

Matthew S. Da Vega (SBN 195443)
Matthew H. Fisher (SBN 229532)
DAVEGA | FISHER | MECHTENBERG LLP
232 E. Anapamu St.
Santa Barbara, CA 93101
Telephone: (805) 232-4471
Facsimile: (877) 535-9358
mdavega@mdmflaw.com

Attorneys for Plaintiff and Proposed Plaintiffs Class

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

01/05/2023 at 12:15:07 PM

By: Miya Williams,
Deputy Clerk

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

BREANA HARRISON, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

UNIVERSITY HEALTHCARE ALLIANCE;
and DOES 1-100, inclusive,

Defendant

Case No.: 21-CV003143

CLASS and REPRESENTATIVE ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT and
CONDITIONAL CERTIFICATION FOR
SETTLEMENT PURPOSES ONLY;**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION;**

**DECLARATION OF MATTHEW S.
DA VEGA IN SUPPORT OF MOTION;**

[PROPOSED] ORDER with COVER SHEET

Assigned For All Purposes to the Honorable
Evelio Grillo (Dept. 21)

Date: February 7, 2023

Time: 10 a.m.

Location: Dept. 21 (Hon. Evelio Grillo)

Reservation ID: 319404208984

1 **TO THIS HONORABLE COURT, ALL INTERESTED PARTIES, and THEIR**
2 **ATTORNEYS OF RECORD PLEASE TAKE NOTICE** that on February 7, 2023 at 10 a.m.,
3 or as soon as the matter may be heard, in Department 21 (Honorable Evelio Grillo) of the above
4 entitled Alameda County Superior Court - Administration Building - 1221 Oak Street, Oakland,
5 CA 94612, Plaintiff Breana Harrison (“Plaintiff”) pursuant to California Code of Civil Procedure
6 §382 and California Rules of Court, rule 3.769, *et seq.*, will and does move this Court for an
7 Order granting preliminary approval of the proposed class action and PAGA settlement on the
8 terms and conditions set forth in the Joint Stipulation of Class Action Settlement Agreement and
9 Release (“Settlement Agreement”), a copy of which is attached as **Exhibit 1: Settlement**
10 **Agreement** to the Declaration of Matthew S. Da Vega in Support of Motion (“Da Vega Decl.”).
11 Plaintiff further moves the Court for an Order:

- 12 1. Preliminarily approving the Settlement in a form similar to the Preliminary
13 Approval Order attached to the Settlement Agreement as **Exhibit A: Preliminary**
14 **Approval Order**;
- 15 2. Certifying the proposed Class, for settlement purposes only;
- 16 3. Appointing Plaintiff as “Class Representative”, for settlement purposes;
- 17 4. Appointing Plaintiff’s Counsel Da Vega Fisher Mechtenberg LLP as Class
18 Counsel, for settlement purposes;
- 19 5. Approving the proposed Class Notice which is attached to the Settlement
20 Agreement as **Exhibit B: Notice of Class Action Settlement**;
- 21 6. Approving the method and manner for providing notice to the Class, as
22 well as procedure for opting out, and making objections, as set forth in the
23 Settlement Agreement;
- 24 7. Approving the schedule for sending of notices to the Class per the
25 Settlement Agreement;
- 26 8. Setting a date and time for the Final Approval / Fairness Hearing as soon as
27 possible to consider Final Approval of the Settlement;
- 28

1 Plaintiff seeks class certification of the following class, for settlement purposes only:

2 **The “Class” is defined as:**

3 “All current and former medical assistant float pool employees who physically
4 performed overtime work, and were paid an incorrect overtime rate, for Defendant
in the State of California from November 11, 2017 until the through the date the
Court grants preliminary approval of the Settlement.”

5 “Class Period” period of time from “November 11, 2017 through the date the
6 Court grants preliminary approval of the Settlement.”

7 This Motion will be made on the grounds that the Parties have reached a settlement,
8 subject to approval by this Court, which the Parties believe provides fair, just, and reasonable
9 compensation to the class of non-exempt employees who Plaintiff alleges were not paid the
10 correct overtime rates for all overtime hours worked, were not furnished timely/accurate wage
11 statements, and were not paid full wages upon separation/termination, in violation of California
12 Labor Codes, California Unfair Business Act and the Private Attorney General Act (“PAGA”).
13 Plaintiff desires to give notice of the proposed settlement to the Class Members and hold a
14 hearing as to whether the settlement should be finally approved. The Parties have met and
15 conferred regarding this Motion for the Preliminary Approval of Class Settlement and request the
16 Court approve it.

