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

SHADEA BRADLEY and GREGORY
JOHNSON, individually, and on behalf of other
members of the general public similarly situated,

Plaintiffs,

vs.

NATIVE AMERICAN HEALTH CENTER,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 22CV011617

*Assigned for all purposes to the Honorable
Evelio Grillo, Dept. 21*

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: July 14, 2023

Time: 9:00 a.m.

Dept.: 21

Reservation ID: 663481384297

Complaint Filed: May 23, 2022

Trial Date: Not Set

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

3 **PLEASE TAKE NOTICE** that on July 14, 2023 at 9:00 a.m. or as soon thereafter as may be
4 heard in Department 21 of the above-entitled court, located at located at 1221 Oak Street, Oakland,
5 California 94612, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769,
6 Plaintiffs Shadea Bradley and Gregory Johnson (“Plaintiffs”) will, and hereby do, move the Court for
7 entry of an order granting preliminary approval of the proposed Joint Stipulation of Class Action and
8 PAGA Settlement entered between Plaintiffs and Defendant Native American Health Center, Inc.
9 (“Defendant”). Specifically, Plaintiffs request that the Court enter an order:

10 1. Granting preliminary approval of the Joint Stipulation of Class Action and PAGA
11 Settlement attached as Exhibit 1 to the Declaration of S. Emi Minne in support of Motion for
12 Preliminary Approval (“Agreement” or “Settlement”);

13 2. Approving the proposed Notice of Proposed Class Action Settlement (“Class Notice”)
14 attached as Exhibit A to the Agreement, and the proposed deadlines for the settlement administration
15 process;

16 3. Approving the opt-out and objection procedures set forth in the Agreement and Class
17 Notice;

18 4. Provisionally certifying the proposed Class for settlement purposes;

19 5. Appointing Plaintiffs as the Class Representatives for the Class for settlement
20 purposes;

21 6. Appointing S. Emi Minne and Jill J. Parker of Parker & Minne, LLP and Edwin
22 Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers for Justice, PC as Class Counsel for
23 settlement purposes;

24 7. Appointing Simpluris, Inc. as the Settlement Administrator;

25 8. Directing Defendant to furnish the names, last known mailing address, social security
26 numbers, start and end dates of active employment as a non-exempt employee of Defendant in the
27 State of California, number of workweeks during the Class Period, and number of workweeks during
28 the PAGA Period for all Class Members to the Administrator no later than 14 days calendar after the

1 Court grants preliminary approval of the Settlement, as well as any other information the
2 Administrator may reasonably require to administer the Settlement;

3 9. Scheduling a final approval hearing.

4 Good cause exists for the granting of this motion as the proposed Settlement is fair, adequate,
5 and reasonable. Additionally, the proposed notice process complies with California Rules of Court,
6 Rules 3.766 and 3.769, and mailing the proposed Class Notice to the Class Members' last known
7 addresses is an appropriate form of giving notice.

8 Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Settlement, as well as
9 information regarding the preliminary approval hearing on this matter, were submitted to the
10 California Labor Workforce Development Agency via online filing at [https://www.dir.ca.gov/Private-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
11 [Attorneys-General-Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html) on June 12, 2023. *See* Minne Decl. ¶ 67,
12 Exh. 3.

13 The motion is based upon this notice, the attached memorandum of points and authorities; the
14 Declaration of S. Emi Minne and exhibits thereto; the Declaration of Joanna Ghosh; the Declaration
15 of Shadea Bradley; the Declaration of Gregory Johnson; the Declaration of Eric Springer on behalf of
16 Simpluris, Inc.; the pleadings and other records on file with the Court in this matter; and any other
17 further evidence or argument that the Court may properly receive at or before the hearing.

18 Respectfully submitted,

19
20 Dated: June 12, 2023

PARKER & MINNE, LLP

21 By: 

22 S. Emi Minne
23 Attorneys for Plaintiffs
24 SHADEA BRADLEY and
25 GREGORY JOHNSON
26
27
28

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a putative class and representative wage and hour action brought by Plaintiffs Shadea Bradly and Gregory Johnson (“Plaintiffs”) against Defendant Native American Health Center, Inc. (“Defendant”) on behalf of Defendant’s current and former non-exempt employees. By way of this Motion, Plaintiffs seek preliminary approval of a non-reversionary Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Agreement”)¹, which will resolve the Action in its entirety. The key terms of the Agreement are as follows:

- Size of the Class: approximately 732 individuals.
- Gross Settlement Amount: \$1,595,000.00, exclusive of employer payroll taxes.
- Settlement Administration Costs: \$11,728.00.
- Requested Class Representative Enhancement Payments: \$7,500.00 to each Plaintiff.
- Requested Attorney’s Fees and Costs: \$558,250.00, plus costs not to exceed \$30,000.00.
- PAGA Penalties: \$100,000.00, 75% of which will be paid to the LWDA, with the remaining 25% paid to PAGA Members.
- Estimated Net Settlement Amount: \$880,022.00.
- Average Estimated Individual Class Payment: \$2,037.09.
- Average Estimated Individual PAGA Payment: \$93.98.

As set forth herein, the Agreement is the product of informed discovery, arms-length negotiations by experienced counsel, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiffs therefore respectfully request that the Court enter an order granting preliminary approval of the proposed Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a nonprofit, Federally Qualified Health Center that provides medical, dental, behavioral health, community wellness, and social services to California’s Bay Area Native

¹ The Joint Stipulation of Class Action and PAGA Settlement A is attached as Exhibit 1 to the Declaration of S. Emi Minne in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Minne Decl.”).

Population and underserved communities, with locations in Alameda County, San Francisco County, and Contra Costa County. (Minne Decl., ¶ 3.) Plaintiff Shadea Bradley is former non-exempt employee of Defendant who was employed by Defendant as a Dental Assistant from approximately June 4, 2018 to September 11, 2019. (*Id.*, ¶ 4; Declaration of Shadea Bradley [“Bradley Decl.”], ¶ 3.) Plaintiff Gregory Johnson is a former non-exempt employee of Defendant who was employed by Defendant as a Facilities Maintenance Worker from approximately March 2021 to September 2022. (Minne Decl., ¶ 5; Declaration of Gregory Johnson [“Johnson Decl.”], ¶ 3.)

