

1 Shaun Setareh (SBN 204514)
shaun@setarehlaw.com
2 Thomas Segal (SBN 222791)
thomas@setarehlaw.com
3 Farrah Grant (SBN 293898)
farrah@setarehlaw.com
4 SETAREH LAW GROUP
9665 Wilshire Boulevard, Suite 430
5 Beverly Hills, California 90212
Telephone (310) 888-7771
6 Facsimile (310) 888-0109

7 Attorneys for Plaintiff
Christina Romero
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN BERNARDINO

12 CHRISTINA ROMERO, on behalf of herself
13 and all others similarly situated

14 Plaintiff,

15 v.

16 MCDONALD'S RESTAURANTS OF
CALIFORNIA, INC., a California
17 corporation; and DOES 1 through 50,
inclusive,

18 Defendants

Case No. CIVSB2305280

Assigned for All Purposes to the Honorable
Joseph T. Ortiz, Department S-17

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

*[Filed concurrently with Declaration of Shaun
Setareh in support thereof]*

Date: October 1, 2024

Time: 1:30 p.m.

Place: Department S-17

Complaint Filed: February 17, 2023

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on October 1, 2024 at 1:30 p.m., or as soon thereafter as the matter
3 may be heard in Department S-17 of the above-entitled Court located at 247 W 3rd St, San Bernardino,
4 CA 92415, Plaintiff Christina Romero (“Plaintiff”) will and does hereby move this Court for an Order:

- 5 • Preliminarily approving the proposed Class and PAGA Settlement Agreement and Release
6 as fair, reasonable, and adequate;
- 7 • Preliminarily approving the form, manner, and content of the notice to be mailed to the
8 Class;
- 9 • Setting deadlines for the Settlement Administrator to provide notice to the Class and for
10 Class Members to opt out of or object to the Settlement;
- 11 • Scheduling a hearing date for the Motion for Final Approval of Class Action Settlement;
- 12 • Provisionally certifying the Class;
- 13 • Staying all proceedings in this action, except for such proceedings as may be necessary to
14 implement and complete the Settlement, until Final Approval;
- 15 • Appointing Plaintiff Christina Romero as the Class Representative for settlement purposes
16 only;
- 17 • Appointing Shaun Setareh, Thomas Segal and Farrah Grant of Setareh Law Group as Class
18 Counsel for settlement purposes only; and
- 19 • Appoving Simpluris, Inc. as the Settlement Administrator;
- 20 • Directing that notice be mailed to the Class; and
- 21 • Scheduling a hearing date for the Motion for Final Approval of Class Action Settlement.

22 This motion is made pursuant to California Rules of Court 3.769. This motion will be based upon
23 this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the
24 Declaration of Shaun Setareh as well as exhibits attached thereto, the arguments of counsel, the documents
25 filed in this action and any other matters as may be properly presented on or before the hearing on this
26 motion.

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DATED: September 6, 2024

SETAREH LAW GROUP

/s/ Farrah Grant
SHAUN SETAREH
THOMAS SEGAL
FARRAH GRANT
Attorneys for Plaintiff
Christina Romero

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Christina Romero (“Plaintiff”) seeks preliminary approval of a non-reversionary class and
4 representative action settlement of wage and hour claims and claims for civil penalties under the Private
5 Attorneys General Act of 2004 (“PAGA”) against Defendant MCDONALD’S RESTAURANTS OF
6 CALIFORNIA, INC. (“Defendant”)¹ for a Gross Settlement Amount (“GSA”) of **\$6,500,000**. The Class,
7 to be certified for purposes of settlement only, is estimated to consist of approximately 19,470 Class
8 Members. No Class Members will have to make a claim to receive payment. Instead, all Class Members
9 will be mailed checks directly. Any residue from uncashed checks will go to the State Bar Justice Gap
10 Fund which provides funding to legal aid organizations providing free civil legal services to low-income
11 Californians.

12 The Net Settlement Sum (“NSS”) expected to be paid to Class Members – after payment of Class
13 Counsel fees of thirty three and one-third of the GSA (\$2,166,666.66) and costs of up to \$25,000,
14 settlement administration estimated to be \$76,500, Plaintiff’s service award of \$10,000, and a PAGA
15 Settlement Amount of \$200,000, which includes payment to the California Labor & Workforce
16 Development Agency (“LWDA”) of \$150,000 (75% of the total PAGA Settlement Amount) and payment
17 to PAGA Group Members of \$50,000 (25% of the PAGA Settlement Amount), is \$4,021,833.34.
18 Including the 25% portion of the PAGA Payment, or \$50,000, that will be paid to PAGA Group Members,
19 the NSS being paid to Class Members is **\$4,071,833.34**. The average estimated share of the NSS per Class
20 Member is approximately **\$209.13**. Plaintiff has obtained a significant monetary recovery for Class
21 Members.

22 The Settlement occurred as a result of extensive, arm’s-length negotiations by experienced counsel
23 after sufficient formal and informal written discovery and investigation into the facts. The case settled
24 following acceptance of a mediator’s proposal made by Stephanie Chow, an experienced mediator. The
25 Settlement seeks to fully and finally settle and resolve all claims against Defendant on behalf of all
26

27 ¹ The Parties executed a Class and PAGA Settlement Agreement and Release (“Settlement”), attached as
28 Exhibit 1 to the Declaration of Shaun Setareh filed concurrently herewith.

1 individuals employed by Defendant as non-exempt employees in California at any time from June 2, 2020
2 to the preliminary approval date, or such earlier date as Defendant may elect under the terms of the
3 Settlement. The Settlement will result in financial benefit to the class members on terms that are fair,
4 reasonable, and adequate. Based upon their evaluation, Plaintiff and her counsel have determined that the
5 Settlement is fair, reasonable, adequate and in the best interest of the Class, and they request that this Court
6 grant preliminary approval of the Settlement.