17 This Motion is based on the following Memorandum of Points and Authorities in Support
18 of Motion for Preliminary Approval of the Class Settlement, the Declaration of Matthew S.
19 Da Vega in Support of Motion and Exhibits attached thereto, and all other records and papers on
20 file in this action. Pursuant to Labor Code § 2699(1)(2), and the instructions provided by the
21 Department of Industrial Relations on its web site, a PDF copy of this motion and the supporting
22 papers will be sent/uploaded electronically to LWDA’s website at the time it is filed and served.

23
24 Dated: January 5, 2023

DAVEGA | FISHER | MECHTENBERG LLP

25
26 By: _____


Matthew S. Da Vega
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	3
III.	PROCEDURAL HISTORY	3
IV.	CASE INVESTIGATION, DISCOVERY, NEGOTIATIONS, AND MEDIATION...	6
A.	The Parties' Dispute of the Merits of the Case	6
B.	Document and Data Discovery and Expert Analysis	6
C.	Mediation and Settlement	7
V.	CLASS REPRESENTATIVE'S SERVICES TO THE CLASS	8
VI.	KEY TERMS OF THE SETTLEMENT	8
A.	Definition of the Class	8
B.	\$90,000 Gross Settlement Amount.....	9
C.	Released Claims	10
D.	Attorneys' Fees and Incurred Expenses	11
E.	PAGA Penalty Amount, LWDA Payment, and Settlement Administrator	12
F.	Class Representative Enhancement Payment	12
VII.	THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE PRELIMINARILY APPROVED	13
A.	The Settlement Is the Product of Non-Collusive, Arm's-length, and Well-Informed Negotiations	14
B.	The Settlement Agreement Provides Reasonable Compensation for Class Members' Damages in Light of Significant Litigation Risks	15
C.	The Class Settlement Payment Process is Fair and Reasonable	18
D.	The Settlement of Penalties Under the Labor Code Private Attorney General Act of 2004 (PAGA) is Reasonable	18
E.	The Settlement's Provision for Attorneys' Fees, Expenses, and Costs is Reasonable, Fair, and Appropriate Under the Circumstances	19
F.	Class Representative Enhancement Payments Are Reasonable and Routinely Awarded	20
G.	CPT Group Should Be Appointed as the Settlement Administrator	21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VIII. THE COURT SHOULD CONDITIONALLY CERTIFY A PROVISIONAL SETTLEMENT CLASS	22
IX. THE COURT SHOULD APPROVE THE PROPOSED CLASS NOTICE	24
X. A FINAL APPROVAL/FAIRNESS HEARING SHOULD BE SCHEDULED.....	26
XI. CONCLUSION	26

TABLE OF AUTHORITIES

CASES

Federal Cases

<i>Bibo v. Fed. Exp., Inc.</i> (N.D. Cal. Apr. 21, 2009) 2009 WL 1068880	24
<i>Collins v. Cargill Meat Solutions Corp.</i> (E.D. Cal. 2011) 274 F.R.D. 294	18
<i>City of Detroit v. Grinnell Corp.</i> (1974) 495 F.2d 488	17
<i>Chu v. Wells Fargo Investments, LLC</i> (N.D. Cal. Feb. 16, 2011) 2011 WL 672645	16
<i>Cotter v. Lyft, Inc.</i> (N.D. Cal. 2016) 193 F.Supp.3d 1030	19
<i>Deaver v. Compass Bank</i> (N.D. Cal. Dec. 11, 2015) 2015 WL 8526982	16
<i>Franco v. Ruiz Food Prod., Inc.</i> (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801.....	19
<i>Gardner v. GC Servs., LP</i> (S.D. Cal. Apr. 2, 2012) 2012 WL 1119534	18
<i>Harris v. Vector Mktg. Corp.</i> (N.D. Cal. Apr. 29, 2011) No. C-08-5198 EMC, 2011 WL 1627973	13
<i>In re Wells Fargo Loan Processor Overtime Pay Litig.</i> (N.D. Cal. Aug. 2, 2011) 2011 WL 3352460	16
<i>In re High-Tech Employee Antitrust Litig.</i> (N.D. Cal. Sept. 2, 2015) No. 11-CV-02509-LHK, 2015 WL 5158730	21
<i>Linney v. Cellular Alaska P'ship</i> (9th Cir. 1998) 151 F.3d 1234, 1239	14
<i>McNeal v. RCM Techs. USA Inc.</i> (C.D. Cal. Mar. 16, 2017) 2017 WL 1807595	22
<i>Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.</i> (C.D. Cal. 2004) 221 F.R.D. 523	17
<i>Nelson v. Avon Prod., Inc.</i> (N.D. Cal. Feb. 24, 2017) 2017 WL 733145	18
<i>Officers for Justice v. Civil Serv., Commission</i> (9th Cir. 1982) 688 F.2d 615	17
<i>Ogbuehi v. Comcast of California/Colorado/Florida/Oregon, Inc.</i> (E.D. Cal. June 9, 2015) 2015 WL 3622999	17-18
<i>Singer v. Becton Dickinson & Co.</i> (S.D. Cal. June 1, 2010) 2010 WL 2196104	21
<i>Smith v. CRST Van Expedited, Inc.</i> (S.D. Cal. Jan. 14, 2013) 2013 WL 163293	19-20
<i>Taylor v. Shippers Transp. Express, Inc.</i> (C.D. Cal. May 14, 2015) 2015 WL 12658458.....	19
<i>Thieriot v. Celtic Inc. Co.</i> (N.D. Cal. Apr. 21, 2011) 2011 WL 1522385	20, 21