On May 23, 2022, Plaintiff Shadea Bradley filed a putative class action complaint against Defendant entitled *Shadea Bradley v. Native American Health Center, Inc.* (Alameda County Superior Court Case No. 22CV011617, hereinafter “Action”). The original Complaint alleged the following causes of action: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime Wages); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); and (10) Violation of California Business and Professions Code §§ 17200, et seq. (Minne Decl., ¶ 6.)

On August 1, 2022, Ms. Bradley served her first set of formal written discovery requests on Defendant, which consisted of Special Interrogatories (Set One and Set Two), Form Interrogatories (Set One), and Requests for Production of Documents (Set One), as well as a notice of deposition of Defendant’s person most knowledgeable. (*Id.*, ¶ 7.) After Ms. Bradley served her first set of written discovery requests, Plaintiffs’ counsel met and conferred with Defendant’s counsel regarding the potential for early resolution of the Action. (*Id.*, ¶ 8.) Pursuant to these discussions, the Parties agreed to exchange informal discovery, engage in private mediation, and extend Defendant’s deadline to respond to Ms. Bradley first set of written discovery requests until after completion of mediation. (*Id.*)

1 However, notwithstanding the general agreement to engage in informal discovery, as a pre-condition
2 for engaging in early mediation, Plaintiff’s counsel required that Defendant produce the names and
3 contact information of all putative Class Members pursuant to a *Belaire-West* opt-out procedure prior
4 to mediation. (*Id.*)

5 Consistent with the Parties’ agreement regarding mediation, informal discovery, and the Class
6 list, Plaintiffs’ counsel met and conferred with Defendant’s counsel regarding the format of a *Belaire-*
7 *West* notice, which was ultimately mailed by Simpluris, Inc. on December 16, 2022. (*Id.*, ¶ 9.) On
8 January 12, 2023, Simpluris, Inc. provided Plaintiffs’ counsel with a list containing the names and
9 contact information of all putative Class Members who did not opt-out. (*Id.*)

10 On January 27, 2023, Plaintiff Johnson provided notice to the California Labor & Workforce
11 Development Agency (“LWDA”) and Defendant of his intent to seek civil penalties pursuant to Labor
12 Code §§ 2698, et seq. (“PAGA”). (*Id.*, ¶ 10.) In an effort to facilitate global resolution, the Parties
13 subsequently agreed to include Mr. Johnson’s anticipated PAGA claims in the mediation. (*Id.*)

14 Pursuant to the Parties’ agreement, Defendant provided Plaintiffs’ counsel with extensive
15 informal discovery prior to mediation, which included a 25% sampling of Class Members’ time and
16 payroll records. The sampling was randomly selected and included employees across the Class Period.
17 (*Id.*, ¶ 11.) Defendant also provided Plaintiffs’ counsel with all versions of Defendant’s employee
18 handbooks in use during the Class Period, the collective bargaining agreement governing Class
19 Members’ employment, and other documents evidencing its relevant wage and hour policies and
20 procedures. (*Id.*) Finally, Defendant provided Plaintiffs’ counsel with key data points regarding the
21 size and composition of the Class, such as the number of Class Members and PAGA Members
22 (including the number of current versus former employees), the total number of workweek and pay
23 periods worked by Class Members, the number of pay periods worked by PAGA Members, and the
24 average rates of pay for the Class. (*Id.*)

25 Prior to mediation, Plaintiffs’ counsel thoroughly reviewed the informal discovery produced
26 by Defendant, which included consulting with an expert to analyze Class Members’ time and payroll
27 records. (*Id.*, ¶ 12.) Plaintiffs’ counsel also engaged in further independent investigation, interviewed
28 numerous Class Members regarding their experiences working for Defendant, and conducted further

1 legal research regarding the merits of Plaintiffs’ claims and Defendant’s potential defenses thereto.
2 (*Id.*) Based on this investigation and informal discovery, Plaintiffs’ counsel prepared a detailed and
3 informed assessment of Defendant’s potential liability in advance of mediation. (*Id.*) Plaintiffs’
4 counsel also extensively briefed the strengths and weaknesses of Plaintiffs’ claims and Defendant’s
5 anticipated defenses, and provided their analysis to the mediator for her consideration. (*Id.*)

6 After completing a thorough investigation and analysis of Plaintiffs’ claims, on February 7,
7 2023, the Parties attended a formal mediation with Monique Ngo-Bonnici, Esq., a neutral and
8 respected mediator with extensive experience in complex wage and hour matters. (*Id.*, ¶ 13.) The
9 Parties engaged in a full day of negotiations, during which the Parties debated their respective positions
10 and exchanged views regarding the strengths and weaknesses of their claims and defenses. (*Id.*) The
11 settlement discussions were at all times at arm’s length and, although conducted with appropriate
12 professional decorum, were adversarial. (*Id.*) Plaintiffs and their counsel went into mediation willing
13 to explore the potential for a settlement of the Action, but were also prepared to litigate Plaintiffs’
14 claims through class certification, trial, and appeal if a settlement was not reached. (*Id.*) The Parties
15 failed to reach an agreement to settle the Action at the mediation, however Ms. Ngo-Bonnici issued
16 mediator’s proposal, which was subsequently accepted by all Parties on or about March 6, 2023. (*Id.*)

17 On April 28, 2023, after Mr. Johnson fully exhausted PAGA’s mandatory 65-day notice period,
18 the Parties filed a Joint Stipulation to allow for the filing of a First Amended Complaint (“FAC”) in
19 order to add Mr. Johnson as an additional named plaintiff to the Action, and to add a cause of action
20 under PAGA. (*Id.*, ¶ 14.) The Court entered an order approving the stipulation and deeming the FAC
21 filed on May 1, 2023. (*Id.*).

22 On or about April 28, 2023, after further negotiations, the Parties fully executed a long form
23 Joint Stipulation of Class Action and PAGA Settlement. (*Id.*, ¶ 15, Exh. 1.)

24 **III. SUMMARY OF THE SETTLEMENT TERMS**

25 **A. Definition of the Proposed Class and PAGA Members.**

26 For purposes of Settlement only, the Parties have agreed to certify the following class: “All
27 current and former hourly-paid, non-exempt employees of Defendant Native American Health Center,
28 Inc. who were employed by Defendant in the State of California at any time during the Class Period.”