7 **II. THE MAJOR TERMS OF SETTLEMENT**

8 Key provisions of the proposed settlement include the following:

- 9 • Defendant will pay a GSA of **\$6,500,000**.
- 10 • Defendant will not oppose Class Counsel’s application for fees up to 33 and 1/3 percent of the
11 GSA (**\$2,166,666.66**) and costs not to exceed **\$25,000**, to be paid out of the GSA.
- 12 • The notice portion of the Settlement will be administered by Simpluris, Inc. (“Simpluris”), whose
13 costs are estimated to be **\$76,500** to administer the Settlement per its terms.
- 14 • Out of the GSA, **\$200,000** is allocated to resolve the PAGA claims, with 75%, i.e., **\$150,000**, to
15 be paid by the Settlement Administrator to the LWDA, and 25%, i.e., **\$50,000**, to be paid to PAGA
16 Group Members – i.e., individuals employed by Defendant as non-exempt employees in California
17 at any time during December 13, 2021 to and including the close of the Class Period.
- 18 • Defendant will not oppose the application for a **\$10,000** Service Award to Plaintiff.
- 19 • After deducting Class Counsel’s attorneys’ fees and costs, service award to Plaintiff, settlement
20 administration costs, and the PAGA Settlement Amount, the remainder – i.e., the NSS – is calculated
21 to be at least \$4,021,833.34. Including the 25% portion of the PAGA Payment, or \$50,000, that will
22 be paid to PAGA Group Members, the NSS being paid to Class Members is **\$4,071,833.34**. Each
23 Settlement Class Member and each PAGA Member will receive a *pro rata* share from one or both of
24 these amounts based upon the number of weeks worked during the Class Period and/or PAGA Period.
- 25 • Settlement Class Members will be mailed a check so long as they do not opt out. PAGA Members
26 will be mailed a check regardless of whether they opt out of the Settlement as a Class Member.
- 27 • Any checks issued by the Settlement Administrator to Settlement Class Members shall be
28 negotiable for one hundred eighty (180) calendar days after mailing. Those checks remaining

uncashed for more than 180 days after issuance will sent to the cy pres Justice Gap Fund.
(Declaration of Shaun Setareh (“Setareh Decl.”), ¶ 16, Exh. 1 (the “Settlement”).)

III. STATEMENT OF FACTS

A. THE PARTIES

Defendant is a McDonald’s subsidiary that operates McDonald’s corporate owned restaurants in California. Plaintiff Christina Romero worked for Defendant as an hourly non-exempt employee in Upland California as a crew member from approximately December 2021 to July 2022. (Setareh Decl. ¶ 7.)

B. PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES

Plaintiff alleges that Plaintiff and putative class members meal and rest breaks were not scheduled and that they were sometimes not provided in a timely fashion. (Setareh Decl. ¶ 11.)

Additionally, Plaintiff alleges that Defendant did not pay employees for the off-the-clock work performed, including time spent undergoing Covid-19 screenings, time spent clocking in, time spent maintaining uniforms and time spent responding to cell phone communications. (*Id.*)

Plaintiff further asserts she was not reimbursed for business expenses of cell phones, vehicle and laundry services. (*Id.*)

Plaintiff additionally alleges that Plaintiff and the putative class members were not provided with sick time that they were legally entitled to. (*Id.*)

Moreover, Plaintiff alleges that individuals who were paid with pay cards sometimes incurred fees when using the pay cards. (*Id.*)

Plaintiff asserts that Defendant failed to properly factor in shift differential pay when calculating the regular rate of pay. (*Id.*)

Finally, Plaintiff alleges that because of these discrepancies in hours worked as reported, Defendant failed to provide accurate wage statements and also failed to timely pay all wages owed to her and other former employees all wages owed upon separation of employment. (*Id.*)

Defendant denies all of Plaintiff’s allegations and contends it has fully complied with all applicable laws and regulations in connection with its employment of Plaintiff and the employees she seeks to represent. Defendant further contends that Plaintiff cannot establish the requirements to certify a class. Defendant also contends that Plaintiff’s claims are incapable of being manageably tried as a class or PAGA

1 representative action. Defendant asserts that it provides meal periods to employees and authorizes and
2 permits them to take rest periods, and pays meal and rest period premiums, in accordance with applicable
3 law. Defendant asserts that to prove whether any particular employee was not provided the opportunity to
4 take a meal or rest periods on any given day would require an individualized inquiry that would prevent
5 this issue from being resolved on a class and/or representative basis. Defendant asserts that it paid
6 employees for time spent undergoing Covid-19-related wellness checks, and that checks only took a few
7 seconds and varied over time and by location. Defendant states the uniform did not require special
8 maintenance. Defendant asserts that the uniforms were wash-and-wear and did not require drycleaning.
9 Defendant has contended that it did not have a purported policy of not paying required compensation, but
10 rather a policy of paying compensation and of requiring employees to report any unpaid compensable
11 time, and that any failures to report by employees cannot be legally charged to Defendant and, in any
12 event, involve such highly individualized circumstances as to prevent class certification and representative
13 action treatment should this case be litigated. Defendant asserts that employees are only paid by pay card
14 if they expressly elect that option, which most employees do not choose to do. Defendant states that
15 Plaintiff and putative class members were not required to use their cell phone or car for business reasons,
16 that they should not have had to incur any business-related expenses at all, and that if any expenses were
17 incurred, Defendant's policy is to reimburse them. (Setareh Decl. ¶ 12.)

18 **C. PROCEDURAL HISTORY**

19 On February 17, 2023, Plaintiff filed the putative class and representative action complaint
20 against Defendant in San Bernardino Superior Court, entitled *Christina Romero v. McDonald's*
21 *Restaurants of California, Inc.*, Case No. CIVSB2305280. The Complaint alleged ten causes of action
22 for (1) failure to provide meal periods, (2) failure to provide rest periods, (3) failure to pay hourly and
23 overtime wages, (4) failure to pay sick time, (5) failure to reimburse business expenses, (6) failure to
24 provide accurate itemized wage statements, (7) failure to timely pay all final wages, (8) failure to pay
25 wages without discount, (9) statutory unfair competition, and (10) civil penalties under the Labor
26 Code Private Attorneys General Act of 2004 (PAGA). (Setareh Decl. ¶ 8.)
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1 On June 14, 2024, Plaintiff submitted an amended PAGA letter to the Labor & Workforce
2 Development Agency to clarify claims and allegations based on information learned and theories
3 developed through the course of the litigation. (Setareh Decl. ¶ 9.)

4 The parties entered into a stipulation to file a First Amended Complaint for settlement purposes,
5 which was lodged on August 30, 2024, and entered by the Court on September 5, 2024. The First Amended
6 Complaint is Exhibit A to the Settlement. On September 6, 2024, Plaintiff filed the First Amended
7 Complaint. (Setareh Decl. ¶ 10.)