1	<i>Van Bronkhorst v. Safeco Corp.</i> (9th Cir. 1976) 529 F.2d 943	13
2	<i>Wren v. RGIS Inventory Specialists</i> (N.D. Cal. Apr. 1, 2011) 2011 WL 1230826.....	16
3	<u>State Cases</u>	
4	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	14
5	<i>Brinker Rest. Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004.....	22
6	<i>Capitol People First v. Dep't of Developmental Servs.</i> (2007) 155 Cal.App.4th 676	24
7	<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	24
8	<i>Citizens of Humanity, LLC v. Ramirez</i> (2021) 63 Cal.App.5th 117	23
9	<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	13, 14
10	<i>Hasty v. Elec. Arts, Inc.</i> (San Mateo Cty. Super. Ct., Sept. 22, 2006) No. CIV 444821	21
11	<i>In re Cellphone Fee Termination Cases</i> (2010) 186 Cal.App.4th 1380	20
12	<i>In re Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545	19
13	<i>Johnson v. GlaxoSmithKline, Inc.</i> (2008) 166 Cal.App.4th 1497.....	23
14	<i>Laffitte v. Robert Half Int'l Inc.</i> (2016) 1 Cal.5th 480	19
15	<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	22, 24
16	<i>McGhee v. Bank of America</i> (1976) 60 Cal.App.3d 442	23
17	<i>Meewes v. ICI Dulux Paints</i> (Los Angeles Cty. Super. Ct. Sept. 19, 2003) No. BC265880.....	21
18	<i>Potter v. Pacific Coast Lumber Co.</i> (1951) 37 Cal. 2d 592.....	13
19	<i>Rebney v. Wells Fargo Bank</i> , (1990) 220 Cal.App.3d 1117	17
20	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	14, 15, 17, 23, 24
21	<i>Williams v. Superior Court</i> (2013) 221 Cal.App.4th 1353	23
22	STATUTES	
23	<u>State Statutes</u>	
24	California Code of Civil Procedure §382	ii, 3
25	California Code of Civil Procedure §384	10, 18
26	California Labor Code § 2699 (i)	19
27	California Private Attorney General Act of 2004..	iii, iv, 1, 3, 4, 5, 7, 8, 9, 11, 12, 15, 18, 19, 22, 25
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RULES

Cal. Rules of Court, rule 3.764(e) 22

Cal. Rules of Court, rule 3.766 (d) 25

Cal. Rules of Court, rule 3.769 (f)(g)ii, 2, 13, 22, 25, 26

SECONDARY SOURCES

Manual for Complex Litigation § 21.63 (4th ed. 2004)..... 2

4 NEWBERG ON CLASS ACTIONS (5th ed. 2014) 13, 25

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On behalf of herself and similarly situated individuals, Plaintiff Breana Harrison (“Plaintiff” or “Class Representative”) respectfully moves for preliminary approval of a **\$90,000 (Ninety Thousand Dollars)** settlement of the class and PAGA claims asserted in this lawsuit against Defendant University Healthcare Alliance (“Defendant” or “UHA”) or together with the Plaintiff, the “Parties”.

The Parties to the Lawsuit disagree on the merits of the case. Class certification, liability and damages are all disputed. Nevertheless, after litigation, investigation, numerous interviews, exchange of extensive information, data, documents, and a mediation before a neutral, professional mediator skilled in California employment laws, the Parties reached an informed agreement to settle the class and PAGA claims pursuant to the Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement”) (See Da Vega Decl., **Exhibit 1 - “Settlement Agreement”**).