(Minne Decl., ¶ 17; Agreement, ¶ 6) The Class Period commences on May 23, 2018 and ends on the June 27, 2023. (Minne Decl., ¶ 17; Agreement, ¶ 7.)² There are approximately 432 Class Members. (Minne Decl., ¶ 18.).

The Settlement also includes a subgroup of “PAGA Members” which consists of all current and former non-exempt employees of Defendant who were employed by Defendant in the state of California at any time during the PAGA Period. (Minne Decl., ¶ 19; Agreement, ¶ 24.) The PAGA Period commences on January 27, 2022, and ends on June 27, 2023. (Minne Decl., ¶ 19; Agreement, ¶ 23.) There are approximately 266 PAGA Members. (Minne Decl., ¶ 20.)

B. Gross Settlement Amount

The Parties have agreed to settle the Class and PAGA claims at issue in the FAC for Gross Settlement Amount of \$1,595,000.00. (Minne Decl., ¶ 21; Agreement, ¶¶ 15, 50.) The Gross Settlement Amount is non-reversionary, and does not include employer-side payroll taxes, which shall be separately paid by Defendant. (*Id.*) The Gross Settlement Amount shall be allocated as follows:

- Attorneys’ Fees to Class Counsel in the amount of 35% of the Gross Settlement Amount (i.e., \$558,250.00). (Minne Decl., ¶ 22; Agreement, ¶¶ 4, 54.)
- Reimbursement of Class Counsel’s actual litigation costs and expenses, not to exceed \$30,000.00. (Minne Decl., ¶ 22; Agreement, ¶¶ 4, 54.)
- Class Representative Enhancement Payments of \$7,500.00 to each Plaintiff. (Minne Decl., ¶ 22; Agreement, ¶¶ 8, 55.)
- Settlement Administration Costs not to exceed \$11,728.00. (Minne Decl., ¶ 22; Agreement, ¶¶ 37, 56.)
- PAGA Penalties in the amount of \$100,000.00, 75% of which shall be allocated to the LWDA, and 25% of which shall be distributed to PAGA Members. (Minne Decl., ¶ 22; Agreement, ¶¶ 22, 57.)

The Gross Settlement Amount, less the payments listed above, shall be the “Net Settlement Amount”, which shall be distributed to Participating Class Members as Individual Class Payments on

² The Agreement defines both the Class Period and PAGA Period cut-off dates as the earlier of (a) 60 days from the execution by both parties of the long form settlement agreement, or (b) the date of preliminary approval. (Agreement, ¶¶ 7, 23.) The Agreement was fully executed on or about April 28, 2023. Thus, under the terms of the Agreement, both the Class Period and PAGA Period end on June 27, 2023. (Minne Decl., ¶ 17.)

a pro rata basis according to the number of workweeks worked during the Class Period. (Minne Decl., ¶¶ 23-24; Agreement ¶¶ 16, 58, 59.) Individual Class Payments shall be allocated as 20% wages subject to all applicable tax withholdings, 40% interest and 40% penalties not subject to tax withholdings. (Minne Decl., ¶ 26; Agreement, ¶ 60.) The Net Settlement Amount is currently estimated to be approximately \$880,022.00. (Minne Decl., ¶ 23; Agreement, ¶ 58.) It is currently estimated that Class Members will receive an average Individual Class Payment of \$2,037.09. (Minne Decl., ¶ 25.)

In addition to the Individual Class Payments from the Net Settlement Amount, PAGA Members shall receive a pro-rata share of the 25% portion of PAGA Penalties allocated for distribution to PAGA Members. (Minne Decl., ¶ 27; Agreement, ¶ 27.) Individual PAGA Payments will be distributed on a pro-rata basis based on the number of workweeks worked by PAGA Members during the PAGA Period. (Minne Decl., ¶ 27; Agreement, ¶¶ 17, 61.) The estimated average Individual PAGA Payment to PAGA Members is \$93.98. (Minne Decl., ¶ 27.)

The Settlement Administrator shall determine the eligibility for, and the amounts of, each Individual Settlement Award under the terms of the Settlement Agreement. (Minne Decl., ¶ 28; Agreement, ¶¶ 37, 53, 64.) All payments owed under the Settlement shall be disbursed within 29 days of the Effective Date. (Minne Decl., ¶ 28; Agreement ¶¶ 52-53.) If an Individual Class Payment check or Individual PAGA Payment check remains uncashed after one hundred eighty (180) days from the initial mailing, the Settlement Administrator shall transfer the value of the uncashed checks to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member or PAGA Member. (Minne Decl., ¶ 28, Agreement ¶ 79.) As such, no "unpaid residue" under California Code of Civil Procedure §384 will result from the Settlement. (Minne Decl., ¶ 28.)

C. Release of Class and PAGA Claims.

Upon the funding of the Gross Settlement Amount and all employer payroll taxes, Plaintiffs, Participating Class Members, and PAGA Members shall be deemed to have released their respective Released Claims against the Released Parties. (Agreement ¶¶ 30, 85.) The scope of the release is narrowly tailored to release claims based on facts alleged in the FAC, depending on whether Class Members elect to opt-out of the settlement and whether such individuals qualify as PAGA Members.

(*Id.*) All Class Members who are PAGA Members will release PAGA claims even if they request exclusion from the Class. (*Id.*, ¶¶ 31, 86) In addition to the release of claims made by all Participating Class Members and PAGA Members, as set forth above, Plaintiffs, in their individual capacities, agree to a general release of all claims against Defendant. (*Id.*, ¶ 87.)

Plaintiffs' counsel is unaware of any other pending matters or actions that assert claims that will be extinguished to adversely affected by the Settlement. (Minne Decl., ¶ 66.)

IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL.

A. Standard of Review for Preliminary Approval

The review and approval of a proposed class action settlement involves a two-step process. *See* Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of settlement and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the range of a fair settlement to justify providing notice of the proposed settlement to class members. Second, after notice is provided to the class, the Court must conduct a second inquiry into whether the proposed settlement is fair, reasonable and adequate. *Id.*

The initial evaluation of a settlement at preliminary approval "is not a fairness hearing." *Armstrong v. Bd. of Sch. Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), overruled on other grounds by *Felzen v. Andreas*, 134 F.3d 873, 875 (7th Cir. 1998). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, whether the proposed settlement is within the range of possible approval and, as a result, "whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing." *Id.* As set forth below, the Settlement is within the range of possible approval. Accordingly, preliminary approval should be granted.