8 **D. INVESTIGATION AND DISCOVERY**

9 Leading up to the mediation, the Parties engaged in formal and informal discovery and
10 exchange of information and documents. Defendant propounded a set of document requests, to which
11 Plaintiff responded and produced documents. Plaintiff propounded written discovery as well, to which
12 Defendant responded and produced hundreds of documents and other information, including, but not
13 limited to, policy documents and records relating to Plaintiff's employment. (Setareh Decl., ¶ 13.)

14 In addition to this exchange of formal discovery, the Parties agreed to attend mediation to attempt
15 to resolve the action entirely and further agreed to engage in informal discovery in advance and in
16 preparation thereof. In preparation for mediation, Plaintiff requested and Defendant provided
17 substantial informal discovery, including production of additional policy documents, putative class
18 members' time and pay records, employee headcounts and pay period counts, and other information
19 requested by Plaintiff. (*Id.*)

20 Plaintiff hired an expert to analyze the produced data with respect to potential damages and
21 penalties in preparation for mediation. (Setareh Decl. ¶ 14.) From the data and other documents obtained
22 from Defendant pertaining to the Class and Defendant's policies, Plaintiff's expert was able to analyze the
23 data sampling, and Plaintiff was then able to thoroughly assess the merits of each claim. (*Id.*)

24 **E. SETTLEMENT NEGOTIATIONS AND SETTLEMENT**

25 The Parties agreed to mediate Plaintiff's alleged wage and hour and PAGA claims and selected
26 Stephanie Chow to serve as mediator. The case settled following acceptance of a mediator's proposal
27 at the end of the full-day mediation on December 28, 2023. (Setareh Decl., ¶ 15.) Each of the Parties,
28

1 represented by its respective counsel, recognized the risk of an adverse result in the Action. (Setareh Decl.,
2 ¶ 18.) The parties agreed to settle the Action and resolve the claims against Defendant. (Settlement, ¶ 1.7.)

3 **F. REASONABLENESS OF THE SETTLEMENT**

4 Plaintiff's Counsel believe that the Settlement is in the best interest of the class members based on
5 their investigation and discovery, their detailed understanding of the issues raised, and the outcome of
6 extensive settlement negotiations. (Setareh Decl., ¶ 17.) Plaintiff's counsel balanced the Settlement
7 against the probable outcome of class certification, liability, the range of recovery at trial, the risks of losing
8 class certification, losing at trial, or not recovering as much as provided by the proposed Settlement, as
9 well as the difficulties and complexity of the litigation, the lengthy process of litigating to judgment, and
10 the various possible delays and appeals. (*Id.* ¶ 18.) Although Defendant contends they have no liability
11 in this case, Plaintiff's Counsel believe that the Settlement represents a fair, reasonable, and adequate
12 settlement given the respective risks associated with the Action. (*Id.*)

13 **IV. DESCRIPTION OF THE SETTLEMENT**

14 **A. APPOINTMENT OF SETTLEMENT CLASS COUNSEL**

15 The Parties have stipulated to the appointment of Shaun Setareh, Thomas Segal and Farrah Grant
16 of Setareh Law Group as Class Counsel. (Settlement, ¶ 2.5.)

17 **B. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

18 The Parties have stipulated to the appointment of Simpluris to administer the Settlement and to
19 provide notice to the Class Members (the "Settlement Administrator"). Simpluris estimates that settlement
20 administration costs shall be **\$76,500**. The Settlement Administrator's estimated fee of \$76,500 is
21 reasonable for a settlement with a class of this size. (Setareh Decl., ¶ 22.)

22 **C. DESCRIPTION OF THE SETTLEMENT CLASS**

23 For settlement purposes only, the Parties agree to the certification of a class pursuant to
24 California Code of Civil Procedure § 382 defined as all individuals employed by Defendant as non-
25 exempt employees in California at any time during the Class Period, i.e. from June 2, 2020 to the
26 preliminary approval date, or such earlier date as Defendant may elect under the terms of the Settlement.
27 (Settlement, ¶¶ 2.6, 2.8).

1 PAGA Group Members are defined as individuals employed by Defendant as non-exempt
2 employees in California at any time during December 13, 2021 to the close of the Class Period. (*Id.*, ¶
3 2.29, 2.32.)

4 Defendant estimates that there were approximately 19,470 Class Members, as of approximately
5 April 2024. (Setareh Decl. ¶ 24.) Defendant represents that the number of workweeks from June 2,
6 2020 through December 5, 2023 is approximately 900,000. If it is determined that the number of Class
7 Work Weeks worked by Class Members exceeds 990,000 Class Work Weeks (900,000, plus 10% of
8 900,000), then, at their option, Defendant may elect to end the Class Period on the date on which the
9 number of Class Work Weeks reached 990,000, or increase the Gross Settlement Amount in
10 proportion to the increased percentage — for example, if such increase in Class Work Weeks is 15%
11 over 900,000 Class Work Weeks, the Gross Settlement Amount will increase by 5%. (Settlement, ¶
12 6.4.)

13 **D. SCOPE OF THE RELEASE**

14 **1. Class Released Claims**

15 “Released Claims” means that Settlement Class Members, on behalf of themselves
16 and their respective former and present representatives, agents, attorneys, heirs,
17 administrators, successors, and assigns, release Released Parties of all claims,
18 debts, liabilities, demands, obligations, damages, and actions or causes of action
19 of any kind arising before or during the Class Period and that were alleged in the
20 Complaint, Amended Complaint, or the PAGA Notices or could have been alleged
21 against any of the Released Parties based on the facts alleged in the Complaint,
22 Amended Complaint, or PAGA Notices or based on any facts discovered in the
23 course of the litigation and including claims under California Labor Code sections
24 201, 202, 203, 204, 212, 215, 216, 218.6, 223, 225, 226, 226.3, 226.6, 226.7, 245
25 et seq., 256, 510, 512, 553, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1,
26 1198, 1199, 2698 et seq. (PAGA), and 2802; the Industrial Welfare Commission
27 (“IWC”) Wage Orders, including IWC Wage Order No. 5-2001; Business and
28 Professions Code section 17200 et seq; and Code of Civil Procedure sections 382
and 1021.5. For the avoidance of doubt, expressly excluded from the Released
Claims are claims in FEHA and related common law cases, in Workers’
Compensation and Unemployment Insurance benefit cases and claims for benefits
under the Employee Retirement Income Security Act of 1974 (ERISA).
(*Id.*, ¶ 2.40.)