The Parties’ investigations and interchange of information enabled them to conduct meaningful and prolonged negotiations, with a keen eye towards the strengths and weaknesses of their positions and the value of the claims. In particular, the Parties exchanged data (i.e. documents and spreadsheets of all alleged Class Members employment data during the damages period) and Plaintiff completed expert analyses of the data (i.e. estimates of potential damages for various claims if proven), which informed their views of the case, and ultimately helped set the parameters for settlement talks. All negotiations were conducted at arm’s-length and were facilitated by a highly experienced class action and employment mediator, Hon. Michael Loeb (<https://www.jamsadr.com/loeb/>) on August 29, 2022. At mediation the Parties agreed to basic terms of a potential resolution of claims codified in a Confidential Memorandum of Understanding (“MOU”) and eventually the Settlement Agreement. The Settlement provides payment to 54 putative Settlement Class Members (with a minimum of \$100 for the 37 Class Members who are were not owed any waiting time penalties as Defendant paid their unpaid overtime wage differential prior their separation of employment and \$1,373.53 to each of the

1 remaining 17 Class Member who were subjected to waiting time penalties). The fact that the
2 Parties were able to reach a favorable settlement without additional years of risky and costly
3 litigation presents substantial benefits to the Class Members and promotes judicial economy. As
4 detailed in these papers, the Parties believe the Settlement is the best possible outcome of this
5 matter, especially given the substantial risks and delays associated with litigation.

6 Therefore, Pursuant to California Rules of Court, Rule § 3.769, Plaintiff now seeks, and
7 Defendant do not oppose, preliminary approval of the settlement. See Manual for Complex
8 Litigation (“MCL”) § 21.63 (4th ed. 2004). In order to effectuate the settlement and the
9 resolution of this action, Plaintiff respectfully moves the Court for an Order:

- 10 1. Preliminarily approving the Settlement in a form similar to the Preliminary
11 Approval Order attached to the Settlement Agreement as **Exhibit A: Preliminary**
12 **Approval Order**;
 - 13 2. Certifying the proposed Class for settlement purposes only;
 - 14 3. Appointing Plaintiff as “Class Representative” for settlement purposes;
 - 15 4. Appointing Plaintiff’s Counsel Da Vega Fisher Mechtenberg LLP as Class Counsel
16 for settlement purposes;
 - 17 5. Approving the proposed Class notice attached to the Settlement Agreement as
18 **Exhibit B: Notice of Class Action Settlement**;
 - 19 6. Approve the method and manner for providing notice to the Class, as well as
20 procedure for opting out, and making objections, as set forth in the Settlement
21 Agreement;
 - 22 7. Approve the schedule for sending of notices to the Class per the Settlement
23 Agreement;
 - 24 8. Setting a date and time for the Final Approval / Fairness Hearing as soon as
25 possible to consider Final Approval of the Settlement.
- 26
27
28

1 **II. BACKGROUND**

2 Plaintiff and Class Members are current and former non-exempt "Medical Assistant float
3 pool employees" who work/worked for the Defendant UHA, the medical foundation of Stanford
4 Healthcare, at Defendant's various medical facilities throughout California. Medical Assistant
5 floaters are members of a "float pool" that fill in at these locations depending on the scheduling
6 needs of the various facilities. They do not have a "home" location where their work is
7 predominantly performed. Plaintiff alleges that she and Class Members were not paid for
8 overtime work (hours worked over 8 hours/day or 40 hours/week) at the correct overtime rates
9 (1.5x or 2 x their regular rates) from 4/26/2019 through 12/4/2020 [when Defendant switched
10 from third party ADP's electronic payroll processing system to Stanford Health Care's electronic
11 pay roll processing system] at which point Medical Assistant floaters were then paid for overtime
12 hours at the correct and legal overtime rate(s). Plaintiff further alleges that Defendant failed to
13 keep and provide accurate and timely records of wages earned and other legally mandated
14 records (as a result of Defendant not paying overtime correctly), and failed to pay Plaintiff and
15 Class Members whose employment has terminated (voluntarily resigned and/or were terminated)
16 a final payment of his or her wages in a prompt and timely manner in conformity with California
17 Labor Codes (again as a result of not paying overtime correctly). Defendant denies all
18 allegations.

19 **III. PROCEDURAL HISTORY**

20 **November 29, 2021 (Original Complaint Filed and PAGA Notice Sent):** Plaintiff sent
21 and submitted her PAGA notice and also filed her class action lawsuit under CCP §382 to address
22 Defendant's alleged violations of California wage and hour laws. Plaintiff's complaint alleged 4
23 causes of action, including:

- 24 1. Failure to Pay Overtime Wages,
- 25 2. Failure to Furnish Timely/Accurate Wage Statements,
- 26 3. Failure to Pay All Wages Due at Discharge in Timely Manner,
4. Unlawful Business Practices.