B. The Settlement is Entitled to a Presumption of Fairness.

California Courts recognize that a presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000). Because the

proposed Settlement was reached through arm's-length negotiations based on sufficient investigation and discovery by qualified counsel, it is entitled to a presumption of fairness.³

1. The Proposed Settlement Was Reached Through Arm's Length Bargaining.

The Settlement was reached following a full day of mediation with Monique Ngo-Bonnici, Esq., a highly respected mediator. (Minne Decl., ¶ 13; Declaration of Joanna Ghosh ["Ghosh Decl."], ¶ 13.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (Minne Decl., ¶ 13; Ghosh Decl., ¶ 13.) The Parties went into settlement discussions willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate its position through class certification, trial, and appeal if a settlement was not reached. (Minne Decl., ¶ 13; Ghosh Decl., ¶ 13.) The Settlement was ultimately reached pursuant to a mediator's proposal which was accepted by the Parties. (Minne Decl., ¶ 13.) The proposed Settlement was reached at the end of a process that was neither fraudulent nor collusive. (Minne Decl., ¶¶ 13, 16; Ghosh Decl., ¶ 13.) To the contrary, counsel for the Parties advanced their respective positions throughout the settlement negotiations. (Minne Decl., ¶¶ 13, 16; Ghosh Decl., ¶ 13.)

2. Plaintiffs and Their Counsel Conducted Sufficient Investigation and Discovery to Allow the Court and the Parties Act Intelligently.

Courts typically assess the status of discovery in determining whether a proposed class action settlement is fair, reasonable, and adequate. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). As detailed above, prior to reaching the Settlement, Plaintiffs and their counsel propounded formal discovery and obtained the Class list. (Minne Decl., ¶¶ 7, 9.) Plaintiffs' counsel also obtained extensive informal discovery before the mediation, which included: a representative 25% sampling of Class Members' time and payroll documents; all versions of Defendant's employee handbooks in use during the Class Period, the collective bargaining agreement governing Class Members' employment, and other documents reflecting Defendant's applicable wage and hour policies; and data points regarding the size and composition of the putative class, total workweeks and pay periods worked by

³ At preliminary approval, the fourth factor – the percentage of objectors – is not applicable, as notice has not yet been provided to the Class and Class Members have not yet had an opportunity to object to the Settlement.

1 Class Members and PAGA Members, and the average rate of pay for the Class. (*Id.*, ¶ 11.) Plaintiffs’
2 counsel thoroughly reviewed this informal discovery prior to mediation, which included consulting
3 with an expert to fully analyze Class Members’ time and payroll records. (*Id.*, ¶ 12.) Plaintiffs’ counsel
4 also conducted further independent investigation, interviewed Class Members, and researched
5 Plaintiffs’ claims and Defendant’s defenses thereto. (*Id.*) Based on this investigation, Plaintiffs’
6 counsel prepared a detailed assessment of Defendant’s potential liability, and extensively briefed the
7 strengths and weaknesses of Plaintiffs’ claims and Defendant’s anticipated defenses prior to
8 mediation. Thus, Plaintiffs’ counsel was able to act intelligently and effectively in negotiating the
9 proposed Settlement. (*Id.*; see also Ghosh Decl., ¶¶ 10-13.)

10 3. Plaintiffs’ Counsel is Experienced in Class Action Litigation.

11 The settlement negotiations were conducted by highly capable and experienced counsel.
12 Plaintiffs’ counsel are respected members of the bar with strong records of effective advocacy for their
13 clients, and are experienced in handling complex wage-and-hour class action litigation. (*Id.*, ¶¶ 58-63;
14 Ghosh Decl., ¶¶ 2-7.) Although Plaintiffs and their counsel were prepared to litigate the claims in this
15 action, they support the proposed Settlement as being in the best interests of the Class Members. (*Id.*,
16 ¶¶ 54-55; Ghosh Decl., ¶ 15; Bradley Decl., ¶ 8; Johnson Decl., ¶ 8.)

17 **C. The Settlement is Fair, Adequate, and Reasonable in Light of the Parties’ Respective**
18 **Positions and Risks of Continued Litigation**

19 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
20 trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable.
21 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 246, 250 (2001). In evaluating the
22 reasonableness of a settlement, a trial court must consider “the strength of plaintiffs’ case, the risk,
23 expense, complexity and likely duration of further litigation, the risk of maintaining class action status
24 through trial, the amount offered in settlement, the extent of discovery completed and the stage of the
25 proceedings, the experience and views of counsel, the presence of a governmental participant, and the
26 reaction of the class members to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168
27 Cal.App.4th 116, 128 (2008).

28 Plaintiffs’ counsel has carefully considered Plaintiffs’ claims and analyzed class-wide

1 violation rates. Based on information gathered by Plaintiffs' counsel, including calculations of
2 Defendant's maximum potential liability exposure and the risks associated with continued litigation,
3 Plaintiffs' counsel has determined that the proposed Settlement is fair, adequate, and reasonable.
4 (Minne Decl., ¶¶ 30-55.)

5 a. Defendant's Maximum Potential Exposure.

6 Based on information gathered through discovery, Plaintiffs' counsel estimated that if all class
7 claims were adjudicated in favor of the Class, Defendant's maximum potential liability for the Class
8 claims is \$9,718,119.04. (*Id.*, ¶ 30.) This estimate can be broken down by claim as follows:
9 \$2,060,630.00 in unpaid overtime and minimum wages; \$2,701,747.44 in unpaid meal period
10 premiums; \$2,796,840.00 in unpaid rest period premiums; \$86,400.00 in unreimbursed business
11 expenses; \$1,164,801.60 in waiting time penalties under Labor Code § 203; and \$870,700.00 in wage
12 statement penalties under Labor Code § 226. (*Id.*, ¶¶ 30-39.)