26 **2. Released PAGA Claims**

27 “Released PAGA Claims” means all claims that were or could have been asserted
28 pursuant to PAGA arising out of or related to the Released Claims arising before

1 or during the PAGA Period. The Released PAGA Claims are released by both the
2 State of California and the PAGA Group Members as part of this Settlement.
(*Id.*, ¶ 2.41.)

3 **3. Settlement Amount And Allocation Of Settlement Monies**

4 The Settlement provides for a GSA of **\$6,500,000**, which includes all settlement payments to the
5 Class Members, all attorneys' fees, all litigation costs, all settlement administration expenses, all payments
6 to the LWDA, and the service award to Plaintiff. (*Id.*, ¶ 2.20, 2.22.) This is a non-reversionary settlement,
7 and none of the GSA shall revert to Defendant, with the funds of checks uncashed more than 180 days
8 after issue being directed to the cy pres Justice Gap Fund. (¶ 4.10.3.)

9 **E. CLASS MEMBER SETTLEMENT PAYMENT FORMULA**

10 The Parties have agreed to a settlement formula which allocates settlement amounts to Class
11 Members and PAGA Members on a *pro rata* basis, based on their number of workweeks. (Settlement, ¶
12 4.6.2). The Settlement Administrator shall calculate the total number of Class Work Weeks worked by all
13 Settlement Class Members during the Class Period by adding together all the Class Work Weeks provided by
14 Defendant for each Settlement Class Member. The Settlement Administrator shall then divide the Net
15 Settlement Sum by the total number of Class Work Weeks for all Settlement Class Members, resulting in a per
16 Class Work Week value. The Settlement Administrator shall then take the per Work Week value and multiply
17 it by the number of individual Class Work Weeks worked by each Settlement Class Member to yield his or her
18 Class Settlement Award. (*Id.*)

19 Class Settlement Awards shall be allocated 30% to wages subject to Withholdings and Taxes and
20 70% to interest, penalties, and non-wage damages. (*Id.*, ¶ 4.7.1.)

21 The Parties agree to allocate **\$200,000** of the GSA for settlement of claims for civil penalties under
22 PAGA, Labor Code § 2699, *et seq.* (*Id.*, ¶ 2.33.) Pursuant to Labor Code section 2699(i), 75% of that
23 amount (**\$150,000**) will be paid to the LWDA. The remaining 25% (**\$50,000**), will be distributed to PAGA
24 Members on a *pro rata* basis according to the number of PAGA Pay Periods. (*Id.* ¶¶ 2.33, 4.6.4)

25 The Claims Administrator shall distribute the Individual Settlement Payments within 10 business
26 days after receipt of the payment from Defendant. (*Id.*, ¶ 4.10.2.)

27 **F. NOTICE TO CLASS MEMBERS OF SETTLEMENT**

28 The proposed Class Notice and Notice of Eligible Work Weeks ("Notice Packet") (attached as

Exhibit B and C to the Settlement) provides Class Members with all required information so that each member may make an informed decision regarding his or her participation in the Settlement. (*Id.*, ¶ 2.24.) All Class Members will receive a Notice Packet. (*Ibid.*)

Within twenty (20) business days following entry of the Preliminary Approval Order, Defendant will provide the Settlement Administrator the following information with respect to each Class Member: (i) name, (ii) last known residence address, (iii) last known telephone number, (iv) Social Security number, and (v) individual number of Class Work Weeks during the Class Period, and (vi) individual number of PAGA Pay Periods during the PAGA Period (if applicable). (*Id.*, ¶ 4.3.1.) No later than ten (10) business days after receiving the information from Defendant, the Settlement Administrator shall mail the Notice Packet to all Class Members via first class United States Mail. (*Id.*, ¶ 4.3.3)

Any Notice Packets returned to the Settlement Administrator with a forwarding address shall be immediately re-mailed by the Settlement Administrator. The Settlement Administrator shall conduct one address search for any Class Member's Class Notice that is returned without a forwarding address within thirty (30) calendar days of the initial mailing of the Notice Packet, and shall, upon obtaining a new or different address, immediately re-mail the Class Member's Notice Packet. (*Id.*)

Class Members have 45 days to object or opt out of the settlement or dispute the number of workweeks. (*Id.* ¶ 2.25).

Any Class Member wishing to opt-out from the Settlement Agreement must send the settlement administrator a written request for exclusion that is signed by the Class Member, postmarked by no later than 45 days after the date the Settlement Administrator initially mails the Notice to the Class Members. The Request for Exclusion must contain: (i) the full name, address, telephone number and last four digits of the Social Security number of the person requesting to be excluded; (ii) the words "Request for Exclusion" at the top of the document; and (iii) the following statement: "I wish to be excluded from the Settlement of this case, *Christina Romero v. McDonald's Restaurants of California, Inc.*, San Bernardino Superior Court Case No. CIVSB2305280." (Settlement, ¶ 4.4.1.) Each Class Member who does not submit a Request for Exclusion within the Notice Response Deadline shall be bound by the terms of the Settlement and any Court order approving the terms of the Settlement, unless the Court deems such Class Member excluded at the time of the final Fairness Hearing. (*Id.* ¶ 4.4.4).

1 To object to the Settlement Agreement, a Class Member must not exclude themselves from the
2 Settlement and must submit a signed, written objection to the settlement administrator by no later than 45 days
3 after the Notice was initially mailed to the Settlement Class members. An Objection must contain: (i) a
4 reference to the name and case number of the Action (*Christina Romero v. McDonald's Restaurants of*
5 *California, Inc.*, San Bernardino Superior Court Case No. CIVSB2305280); (ii) the full name, signature,
6 address, telephone number, and last four digits of the Social Security number of the objecting Settlement Class
7 Member; (iii) a written statement of the grounds for objecting to the Settlement; and (iv) a written statement of
8 whether the Settlement Class Member intends to appear at the Final Approval Hearing and whether he or she
9 is represented by counsel. Written Objections and all supporting briefs or other materials must be submitted to
10 the Settlement Administrator, by United States mail, postmarked no later than the Notice Response Deadline.
11 Settlement Class Members may but are not required to appear at the Fairness Hearing. (*Id.* ¶ 4.5).

12 Settlement Class Members may dispute the number of Class Work Weeks attributed to them for
13 the Class Period by completing and returning the Notice of Eligible Work Weeks form included in the
14 Notice Packet. (Exhibit C to the Settlement.) The member of the Settlement Class must submit the form no
15 later than 45 days after the date of the mailing of the Notice. (*Id.* ¶ 2.10.)