27 **The Putative Class Definition:** Plaintiff defined the class, at that time, as:

28 "All current and former California-based Medical Assistant Floater
employees who performed work for Defendant from November 29, 2017

1 until the entry of judgment.”

2 Plaintiff believes this included, but was not limited to Defendant's Medical Assistant
3 “floater” employees (collectively “Medical Assistant Floaters or “Class Members”), or those with
4 similar titles performing similar work (Medical Assistant I, Medical Assistant II, etc.), as their
5 specific titles may have changed over time.

6 **February 4, 2022 (First Amended Complaint Filed):** Plaintiff filed and served her First
7 Amended Complaint (“FAC”) with the addition of the 5th cause of action for violations of the
8 PAGA.

9 **February 24, 2022 (Defendant Answers):** UHA filed and served its answer, as well as
10 notice of related case *Abron, et al. v. University Healthcare Alliance, et al.*, Alameda County
11 Superior Court Case No. Case number: RG20066438.

12 **February 25 - 28, 2022 (Plaintiff Files Objection to Notice of Related Case):** Plaintiff
13 filed and served an objection to the notice of related case arguing that the two matters were not
14 related. Harrison and Abron have/had different jobs in different departments and their claims
15 were different and not overlapping. *Harrison* sought to represent other Medical Assistant
16 “Floaters” who were underpaid overtime wages based on a failure to pay the legal required
17 overtime rate of time and half or double time for overtime hours worked. *Harrison* made no
18 claims regarding the “rounding” of time punches/cards and limits its putative class to persons in
19 the same job title/role and who were subject to the same practices as Plaintiff Harrison. In
20 contrast, *Abron* sought to represent “all non-exempt UHA employees” whose time cards were
21 rounded in Defendant’s favor. The *Abron* complaint provided no factual allegations or supporting
22 details that this “rounding” of time punches practice effected Medical Assistant Floaters or other
23 UHA employees working in other roles, titles, departments and/or UHA locations.

24 **March 9 - 11, 2022 (UHA Sends Letters and Checks to Class Members following a**
25 **“Payroll Audit”):** Defendant sent letters to Class members indicating that, “As result of a recent
26 payroll audit, it has been discovered that previous overtime payments made to you during the
27 period of 4/26/2019 through 12/4/2020 were incorrect. You were underpaid by \$ [amount owed
28 putative Class Member] during this time period. University HealthCare Alliance (UHA) is
initiating a pay adjustment for the above amount on Friday, March 11, 2022 ... UHA apologizes

1 for this regrettable error and with this payment, we believe you have received all monies that had
2 been previously unpaid to you.” The underpayments occurred from 4/26/2019 through 12/4/2020
3 because the putative Class Members were given a \$2/hour pay differential to incentivize them to
4 stay with the float pool rather than moving into a permanent (i.e., non-floating) position within
5 UHA. Once the \$2/hour pay differential went into effect, it caused a minor error in UHA’s payroll
6 processing system’s overtime calculations for this specific group of non-exempt employees.

7 **March 28, 2022 (Defendant Answer to First Amended Complaint):** Defendant filed
8 and served its answer to the FAC.

9 **March 29, 2022 (CMC):** The Court held a case management conference and ruled that
10 the cases of *Harrison* and *Abron* were not related.

11 **April 11-15, 2022 (Plaintiff Serves Discovery Including request for Class Member**
12 **ID/Belaire Notice):** Plaintiff served written discovery (Form Rogs, RPOD, Deposition Notices
13 of Defendant’s Payroll persons, etc.) and reaches out to defense counsel re *Belaire* notice.

14 **April 26, 2022 (Parties Discuss Potential Class Mediation):** Plaintiff’s counsel was
15 contacted by Defense counsel. The parties discussed potential resolution of the class wide and
16 PAGA claims and started discussing potential mediators. The Parties eventually agreed upon
17 using mediator Michael Loeb and scheduled the mediation for Monday, August 29, 2022. The
18 Parties then exchanged documents/data and briefs regard the case/claims prior to the mediation.

19 **August 29, 2022 (Date of Mediation Proceedings):** The Parties participate in a full day
20 mediation with experienced JAMS Mediator Michael Loeb. There appears to be, based on
21 Defendant’s data, approximately **54 putative class members ... of which only 17 were subject**
22 **to waiting time penalties** (as they had separated employment prior to UHA paying them the back
23 wages owed them for the miscalculation over overtime rates) ... and 34 of which had been paid all
24 or most of alleged owed and unpaid wages (but not interest nor penalties). At the mediation the
25 parties came to a tentative settlement subject to court approval that was codified in a
26 Memorandum of Understanding (MOU) and eventually the Joint Stipulation of Class Action
27 Settlement Agreement and Release (“Settlement Agreement”).