13 In addition to the damages for the Class claims, Plaintiffs' counsel also separately calculated
14 Defendant's potential liability for civil penalties under PAGA to be \$6,018,738.00, which can be
15 broken down by violation as follows: \$391,170.00 for unpaid overtime; \$884,000.00 for unpaid
16 minimum wages; \$752,284.00 for meal period violations; \$752,284.00 for rest period violations;
17 \$1,884,000.00 for failure to timely pay wages during employment; \$884,000.00 for failure to maintain
18 required payroll records; and \$471,000.00 for failure to reimburse business expenses. (*Id.*, ¶ 37.) These
19 calculations did not include duplicative penalties that would likely be considered duplicative of
20 statutory penalties recoverable as part of the Plaintiffs' Class claims, such as waiting time penalties
21 under Labor Code § 203 and wage statement penalties under Labor Code § 226. (*Id.*)

22 b. Strengths and Weaknesses of Plaintiffs' Claims and Risks of Continued Litigation.

23 Despite Defendant's significant potential exposure, Plaintiffs' counsel recognized that there
24 are significant risks associated with proceeding with this case through class certification, trial, and
25 likely appeals. As with all class actions, this is a complex case that raises difficult management and
26 proof issues. Accordingly, there is a significant risk that the Court may deny class certification. While
27 Plaintiffs and Plaintiffs' counsel were confident that Plaintiffs' claims are fundamentally meritorious
28

1 and suitable for class-wide resolution, consideration of these risks factored into their decision to enter
2 into the Settlement at this point in the litigation. (Minne Decl., ¶¶ 38-55.)

3 For example, a significant portion of Defendant's estimated liability is based on Plaintiffs'
4 meal period claim. Plaintiffs contend that Defendant's formal meal period policies are facially
5 unlawful, as they fail to guarantee Class Members received all meal period to which they were legally
6 entitled. Plaintiffs further contend that, as a matter of actual practice, Class Members were often
7 required to skip meal periods, to delay meal periods after their fifth hour of work, and to cut their meal
8 periods short, and were not paid meal premiums for such violations. Defendant asserted that its written
9 policies complied with California law, and that meal premiums were paid when Class Members
10 reported that they were unable to take a meal period. Defendant also maintained that as a matter of
11 practice it provided ample opportunity for Class Members to take meal periods, and that if Class
12 Members did not take compliant meal breaks, it is because they voluntarily chose not to do so.
13 Defendant also argued that questions of whether employees had received compliant meal periods, why
14 such meal periods were not taken, and whether such meal and rest periods were voluntarily waived
15 were individualized issues that would bar certification. Defendant also asserted that Class Members
16 worked in a variety of different job positions with different job duties in different locations, and that
17 this variation between employees raised highly individualized questions of fact. While Plaintiffs'
18 counsel strongly disagreed with Defendant's arguments and factual contentions, they recognized that
19 meal period claims have become increasingly difficult to certify since *Brinker Restaurants Corp. v.*
20 *Sup. Ct.*, 53 Cal.4th 1004 (2012). (Minne Decl., ¶ 40.)

21 Plaintiffs' counsel was also cognizant of the challenges associated with maintaining Plaintiffs'
22 rest period claims on a class-wide basis. Plaintiffs contend that Class Members were required to skip
23 their rest periods, or had their rest periods interrupted by their supervisors. Plaintiffs further contend
24 that Defendant required Class Members to stay on-site during their rest periods in a manner that
25 violated California law as set forth in *Augustus v. ABM Securities*, 2 Cal.5th 257, 270 (2016).
26 Defendant asserted that its policies exceeded the requirements of California law by providing 15-
27 minute rest periods, that Class Members were free to leave jobsites during their breaks, and that Class
28 Members who worked through their rest periods did so voluntarily. Defendant likewise argued that

1 whether Class Members had received a compliant rest period and the reasons why Class Members
2 failed to receive compliant rest periods raised individualized issues that could not be certified. While
3 Plaintiffs' counsel disagreed with Defendant's positions, they also recognized that rest period claims
4 are inherently difficult to certify and prove, given that an employer has no obligation to maintain
5 records of rest periods. (Minne Decl., ¶ 41.)

6 Plaintiffs also faced challenges related to certifying and proving liability for their minimum
7 wage and off-the-clock claims. Such claims were primarily based on Plaintiffs' allegations that
8 Defendant failed to pay Class Members all minimum wages and overtime compensation owed due to
9 its practice of pressuring Class Members to work off-the-clock. Defendant asserted that its formal
10 written policies regarding payment of wages were facially compliant, and that Class Members were
11 instructed to record all hours worked. Defendant also argued that individual liability issues
12 predominate, including: (1) whether each employee worked off-the-clock; and (2) whether Defendant
13 knew or should have known about each employee's off-the-clock work. Moreover, given that these
14 claims were based on off-the-clock work not reflected in Defendant's time records, Defendant argued
15 that proving damages at trial would not be manageable. (Minne Decl., ¶ 42.)

16 In addition to meal period, rest period, overtime, and minimum wage claims, Plaintiffs also
17 contend that Defendant failed to reimburse Class Members for necessary business expenses, such as
18 use of their personal cell phones, vehicles, and steel toed boots. Defendant asserted that the majority
19 of Class Members were not required to use their personal cell phones and vehicles for their job, and
20 that only a limited number of employees were required to wear steel-toed boots. Defendant further
21 asserted that individualized inquires regarding why a Class Member failed to receive reimbursement
22 for certain expenses would predominate. (Minne Decl., ¶ 43.)

23 There are also substantial risks attached to Plaintiffs' claims for waiting time penalties and
24 wage statement penalties. Such claims are derivative of Plaintiffs' primary claims for meal period, rest
25 period, minimum wage and overtime violations. Thus, if certification is denied on the primary claims,
26 these derivative claims would also likely fail. Moreover, even if Plaintiffs prevail on the underlying
27 claims, Plaintiffs would still be required to show that Defendant's conduct was willful in order to
28 obtain Labor Code § 203 penalties, a difficult prospect. *See, e.g., Choate v. Celite Corp.*, 215 Cal App.

1 4th 1460, 1468 (2013) (holding that “an employer’s reasonable, good faith belief that wages are not
2 owed may negate a finding of willfulness”). Wage statement claims have also seen varying treatment
3 at the appellate level because such claims have an element of discretion attached to them. *Cf., Jaimez*
4 *v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) with *Price v. Starbucks Corp.*, 192 Cal.App.4th
5 1136 (2011). Accordingly, these derivative claims were extremely uncertain. (Minne Decl., ¶¶ 44-45.)