16 **G. NOTICE AND PAGA PAYMENT TO THE LWDA**

17 The Parties agree to allocate **\$200,000** of the GSA for settlement of claims for civil penalties under
18 PAGA, Labor Code § 2699, *et seq.* (Settlement., ¶ 2.33.) Pursuant to Labor Code section 2699(i), 75%
19 of that amount (**\$150,000**) will be paid to the LWDA. The remaining 25% (**\$50,000**), will be distributed
20 to PAGA Group Members on a *pro rata* basis according to the number of PAGA Pay Periods. (*Id.*, ¶¶
21 2.33, 2.31, 4.6.4). The entirety of each PAGA Settlement Award shall be allocated as penalties. (*Id.*, ¶
22 4.7.1.)

23 Class Counsel has provided a copy of the Settlement and this Motion for Preliminary Approval to
24 the LWDA in accordance with the requirements specified in Labor Code sections 2698-2699.5. (Setareh
25 Decl., ¶ 23.)

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1 **V. ARGUMENT**

2 **A. THE COURT SHOULD CONDITIONALLY CERTIFY THE SETTLEMENT**
3 **CLASS BECAUSE IT MEETS ALL THE REQUIREMENTS FOR CLASS**
4 **CERTIFICATION FOR SETTLEMENT PURPOSES ONLY UNDER CODE**
5 **OF CIVIL PROCEDURE SECTION 382**

6 Under Code of Civil Procedure § 382, class certification is warranted so long as there is “a
7 numerous and ascertainable class with a well-defined community of interest among its members” and a
8 “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.”
9 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332. “The certification question
10 is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” *Id.*
11 at 326 (quoting *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-440). Indeed, the certification
12 question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable
13 to class treatment. *E.g., Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1298. In ruling on a
14 certification motion, a trial court’s task is to determine “whether...the issues which may be jointly tried,
15 when compared with those requiring separate adjudication, are so numerous or substantial that the
16 maintenance of a class action would be advantageous to the judicial process and to the litigants.” *Id.*

17 “[I]t is also well established that trial courts should use different standards to determine the
18 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard
19 of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court* (2003) 113
20 Cal.App.4th 836, 859 (citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 n.19 (“*Dunk*”)).
21 As the court noted in *Dunk*, although certification requirements are intended “to protect the interests of the
22 non-representative class members,” that concern is “protected by the trial court’s fairness review of the
23 settlement.” *Id.*

24 Indeed, numerous courts have certified settlement classes. For example, *In re Drexel Burnham*
25 *Lambert Group, Inc.* (2d Cir. 1992) 960 F.2d 285, *cert. dismissed* (1993) 506 U.S. 1088, 122 L. Ed. 497,
26 113 S. Ct 1070, the parties entered into a tentative settlement before a class was certified. After a hearing,
27 the “district court issued an order certifying the class and approving the settlement agreement.” *Id.* at 289;
28

1 *see also, Alaniz v. California Processors, Inc.* (N.D. Cal. 1976) 73 F.R.D. 269, 278 ("the use of the
2 tentative settlement class procedure was appropriate in this case"), *aff'd*, 572 F.2d 657 (9th Cir.), *cert.*
3 *denied*, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action litigation
4 and an approved procedure which ought to be followed in this case. *See Newberg on Class Actions* (3d ed.
5 1991) § 11.27, pp. 11-40 to 11-56; and *Manual for Complex Litigation*, 2d (1993) § 30.45.

6 Plaintiff submits that, as shown below, this Settlement and the Settlement Class easily meet all of
7 the requirements for certification for settlement purposes.

8 **1. Objectively Ascertainable and Sufficiently Numerous Class**

9 A class is ascertainable when it may be readily identified via an objectively stated definition
10 without unreasonable expense or time by reference to official records. *Rose v. City of Hayward* (1981) 126
11 Cal.App.3d 926, 932. No set number of class members is required to maintain a class action. *Hebbard v.*
12 *Colgrove* (1972) 28 Cal.App.3d 1017, 1030. The California Supreme Court has upheld a class of as few
13 as ten members. *Bowles v. Super. Ct. (Nickel, Jr.)* (1955) 44 Cal.2d 574, 577-81. Here, the Settlement
14 Class is made up of over 19,470 individuals, all of whom may be readily ascertained by reference to
15 Defendant's personnel records. Setareh Decl. ¶ 24. Accordingly, the Settlement Class is not only
16 ascertainable but also sufficiently numerous.

17 **2. Predominance of Common Questions**

18 A question of law or fact is common to the members of a class if it may be resolved through
19 common proof. *See Jaimez, supra*, 181 Cal.App.4th at 1305. As for predominance, it "is a comparative
20 concept, and 'the necessity for class members to individually establish eligibility and damages does not
21 mean individual fact questions predominate.'" *Sav-on, supra*, 34 Cal.4th at 334 (*quoting Reyes v. San*
22 *Diego Cty. Bd. of Supervisors* (1979) 196 Cal.App.3d 1263, 1278). Thus, "[i]ndividual issues do not render
23 class certification inappropriate so long as such issues may effectively be managed." *Id.* This is especially
24 so where the key difference between class members solely concerns their respective amounts of damages.
25 *See id.* As a general rule, if a defendant's liability can be determined by facts common to all members, a
26 class will be certified even if the members must individually prove their damages. *See Hicks v. Kaufman*
27 *& Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916.

1 Plaintiff contends that in this case, the Settlement Class meets these requirements. Plaintiff submits
2 that Defendant's liability arises from the same set of facts and legal questions that apply to and are
3 answered equally as to all Class Members. Plaintiff alleges Class Members were subjected to a common
4 practice in that Defendant: failed to pay them, *inter alia*, for off-the-clock work, failed to provide meal
5 periods and rest periods, including premiums, failed to reimburse for business expenses, failed to pay for
6 sick pay, failed to properly calculate the regular rate of pay, failed to provide compliant wage statements,
7 and failed to pay all wages due upon separation of employment.

8 The Court accordingly should certify the Settlement Class for purposes of settlement under Code
9 of Civil Procedure section 382 and Rule of Court 3.769(c).

10 3. Typicality of Plaintiff's Claims

11 Typicality "requires a showing that the class representative has claims or defenses typical of the
12 class." *See, e.g., Fireside Bank v. Super. Ct. (Gonzalez)* (2007) 40 Cal.4th 1069, 1090. This focuses on
13 "the nature of the claim or defense of the class representative, and not to the specific facts from which it
14 arose or the relief sought." *Hanon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d 497, 508 (internal
15 citations omitted). "The test of typicality 'is whether other members have the same or similar injury,
16 whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class
17 members have been injured by the same course of conduct.'" *Id. (quoting Schwartz v. Harp* (C.D. Cal.
18 1985) 108 F.R.D. 279, 282; *accord Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 ("it has never been
19 the law in California that the class representative must have *identical* interest with the class members").