28 //

1 **IV. CASE INVESTIGATION, DISCOVERY, NEGOTIATIONS and MEDIATION**

2 The Parties vigorously investigated and debated the claims asserted against Defendant.
3 Plaintiff's Counsel began their investigation into the claims long before the case was filed.
4 Plaintiff's Counsel interviewed and obtained discovery/documents from various current and
5 former non-exempt medical assistant employees regarding their experiences working for
6 Defendant. (Da Vega Decl. ¶19.) After the Lawsuit was initiated, the Parties' Counsel engaged in
7 serving written discovery, informal discovery, discussions and negotiations before reaching this
8 Settlement. (*Id.* at ¶19.) Early in the litigation process the Parties' Counsel began having regular
9 discussions regarding the claims, discovery, production of data, and the possibility of
10 mediation/settlement. (*Id.*)

11 **A. The Parties' Dispute of the Merits of the Case.**

12 Throughout the litigation, Defendant has denied Plaintiff's allegations, and further have
13 denied the case is appropriate for class certification. (Da Vega Decl. ¶20.) Further, in addition to
14 generally denying the allegations, Defendant contends that the non-exempt Medical Assistant float
15 pool employees were paid correctly for all hours worked at the correct overtime rate and that
16 Defendant's error in paying the incorrect overtime rate once the above-described error was
17 discovered and that the error was accidental. On the other hand, Plaintiff alleges that non-exempt
18 medical assistant float employees, from the period of 4/26/2019 through 12/4/2020 were paid at
19 the incorrect overtime rates due to miscalculations by Defendant regarding the increase in
20 overtime rates due to Class Members' shift differential pay. Not only did Defendant fail to
21 include the shift differential payments in the overtime calculation, they also regularly paid
22 overtime wages at less than 1.5 times the base hourly rate in periods with shift differential pay. As
23 part of the investigation into the claims, Class Counsel interviewed current and former non-
24 exempt employees and reviewed various documents and handbooks related to non-exempt
25 employees work for Defendant. (*Id.*) This investigation was crucial to the Parties' dispute over
26 both the merits of the case, as well as with respect to the appropriate scope of the Class. (*Id.*)

27 **B. Document and Data Discovery and Expert Analysis**

1 Plaintiff and Defendant informally exchanged extensive documents and multiple data
2 points on the class (i.e. data for all Class Members of class period including job titles, wages rates,
3 shifts worked, length of shifts, shift dates, start/end dates, shift pay, etc.) which at the time of
4 filing includes approximately **54 Class Members** (Da Vega Decl. ¶21.) Plaintiff retained experts
5 Desmond, Marcello & Amster - Valuation and Litigation Consultants (www.dmavalue.com)
6 (“Plaintiff’s Expert”), to examine the data for mediation. (*Id.*) Based on analysis of the data,
7 Plaintiff made various assessments of the data, overtime hours/incorrect pay rates and calculated
8 the potential damages. (*Id.*) Further, Plaintiff’s Counsel provided Defendant with Plaintiff’s
9 position as to a calculation of damages at mediation. (*Id.*) Those expert calculations estimate
10 Defendant’s potential liability for alleged:

- 11 (1) Under-paid overtime wages and interest [due to Defendant’s shift differential
12 miscalculations] at approximately \$2,414.01 (of which Plaintiff alleges Defendant
13 only repaid \$1,963.80);
- 14 (5) Waiting time Penalties at approximately \$110,908.90
- 15 (6) Wage Statement Violations at approximately \$ 950.00
- 16 (7) PAGA penalties for Underpaid Overtime at approx. \$ 1,900.00

17 **UHA’s Total Liability = \$116,172.91**

18 The Gross Settlement Amount of \$90,000 is only \$26,000 less than UHA’s total liability.
19 (Da Vega Decl. ¶21.)

20 **C. Mediation and Settlement**

21 On August 29, 2022 the Parties engaged in a full day of mediation with the experienced
22 employment and class action mediator Michael Loeb of JAMS. (Da Vega Decl. ¶22.) After
23 exchanging data, documents, and evidence the Parties met for the full day mediation via Zoom
24 video conference with Plaintiff’s counsel in-person with Plaintiff. The mediation was attended by
25 Plaintiff’s Counsel and the class representative, Breana Harrison, Defense counsel, and UHA’s
26 representatives. The Parties ultimately executed a confidential memorandum of understanding
27 (“MOU”) at the mediation, which included a term to settle the class claims for the Gross
28 Settlement Amount of **\$90,000 (Ninety Thousand Dollars)**, subject to Court approval. (*Id.*) The

1 Parties then later finalized the terms of the settlement in a long form Joint Stipulation of Class
2 Action Settlement and Release. (*Id.*)