6 Plaintiffs’ counsel also separately contemplated the numerous risks of proceeding with a
7 PAGA claim. First, the same defenses and merits-based risks associated with Plaintiffs’ direct Labor
8 Code claims are also applicable to a PAGA claim. *See Green v. Lawrence Service Co.*, 2013 U.S. Dist.
9 LEXIS 109270, at *5, fn. 5 (C.D. Cal. 2013) (“whether each PAGA claims succeeds or fails is
10 determined by the merits of the substantive claims on which each is based.”) Second, although
11 California law is clear that PAGA actions need not satisfy class action requirements, there is currently
12 a split in authority over whether PAGA claims may nevertheless be stricken based on manageability
13 concerns. *Cf. Wesson v. Staples The Office Superstore*, 68 Cal.App.5th 746 (2021) with *Estrada v.*
14 *Royalty Carpet Mills, Inc.*, 76 Cal.App.5th 685 (2022). Even if Mr. Johnson defeated any challenges
15 to manageability, the Court could ultimately exercise its discretion to find that the imposition of
16 heightened civil penalties was inappropriate, particularly if Plaintiffs prevailed on their class claims.
17 Cal. Lab. Code § 2699(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1122
18 (2012).⁴ (Minne Decl., ¶¶ 46-49.)

19 Finally, Plaintiffs’ counsel recognized the significant risk and expense generally associated
20 with continued litigation, trial, and possible appeals, all of which would substantially delay and reduce
21 any recovery by the Class Members. Even if Plaintiffs prevailed at class certification, proving the
22 amount of wages due to each Class Member would be an expensive, time-consuming, and extremely
23 uncertain proposition. In order to prove liability and damages, Plaintiffs’ counsel will need to request
24 and analyze thousands of pages of documents, and obtain numerous declarations at great expense.
25 Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to
26

27 ⁴ *See also, Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (reducing penalties by
28 97.5%); *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590, *8-9 (C.D. Cal. 2011) (reducing
potential PAGA penalties by over 80 percent); *Magadia v. Wal-Mart Assocs. et al.*, 384 F. Supp. 3d
1058, 1069 (N.D. Cal. 2019)(applying 67% and 80% reductions to PAGA Penalties).

1 aid prosecution of a lawsuit against a current employer. On the other hand, Defendant would likely be
2 able to obtain the cooperation of its current employees. Moreover, even if Plaintiffs prevail at class
3 certification and trial, possible appeals would substantially delay any recovery by the Class. These
4 risks are all obviated by the Settlement, which if approved by the Court will ensure that class members
5 receive timely relief without the risk of an unfavorable judgment. (Minne Decl., ¶ 52.)

6 Taking into account the specific strengths and weaknesses of each claim, and the unique risks
7 associated therewith, the general risks and significant costs associated with litigation this Action
8 through class certification, trial, and appeals, Plaintiffs' counsel estimated that Defendant faced a risk-
9 adjusted liability of \$1,526,769.60 for Plaintiffs' Class claims, and \$451,405.35 for Mr. Johnson's
10 PAGA claims. (Minne Decl., ¶¶ 40-46, 51, 53.)

11 Therefore, after considering the strengths and weaknesses of each claim, and the unique risks
12 associated therewith, the general risks of continue litigation, and the significant costs, expenses, and
13 delay that would result from continued litigation, it is clear that the Settlement is fair, reasonable, and
14 adequate, and is in the best interest of the Class. (Minne Decl., ¶ 54; Ghosh Decl., ¶ 15.) Moreover,
15 the Gross Settlement Amount of \$1,595,000.00 – which represents 16.4% of the maximum value of
16 the direct Class claims at issue - falls within an acceptable range of recovery for this type of litigation
17 given the strengths and weaknesses of the case and the inherent costs and risks associated with class
18 certification, representative adjudication, trial, and/or appeals. *See, e.g., Stovall-Gusman v. W.W.*
19 *Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (approving settlement
20 representing 10% of the maximum damages); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245,
21 256 (N.D. Cal. 2015) (approving settlement representing approximately 8.5% of the maximum
22 damages); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal 2017)
23 (approving settlement where gross recovery was 11% of the maximum damages). (Minne Decl., ¶ 54.)

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

25 The \$100,000.00 allocated for penalties under PAGA is fair and reasonable. PAGA is
26 fundamentally not intended to be compensatory in nature, but is instead intended to facilitate
27 enforcement of California's labor laws by financing state activities and educating and deterring non-
28 compliance. *See* Cal. Labor Code § 2699(i); *Arias v. Sup. Ct.*, 46 Cal. 4th 980; *Williams v. Sup. Ct.*, 3

Cal.5th 531, 546 (2017); *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 379 (2014). Where, as here, the parties reach a substantial class-wide settlement providing employees with monetary compensation for underlying Labor Code violations, many of PAGA’s underlying policy objectives are satisfied. Indeed, the \$100,000.00 PAGA Payment (6.27% of the Gross Settlement Amount) is well-within the range approved by California courts. *See Nordstrom Comm. Cases*, 186 Cal.App.4th 576, 589 (2010)(finding no abuse of trial court’s discretion in approval of release that included PAGA claims but allocated \$0 to PAGA penalties); *Alcala v. Meyer Logistics, Inc.*, 2019 WL 4452961, *9 (C.D. Cal. June 17, 2019) (settlement of claims for PAGA penalties representing 1.25% of gross settlement amount was reasonable, as it “falls within the zero to two percent range for PAGA claims approved by courts.”); *In re M.L. Stern Overtime Litig.*, 2009 WL 995864, *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2%); *Hopson v. Hanesbrands, Inc.*, 2008 WL 3385452, *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 0.3%). (Minne Decl., ¶ 55.)

V. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED.