20 Plaintiff submits that under these standards, Plaintiff's claims are typical of those of the class
21 members. Like Class Members, Plaintiff was an hourly non-exempt employee of Defendant in California.
22 (Setareh Decl., ¶ 19.) Plaintiff alleges she was not paid for all hours worked, was not provided with
23 compliant meal periods and rest breaks, was not reimbursed for business expenses, and did not receive
24 accurate wage statements. (*Id.*) *See Classen, supra*, 145 Cal. App. 3d at 46 (representative plaintiffs need
25 not have all claims or identical interests with class members; they need only have claims that are "typical
26 of the class"); *see also B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal. App. 3d 1341, 1347
27 (representative plaintiffs need not suffer all of the exact same damages as every class member).
28 Accordingly, Plaintiff pursues claims typical of the class she seeks to represent.

1 **4. Adequacy of Plaintiff and Class Counsel to Represent the Class**

2 The adequacy requirement is met where the named plaintiffs are represented by counsel qualified
3 to conduct the litigation and the plaintiffs’ interest in the litigation is not antagonistic to the classes interests.
4 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51. In other words, where the named
5 plaintiffs have adequate counsel, they may represent the entire class absent any disabling conflicts of
6 interest that might hinder the named plaintiffs’ ability to represent the class. *Id.*

7 In this case, Plaintiff submits that she has no conflict of interest with absent Settlement Class
8 Members and has agreed to place the classes interests above her own. (Setareh Decl., ¶ 19.) *See Global*
9 *Minerals, supra*, 113 Cal.App.4th at 851 (the inquiry into the adequacy of a class representative is intended
10 to uncover any conflicts between the plaintiff and the class he or she seeks to represent). Setareh Law
11 Group is experienced in wage and hour class action litigation and has no conflicts of interest with absent
12 Class Members. (Setareh Decl., ¶¶ 4-6, 19.) Thus, this Court should appoint Plaintiff Christina Romero
13 as Class Representative for the Settlement Class and appoint her counsel as Class Counsel.

14 **B. STANDARD FOR GRANTING PRELIMINARY SETTLEMENT APPROVAL**

15 Cases brought as class actions may only be settled upon court approval and then only after a
16 determination that the settlement is fair, adequate, and reasonable is made. *In re Microsoft I-V Cases*
17 (2006) 135 Cal.App.4th 706, 723. Courts have broad discretion to make this determination and consider
18 factors, such as the strength of plaintiff’s case, the risk, expense, complexity and likely duration of further
19 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
20 extent of discovery completed and the stage of the proceedings, the experience and views of counsel, and
21 the reaction of the class members to the proposed settlement. *Id.*; *Dunk*, 48 Cal.App.4th at 1800-01; *Reed*
22 *v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 336. “[A] presumption of fairness exists
23 where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
24 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
25 and (4) the percentage of objectors is small.” *Dunk, supra*, at 1802; *see also Chaves v. Netflix, Inc.* (2008)
26 162 Cal.App.4th 43, 52.

27 California Rule of Court 3.769 sets forth the procedures for settlement of class actions in
28 California. A two-step process is required. First, the court preliminarily approves the settlement and the

1 class members are notified as directed by the court. Cal. Rule of Court 3.769(c)-(f). “The notice must
2 contain an explanation of the proposed settlement and the procedures for class members to follow in filing
3 written objections to it and in arranging to appear at the settlement hearing and state any objections to the
4 proposed settlement.” Cal. Rule of Court 3.769(f). Second, the court conducts a final approval hearing to
5 inquire into the fairness of the proposed settlement. Cal. Rule of Court 3.769(g). If the court approves
6 the settlement, a judgment is entered with provision for continued jurisdiction for the enforcement of the
7 judgment. Cal. Rule of Court 3.769(h).

8 In deciding whether to grant preliminary approval, courts are to give “due regard” to “what is
9 otherwise a private consensual agreement between the parties.” *Sutter Health Uninsured Pricing Cases*
10 (2009) 171 Cal.App.4th 495, 505. When approving a settlement, “the court need not ‘reach any ultimate
11 conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the
12 very uncertainty of the outcome in litigation and avoidance of wasteful and expensive litigation that induce
13 consensual settlements.’” *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291 (quoting
14 *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625).² The court’s inquiry must
15 be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of
16 fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
17 whole, is fair, reasonable and adequate to all concerned. *Id.*

18 **C. THIS COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER**
19 **PRELIMINARILY APPROVING THE SETTLEMENT BECAUSE IT IS**
20 **FAIR, ADEQUATE, AND REASONABLE**

21 **1. Settlement Resulted From Serious, Informed, Non-Collusive Negotiations**

22 The Parties reached this settlement only after they conducted extensive and protracted arm’s-length
23 negotiations through an experienced and knowledgeable mediator, Stephanie Chow, and accepted her
24 mediator’s proposal. (Setareh Decl., ¶ 15.) The Parties have not engaged in any collusion or improper
25

26 ² The California Supreme Court has suggested that trial courts, in the absence of controlling California
27 authority, utilize class action procedures of the Federal Rules of Civil Procedure. *See LaSala v.*
28 *American Sav. & Loan Ass’n* (1971) 5 Cal.3d 864, 872. Thus, the Court may look to federal authorities
in ruling on this motion.

1 negotiations. Plaintiff and Defendant do not have any agreements regarding the proposed Settlement that
2 are not reflected in the Settlement. (*Id.* ¶ 18.)

3 **2. Sufficient Fact Investigation and Discovery Has Occurred to Assess the**
4 **Fairness of the Settlement**

5 As discussed above, Plaintiff's counsel engaged in investigation and written discovery that has
6 allowed them to evaluate the merits of the Class Members' claims and Defendant's defenses as well as the
7 range of possible recoverable damages. (*Id.*, ¶¶ 13-14.) Based on Plaintiff's counsel's investigation and
8 discovery, Plaintiff and her counsel are of the opinion that this settlement is fair, reasonable, adequate, and
9 in the Class Members' best interest. (*Id.* ¶ 17.) Plaintiff's counsel's investigation and discovery are more
10 than sufficient to warrant their and Plaintiff's decision to enter into the Settlement.