3 **V. CLASS REPRESENTATIVE’S SERVICE TO THE CLASS**

4 Plaintiff Breana Harrison was the driving force behind this class action. (Da Vega Decl., ¶
5 23.) Plaintiff played a critical role in retaining Matthew Da Vega and Matthew Fisher of
6 Da Vega Fisher Mechtenberg LLP and providing information regarding her legal claims to make
7 them successful. (*Id.*) Plaintiff has experience as a non-exempt Medical Assistant floater
8 employee and knew other putative class members that in turn provided additional information in
9 support of the legal claims. With their help, Plaintiff’s counsel was able to gather additional
10 evidence, and contact additional putative class members. (*Id.*) Together, the Plaintiff worked
11 dozens of hours to help Plaintiff’s counsel, sacrificing her personal time and reputation to make
12 the case successful.

13 In fact, Plaintiff’s counsel spoke to other witnesses who were afraid to participate in
14 litigation for fear that it might result in damage to their careers. (Da Vega Decl., ¶ 24.) Plaintiff
15 and witnesses feared that initiating or participating in a class action lawsuit might risk their future
16 job opportunities. Despite this Plaintiff stepped up and worked diligently in support of the case.
17 (*Id.*) Plaintiff have had numerous meetings and telephone conversations with Class Counsel to aid
18 in the initial investigation, factual development, mediation, and resolution of this case. (*Id.*) She
19 also reached out to and communicated with other non-exempt employees about their work for
20 Defendant, and encouraged by Plaintiff, other non-exempt employees contacted Class Counsel to
21 provide information about their time at Defendant. (*Id.*) In sum, the Settlement could never have
22 been achieved without Plaintiff’s service on behalf of the Class. (*Id.*)

23 **VI. KEY TERMS OF THE SETTLEMENT**

24 The Settlement provides for a significant settlement payment to each Class Member. In
25 exchange, Class Members will release claims, which were asserted or could have been asserted in
26 the lawsuit based on the facts alleged in support of the class and PAGA claims.

27 **A. Definition of the Class**

28 Under the Settlement Agreement, the “Class” is defined as follows:

1 The “Class”:

2 “All current and former medical assistant float pool employees who physically performed
3 overtime work, and were paid an incorrect overtime rate, for Defendant in the State of
4 California from November 11, 2017 until the through the date the Court grants preliminary
5 approval of the Settlement.” “Class Member(s)” refers to a member(s) of the Class
6 (Settlement Agreement §1.1)

7 “Class Period” refers to the period of time from November 11, 2017 through the date the
8 Court grants preliminary approval of the Settlement.” (Settlement Agreement §1.7)

9 “Settlement Class Members” is defined to mean those Class Members who have not
10 “opted out” of the Class Settlement by submitting a timely and valid Request for
11 Exclusion. (Settlement Agreement §1.33)

12 **B. \$90,000 Gross Settlement Amount**

13 The Settlement provides for Defendant to make a maximum payment of **\$90,000 (Ninety**
14 **Thousand Dollars)** in settlement of all class and PAGA claims in the case, including the Class
15 Counsel Award, all Settlement Administration Costs, the PAGA Penalty Amount, all settlement
16 payments to Settlement Class Members, and the Class Representative Enhancement Payment. (the
17 “Gross Settlement Amount”). Defendant shall be responsible for the additional amount of the
18 employer portion of the payroll taxes. (Settlement Agreement §§1.16.; 2.1).

19 The “Individual Settlement Amount Calculations” payment to the Class Members will be
20 based on a division between Class Members who were: (1) subjected to waiting time penalties
21 (not paid all wages owed at the time of separation / termination of employment) and (2) those that
22 were not subject to waiting time penalties during the Class Period. The Settlement Administrator
23 will determine, based on the data provided, the 17 Class Members who were subject to waiting
24 time penalties and the 34 class members who were not. The 17 Settlement Class Members
25 (assuming no “opt outs”) who were subject to waiting time penalties will each receive \$1,373.53
26 and for the 34 class members who were not, will get \$100 each. The Individual Settlement
27 Amounts will be allocated for tax purposes as follows: Thirty-Three (33%) of each Individual
28 Settlement Payment will be allocated as wages; Thirty-Three (33%) will be allocated interest, and
29 Thirty-four (34%) as penalties. The portion allocated to wages will be reported on an IRS Form
30 W-2 and the portions allocated to non-wages (interest and penalties) will be reported on an IRS

1 Form 1099 by the Settlement Administrator. Defendant shall solely be responsible for the
2 employer portion of the payroll taxes. (Settlement Agreement § 7.1).