Code of Civil Procedure § 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class is superior to other methods. *Fireside Bank v. Superior Court*, 40 Cal.4th 1069, 1089 (2007); *see also Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326 (2004). Courts utilize a less stringent standard for class certification during settlement. *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal.App.4th 836, 859 (2003). The reason: “no trial is anticipated in a settlement class case, so the case management issues inherent in the ascertainable class determination need not be confronted.” *Id.*

As demonstrated below, all three requirements for certification of the Class as defined by the Settlement are satisfied. Furthermore, Defendant has stipulated to certification of the proposed Class for settlement purposes only. (Agreement, ¶ 48.)

A. There is an Ascertainable Class.

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d

862, 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is defined as all persons employed by Defendant in California and classified as hourly-paid and/or non-exempt who worked for Defendant at any time from May 5, 2018, to May 5, 2023. (Agreement, ¶¶ 6-7.) This provides a clear and definite scope for the proposed class.

Next, the class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Under the Federal Rules, the minimum number of a class is 100 individuals. Under California law, that number is significantly less. *See e.g., Rose v. City of Haywood*, 126 Cal.App.3d 926, 934 (1981) (holding 42 class members sufficient to satisfy numerosity); *Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous). Here, the estimated Class size of 432 individuals plainly favors class certification. (Minne Decl., ¶ 18.)

Finally, the question whether class members are easily identifiable turns on whether a plaintiff can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 706 (1967). The existence of an ascertainable class in this case can be established through Defendant’s payroll records, and the class definition is sufficiently specific to enable the parties, potential Class Members and the Court to determine the parameters of the Class.

B. The Class Shares a Well-Defined Community of Interest.

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. This case satisfies all three requirements.

1. Common Issues of Law and Fact Predominate.

The commonality criterion requires the existence of common question of law or fact and is generally established with the issues of predominance and typicality. *See Daar*, 67 Cal.2d 695, 706. What is required is that a common question of fact or law exist which predominates over issues unique to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising from employment—is not a bar to class certification as long as they do not render class litigation unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

1 Here, Plaintiffs' claims present sufficient common issues of law and fact that predominate and
2 warrant class certification. Plaintiffs allege that Defendant prohibited employees from taking
3 compliant meal and rest periods, and required Class Members to perform work off-the-clock. These
4 policies and practices meant that Defendant failed to pay required meal period premiums, minimum
5 wages, and overtime wages, and other related claims. Plaintiffs allege that Defendant's policies and
6 practices were uniform as to all Class Members. Thus, class treatment is appropriate.

7 2. Plaintiffs' Claims are Typical of the Class.

8 To satisfy the typicality requirement, California law does not require that Plaintiffs have claims
9 identical to the other class members. Rather, the test of typicality for a class representative is whether
10 other members have the same or similar injury, whether the action is based on conduct which is not
11 unique to the named plaintiff, and whether other class members have been injured by the same course
12 of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality
13 requirement for a class representative refers to the nature of the claim or defense of the representative,
14 and not to the specific facts from which it arose or the relief sought. *See Id.*

15 Here, Plaintiffs allege that their claims are based on the same legal theories, arise out of the
16 same unlawful policies and practices, and seek the same relief. Because Plaintiffs' claims are based
17 on the same alleged conduct and business practices as the claims of the other Class Members, the
18 typicality requirement is satisfied.

19 3. Plaintiffs and Their Counsel Will Fairly and Adequately Represent the Class.

20 The question of adequacy of representation "depends on whether the plaintiff's attorney
21 qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests
22 of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations
23 are satisfied. Class Counsel are well-regarded and accomplished lawyers who are qualified and
24 experienced in employment-related, class-action litigation, and who do not have any conflicts of
25 interest which would impede their representation of the Class. (Minne Decl., ¶¶ 57-65; Ghosh Decl.,
26 ¶¶ 2-7.) Furthermore, because Plaintiffs' claims are typical of those of other Class Members, and are
27 not based on unique circumstances that might jeopardize the claims of the class, there is no antagonism
28 of interests between Plaintiffs and the Class. Plaintiffs are also fully aware of their duties as the class

representative, and will vigorously and adequately represent the interests of the Class. (Bradley Decl., ¶¶ 3-11; Johnson Decl., ¶¶ 3-10.) Therefore, the adequacy requirement is satisfied.

C. A Class Action is Superior to a Multiplicity of Litigation.

Under the circumstances, proceeding as a class action is a superior means of resolving this dispute, as the Class Members and the court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will come forward to prove her or her separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior to individual litigation.

VI. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE.

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id.* at 47. In cases where class members present claims against a common fund and the defendant agrees a percentage of the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg on Class Actions*, § 14.03 (4th Ed.); *see also In re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) (awarding attorneys' fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve class action attorneys' fee awards averaging around one-third of the recovery. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 558 at n.13 (2009); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions.)

Here, the requested attorneys' fees of \$558,250.00 which is 35% of the common fund, is

disclosed to Class Members in the proposed Notice of Class Action Settlement. (Agreement, Exh. A.) The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel's request for the reimbursement of litigation costs not to exceed \$30,000.00. (Minne Decl., ¶ 57.)

VII. THE PROPOSED ENHANCEMENT AWARDS ARE REASONABLE.

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representative, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. *See Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995) (approving \$50,000.00 enhancement); *In re Online DVD Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be "fair and reasonable"); *Miller v. CEVA Logistics USA, Inc.*, 2015 WL 4730176, at *9 (E.D. Cal. Aug. 10, 2015) (approving service award of \$15,000 to each plaintiff); *Glass v. UBS Financial Services, Inc.*, 2007 WL 221862 at *16 (N.D. Cal. 2007) (approving payments of \$25,000 to each named plaintiff); *In re Heritage Bond Litigation*, 2005 WL 1594403 at *18 (C.D. Cal. 2005) (awarding incentive payments between \$5,000 and \$18,000).

Plaintiffs initiated this litigation on behalf of their former co-workers who can now collect monetary payment from the Settlement. Plaintiffs invested substantial time and effort into litigation including their own research, reviewing documents, and extensive discussions with Class Counsel. (Bradley Decl., ¶¶ 4-8; Johnson Decl., ¶¶ 4-8.) Further, the requested Enhancements are extremely reasonable given the benefit gained by other Class Members. The requested Enhancement Awards of \$7,500.00 to each Plaintiff are disclosed to Class Members in the Class Notice. (Agreement, Exh. A.) For these reasons, Plaintiffs request that Enhancement Awards of \$7,500.00 be preliminarily approved

1 by the Court. (Minne Decl., ¶ 56; Ghosh Decl., ¶ 14; Bradley Decl., ¶ 12; Johnson Decl., ¶ 11.)