11 Plaintiff and Defendant engaged in formal and informal discovery prior to resolving the Action.
12 Plaintiff and Defendant engaged in formal and informal discovery prior to resolving the Action. Leading
13 up to the mediation, the Parties engaged in formal and informal discovery and exchange of information
14 and documents. Defendant propounded a set of document requests, to which Plaintiff responded and
15 produced documents. Plaintiff propounded written discovery as well, to which Defendant responded
16 and produced hundreds of documents and other information, including, but not limited to, policy
17 documents and records relating to Plaintiff's employment. (Setareh Decl., ¶ 13; Settlement, ¶ 1.5.)

18 In addition to this exchange of formal discovery, the Parties agreed to attend mediation to attempt
19 to resolve the action entirely and further agreed to engage in informal discovery in advance and in
20 preparation thereof. In preparation for mediation, Plaintiff requested and Defendant provided
21 substantial informal discovery, including production of additional policy documents, putative class
22 members' time and pay records, employee headcounts and pay period counts, and other information
23 requested by Plaintiff. (*Id.*)

24 Plaintiff hired an expert to analyze the produced data with respect to potential damages and
25 penalties in preparation for mediation. (*Id.* ¶ 14.) From the data and other documents obtained from
26 Defendant pertaining to the Class and Defendant's policies, Plaintiff's expert was able to analyze the data
27 sampling, and Plaintiff was then able to thoroughly assess the merits of each claim. (*Id.*)

1 **3. Plaintiff’s Counsel Are Experienced Class Action and Employment**
2 **Attorneys and the Amount of Attorneys’ Fees Sought Are Appropriate**

3 As detailed more completely in the declarations of Shaun Setareh of the Setareh Law Group,
4 Plaintiff’s counsel are particularly experienced in employment law and wage and hour class actions.
5 (Setareh Decl., ¶¶ 4-6.)

6 Plaintiff’s counsel believe that the 33¹/₃% of the GSA that they will seek in attorneys’ fees are
7 appropriate in this matter. (Setareh Decl., ¶ 21.) The Court of Appeal has recognized that one factor
8 supporting a lodestar multiplier is comparison to the fees typically earned in contingency fee litigation
9 where the plaintiff’s attorney is awarded fees based on a percentage of the award recovered for the client:
10 “to ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in
11 comparable litigation.” *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 50. As the Court
12 knows, contingency fees typically range from one-third to forty percent. Indeed, Setareh Law Group has
13 been awarded 33¹/₃% common-fund attorneys’ fees in numerous class actions. (*Id.*)

14 Factors that courts consider in determining the multiplier include: “The quality of the
15 representation, the novelty and complexity of the issues, the results obtained, and the contingent risk
16 presented.” *Lafitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 489. “There is no hard and fast
17 rule limiting [these]...numerous factors, and their evaluation is entrusted to a trial court’s sound
18 discretion.” *Center for Biological Diversity v. Cty. of San Bernardino* (2010) 185 Cal.App.4th 866, 901.

19 Counsel believe the proposed settlement is fair, reasonable, and adequate in light of the
20 complexities of the case, the uncertainties of further litigation, and that it represents a fair and reasonable
21 recovery for the Settlement Class. (Setareh Decl., ¶ 18.)

22 **4. The Settlement Is Fair and Reasonable Based on the Strength of**
23 **Plaintiff’s Case and the Risks and Costs of Further Litigation**

24 California courts recognize that “‘the merits of the underlying class claims are not a basis for
25 upsetting the settlement of a class action.’” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
26 246 (quoting *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
27 1150). The settlement need not provide one-hundred percent of the damages sought in order to be judged
28 reasonable. *Wershba*, 91 Cal.App.4th at 250. “Thus, even if ‘the relief afforded by the proposed settlement

1 is substantially narrower than it would be if the suits were to be successfully litigated,’ this is not a bar to
2 a class settlement because ‘the public interest may indeed be served by a voluntary settlement in which
3 each side gives ground in the interest of avoiding litigation.’” *Id.* (quoting *Air Lines Stewards v. American*
4 *Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109).

5 Despite a total potential recovery of \$18,215,338.88 on their class claims, Plaintiff recognizes the
6 challenges she faces in certifying a class action and establishing liability on the underlying wage and hour
7 claims. (*Id.*) Plaintiff estimates that her likelihood of prevailing on all her causes of action are extremely
8 low and thus her likelihood of recovering \$18,215,338.88 or anything close to that amount on behalf of a
9 class is very unlikely. (*Id.*) The settlement of \$6,500,000.00 represents about 35.6% of the estimated
10 \$18,215,338.88 exposure, assuming these amounts could be proven at trial.

11 For those claims, if any, that are certified for class treatment, Plaintiff must prevail at a trial on the
12 merits. In addition to having to prove that Plaintiff and other workers were not paid for all hours worked,
13 Plaintiff must establish willfulness with respect to their waiting time penalties claim under Labor Code
14 Section 203 as well as a knowing and intentional violation under Labor Code Section 226 for wage
15 statement penalties.

16 With respect to the claims asserted on behalf of the Settlement Class in this case, there are
17 significant risks that support the reduced compromise amount. These risks include, but are not limited to,
18 the following:

19 (i) The risk that Plaintiff would be unable to establish liability for allegedly unpaid straight
20 time and overtime wages. *See Duran v. U.S. Bank Nat’l Ass’n* (2014) 59 Cal.4th 1, 39 & fn. 33 (“*Duran*”),
21 citing *Dilts v. Penske Logistics, LLC* (S.D. Cal. 2014) 2014 WL 205039 (dismissing certified off-the-
22 clock claims based on proof at trial).

23 (ii) The risk that Plaintiff would not be able to prove liability for alleged failure to provide
24 compliant meal periods and rest breaks; or that to establish liability for the failure to provide compliant
25 meal periods and rest breaks would require an individualized inquiry that would prevent these issues from
26 being resolved on a class and/or collective basis. For example, Plaintiff alleged that that some meal and
27 rest breaks were not timely provided due to work constraints. Defendant asserts that it provides meal
28 periods to employees and authorizes and permits them to take rest periods, and pays meal and rest period

1 premiums, in accordance with applicable law. Defendant asserts that to prove whether any particular
2 employee was not provided the opportunity to take a meal or rest periods on any given day would require
3 an individualized inquiry that would prevent this issue from being resolved on a class and/or representative
4 basis.