2 **VIII. THE PROPOSED CLASS NOTICE, AND OPT-OUT AND OBJECTION**
3 **PROCEDURES SATISFY DUE PROCESS REQUIREMENTS**

4 “The principal purpose of notice to the class is the protection of the integrity of the class action
5 process.” *Cartt v. Superior Court*, 50 Cal.App.3d 960, 970 (1975). The notice ““must fairly apprise
6 the class members of the terms of the proposed compromise and of the options open to the
7 dissenting class members.”” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 251 (2001).
8 Additionally, the notice given should have a reasonable chance of reaching a substantial percentage
9 of the class members. *Cartt*, 50 Cal.App.3d at 974.

10 The Parties have selected Simpluris, Inc. to administer the Settlement. (Minne Decl., ¶ 29;
11 Agreement ¶ 36.) Simpluris, Inc. has extensive experience in administering class action and PAGA
12 settlements, and has procedures in place to protect the security of class data as well as adequate
13 insurance for errors and omissions. (Declaration of Eric Springer [“Springer Decl.”], ¶¶ 5-7, Exh. A-
14 B.) The Parties and their counsel do not have any financial interest in Simpluris, Inc. that would create
15 a conflict of interest. (Minne Decl., ¶ 64; Springer Decl., ¶ 4.)

16 The Parties have jointly drafted a Notice of Class Action Settlement (“Class Notice”) which
17 will be sent to Class Members in both in both English and Spanish. (Agreement, ¶¶ 20, 68, Exh. A).
18 The Class Notice describes the nature of the lawsuit, the key terms of the Settlement, the scope of the
19 Released Class Claims and Released PAGA Claims, Class Members’ estimated Individual Settlement
20 Payment and Individual PAGA Payment, Class Members’ total Workweeks during the Class Period,
21 and PAGA Member’s total workweeks during the PAGA Period. (Agreement, Exh. A.) The Class
22 Notice also informs Class Members how to opt-out of the Settlement, object to the Settlement, and
23 challenge their reported workweeks. (*Id.*) The Class Notice will indicate that the Court has determined
24 only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate
25 and reasonable, and a final determination of such issues will be made at the final hearing. (*Id.*) The
26 Class Notice also include instructions on how to obtain all relevant Settlement documents (including
27 the contact information for Class counsel, a URL to a website maintained by the Administrator
28

1 containing a key documents related to the Settlement, and a URL to the Court's online public portal),
2 and informs Class Members of their right to attend the final approval hearing. (*Id.*).

3 No later than 14 calendar days after the Court grants Preliminary Approval of the Settlement,
4 Defendant shall provide the Administrator with the Class List containing all Class Members' names,
5 last-known mailing addresses, Social Security numbers, start and end dates of active employment with
6 Defendant, total Workweeks during the Class Period Workweeks, and total Workweeks during the
7 PAGA Periods. (*Id.*, ¶ 65.) No later than 7 calendar days after receiving the Class List from Defendant,
8 the Administrator shall mail copies of the Class Notice to all Class Members via regular First Class
9 U.S. Mail. (*Id.*, ¶ 66.) Before mailing the Class Notice to Class Members, the Administrator shall
10 perform a search based on the National Change of Address Database to update and correct any known
11 or identifiable address changes. (*Id.*, ¶ 67.)

12 If any Class Notice as undeliverable, the Administer shall promptly re-mail such returned Class
13 Notices to the forwarding address provided by the USPS. (*Id.*) If no forwarding address is provided,
14 the Administrator shall search for a current address using all readily available resources, such as skip
15 tracing, and re-mail the Class Notice to the most current address obtained. (*Id.*) The Administrator has
16 no obligation to make further attempts to locate or send Class Notice to Class Members whose Class
17 Notice is returned by the USPS a second time. (*Id.*) Class Members shall have 60 days after the
18 mailing of the Class Notice to submit request for exclusions, objection, or workweek dispute by fax,
19 email, or mail. (*Id.*, ¶¶ 34, 69, 71, 74.) Further, the Response Deadline shall be extended by 15 calendar
20 days for all Class Members whose Class Notices are re-mailed. (*Id.*, ¶ 67.)

21 Direct mail notice to Class Members' last known addresses is the best possible notice under
22 the circumstances. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 319 (1950); *Eisen*
23 *v. Carlisle & Jacquelin*, 417 U.S. 156, 173-176 (1974). Furthermore, the Class Notice comports with
24 the requirements of California Rules of Court, Rules 3.769 and 3.766. Pursuant to Rule 3.769(f), the
25 class notice must contain an explanation of the proposed settlement and procedures for class members
26 to follow in filing written objections to it and arranging to appear at the hearing and state objections to
27 the proposed settlement. Cal. R. Ct. 3.769(f). Rule 3.766 further requires that the class notice include
28 (1) a brief explanation of the case, including the basic contentions and denials of the parties; (2) a

1 procedure for the class member to follow in requesting exclusion, and a statement that the Court will
2 exclude the Class Member from the Class if he or she so requests by the specified deadline; (3) a
3 statement that the judgment, whether favorable or not, will bind all class members who do not request
4 exclusion; (4) a statement that any Class Member who does not request exclusion may, if the class
5 member so desires, object and enter an appearance through counsel. The proposed Class Notice satisfies
6 each of these requirements. *See* Agreement, Exh. A.

7 Accordingly, Plaintiffs respectfully request that the Court appoint Simpluris, Inc. as the
8 Settlement Administrator and direct the mailing of the Class Notice to the Class Members in the
9 manner outlined and based on the proposed deadlines set forth in the Agreement.

10 **IX. CONCLUSION**

11 For the reasons set forth above, Plaintiffs respectfully request that the Court: (1) grant
12 Preliminary Approval of the Settlement; (2) approve the Class Notice and plan for distribution of the
13 Class Notice; (3) provisionally certify the Class for settlement purposes only; and (4) schedule a
14 hearing on Final Approval of the Settlement.

15 Respectfully submitted,

16 Dated: June 12, 2023

PARKER & MINNE, LLP

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18 By: _____



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