5 (iv) The risk that Defendant's challenged employment policies might not ultimately support
6 class certification or a class-wide liability finding, *see, Duran*, 59 Cal.4th at 14 & fn. 28 (citing Court of
7 Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability
8 of proposition). Defendant has contended, for example, that it did not have a purported policy of not
9 paying required compensation, but rather a policy of paying compensation and of requiring employees to
10 report any unpaid compensable time, and that any failures to report by employees cannot be legally charged
11 to Defendant and, in any event, involve such highly individualized circumstances as to prevent class
12 certification and representative action treatment should this case be litigated. *See, e.g., Morillion v. Royal*
13 *Packing Co.* (2000) 22 Cal.4th 575, 585 (employer not required to pay employees for time spent
14 performing work of which the employer had no knowledge).

15 (v) For the same reasons, liability, damages recovery, and certification risks are heightened
16 given: (1) the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and practices
17 could preclude class-wide awards of statutory penalties under Labor Code section 226(e); (2) the risk that
18 individual differences between settlement Class Members could be construed as pertaining to liability, and
19 not solely to damages, *see, Duran*, 59 Cal.4th at 19; and (3) the risk that class or collective treatment could
20 be deemed improper as to one or more claims except for settlement purposes.

21 (vi) The risk that any civil penalties award under PAGA could be reduced by the Court in its
22 discretion, which would materially impact the recovery by the Class. *See* Labor Code section 2699(e)(1).

23 (vii) The risk that lengthy appellate litigation could ensue as to both liability and certification
24 issues, with associated litigation risk and costs, further enhances the value of a confirmed settlement as
25 opposed to unpredictable litigation.

26 (viii) Although the PAGA penalties calculated by Plaintiff's expert amounts to an extravagant
27 \$191,472,300.00, that amount is not likely to bear fruit in this case. Most significantly, the ultimate
28 decision as to the amount of penalties is always up to the discretion of the Court.

1 (ix) The risk that the Court would find that Covid-19 screenings occurred while employees were
2 clocked in. This is further compounded by the individualized inquiry that could be necessary to make this
3 determination for each employee based on his or her particular circumstances, including but not limited to co-
4 workers, employees, site, and working conditions.

5 (x) The risk that the Court would find that the Covid-19 screening claim is not certifiable as Defendant
6 claims it paid employees for time spent undergoing Covid-19-related wellness checks, and that it's Covid-19
7 screenings only took a few seconds and varied over time and by location.

8 (xii) The risk that the Court would find that Defendant's reimbursement policies were compliant.

9 In these respects, Defendant strongly denies any liability and the propriety of class certification for
10 any reason other than settlement. (*Id.*) Continued litigation of this lawsuit presented Plaintiff and
11 Defendant with substantial legal risks that were (and continue to be) very difficult to assess. (*Id.*)

12 In light of the uncertainties of protracted litigation, the Settlement amount reflects a fair and
13 reasonable recovery for the Class Members. (*Id.*) The Settlement amount is, of course, a compromise
14 figure. (*Id.*) By necessity, it took into account risks related to liability, damages, class action certification,
15 and all the defenses asserted by Defendant as to all such matters. (*Id.*) Moreover, each Settlement Class
16 Member will be given the opportunity to opt out of the Settlement, allowing those who feel they have
17 claims that are greater than the benefits they can receive under this Settlement to pursue their own claims.
18 (*Id.*)

19 **D. THE COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER**
20 **DIRECTING THAT NOTICE BE SENT**

21 "The notice given to the class must fairly apprise the class members of the terms of the proposed
22 compromise and of the options open to dissenting class members." *Trotsky v. L.A. Fed. Sav. & Loan Ass'n*
23 (1975) 48 Cal.App.3d 134, 151-52. "The notice must be structured to enable class members to decide
24 whether to intervene or object, 'opt out,' or accept the settlement." *Id.* at 152. Class notice must strike a
25 balance between thoroughness and the need to avoid unduly complicating the content of the notice and
26 confusing class members. *Wershba*, 91 Cal.App.4th at 252. Furthermore, an appropriate notice is one
27 which has a reasonable chance of reaching the class members. *Cartt v. Superior Court* (1975) 50
28 Cal.App.3d 960, 974.

1 The Notice Packet explains in plain and easily understood language what the case is about; the
2 class definition and claims; the settlement amount and approximate individual amount each Class Member
3 will receive; the requested amounts to be paid to class counsel and as a service award to the class
4 representative; the rights of class members to opt out or object to the Settlement's terms and the process
5 by which they can do so; the binding effect of the Settlement on those who do not request exclusion,
6 including a description of the claims being released; and the particulars of the final fairness hearing.
7 (Settlement, ¶ 2.7, Ex. B.)

8 The Parties' proposed plan for directing notice to the Class is also the best notice that is practicable
9 under the circumstances. Using last-known addresses, the Settlement Administrator will send the Notice
10 Packet by First Class U.S. Mail to all Class Members. (*Id.*, ¶ 4.3.3.) Further, the Settlement Administrator
11 will perform skip traces to obtain the correct address of any Class Members for whom the Notice Packet
12 is returned as undeliverable and will attempt re-mailings. (*Id.* ¶ 4.3.2.)

13 **E. THE COURT SHOULD SET A HEARING FOR FINAL APPROVAL**

14 Finally, the Court should set a formal hearing to conduct an inquiry into the fairness of the proposed
15 settlement. Cal. Rule Ct. 3.769(e), (g). At the hearing, proponents of the Settlement may explain and
16 describe the terms and conditions and offer argument of settlement approval. Members of the Settlement
17 Class, or their counsel, may also appear and offer evidence and testimony in opposition to the Stipulation
18 of Settlement. The Parties request that the hearing on final approval of the settlement be set as soon as
19 may be convenient for the Court.

20 **VI. CONCLUSION**

21 For the foregoing reasons, the Parties respectfully submit that the Settlement's terms are fair,
22 adequate, and reasonable and that it is in the best interest of the Class Members. Under the applicable
23 class action criteria and guidelines, this Class should be conditionally certified, the Settlement should be
24 preliminarily approved, the Class should be notified regarding the Settlement, and the Court should
25 schedule a final approval hearing.

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DATED: September 6, 2024

SETAREH LAW GROUP

/s/ Farrah Grant
SHAUN SETAREH
THOMAS SEGAL
FARRAH GRANT
Attorneys for Plaintiff
Christina Romero