3 The portion of the Net Settlement Amount allocated to the Class shall be all-in and
4 settlement checks will be sent to all Settlement Class Members. Any settlement checks not cashed
5 after 150 days from the date of the class-wide distribution shall be void, and the Settlement
6 Administrator shall, as soon as practicable, forward the sums correlating to those checks and any
7 residual amounts returned to the Settlement Administrator to be paid out per guidelines in CCP
8 §384 to Cy Pres recipient: Bay Area Legal Aid, 1735 Telegraph Avenue, Oakland, CA 94612,
9 510-663-4755; website: <https://baylegal.org/get-help/>. Settlement Class Member who fails to
10 timely cash or deposit their check(s) shall remain subject to the terms of the Settlement, including
11 without limitation all releases contained herein, and the Final Approval Order and Judgment from
12 the Court. (Settlement Agreement §7.4).

13 **C. Released Claims**

14 *Released Claims:* Under the terms of the Settlement Agreement, upon Final Approval by
15 the Court, and subject to Defendant's deposit of the Gross Settlement with the Settlement
16 Administrator, Plaintiff and each Settlement Class Member shall be bound by the Settlement, and,
17 at the same time, will have released the Released Parties from the Released Claims. The
18 “Released Claims” with respect to the “Released Parties” (defined below) are, “... any and all
19 claims that were asserted in the Action, or that arise from or could have been asserted based on the
20 facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or
21 failures to act alleged in Plaintiff’s Complaint or First Amended Complaint, regardless of whether
22 such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law,
23 or other source of law (“the Released Claims”). The Released Claims specifically include, but are
24 not limited to Labor Code §§ 201, 202, 203, 204, 216, 218.5, 218.6, 226, 226.3, 510, 515, 1174,
25 1174.5, 1194, 1194.2, 1194.3, 1194.5, 1197.1, 1198, 1199, 2699.3, 2699.5, C.C.P. § 1021.5, the
26 related IWC Wage Order No. 1-2001, and Business & Professions Code §§ 17200, et seq., claims
27 based on alleged violations of these Labor Code and Wage Order provisions and all other claims,
28 such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions

1 of law, that could have been pleaded based on the facts asserted in the Action, including: (1)
2 failure to pay overtime wages; (2) failure to provide accurate itemized wage statement; (3) failure
3 to pay all wages due at termination [waiting time penalties], (4) all related violation of the Unfair
4 Competition Act (California Business & Professional Code section 17200, et seq.), (5) violation of
5 PAGA, (6) all related violations of the applicable Wage Orders; and (8) interest, fees, and costs
6 (“Released Claims”). The enumeration of these specific statutes shall neither enlarge nor narrow
7 the scope of res judicata based on the claims that were asserted in the Action or could have been
8 asserted in the Action based on the facts and circumstances alleged in any Complaint on file in
9 the Action. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do
10 not release any other claims, including claims for vested benefits, wrongful termination, violation
11 of the Fair Employment and Housing Act, unemployment insurance, disability, social security,
12 workers’ compensation, or claims based on facts occurring outside the Class Period.” (Settlement
13 Agreement §1.28 - “Released Claims”, §2.7 - Release of Claims by Class Members])

14 The term “Released Parties” means, “UHA and any of its current and former directors,
15 officers, members, administrators, agents, insurers, beneficiaries, trustees, employee benefit
16 plans, representatives, partners, accountants, servants, employees, attorneys, parents, subsidiaries,
17 affiliates, divisions, branches, units, shareholders, investors, contractors, successors, joint
18 venturers, predecessors, related entities, and assigns, and all other individuals and entities acting
19 by, through, under and/or on behalf of UHA.” (Settlement Agreement §1.29). The Settlement
20 Agreement also provides Defendant with a general release from named Plaintiff, including a Civil
21 Code § 1542 waiver. (Settlement Agreement §2.6).

22 **D. Attorneys’ Fees and Incurred Expenses**

23 Under the terms of the Settlement Agreement, Class Counsel will move for reasonable
24 attorney’s fees, not exceeding one-third (33%), **\$29,700 (Twenty Nine Thousand and Seven**
25 **Hundred Dollars)**, of the Gross Settlement Amount (\$90,000). (Settlement Agreement § 2.2).
26 Class Counsel will also seek reimbursement of reasonable expenses incurred by Class Counsel in
27 connection with the lawsuit, not exceeding **\$20,000 (Twenty Thousand Dollars)**. (*Id.*) The Court
28 need not rule on Class Counsel’s fees and expenses now; a formal application will be filed prior to

1 and to be heard at the same date and time as the Final Approval Hearing. As will be explained in
2 detail in the application, the requested fees and costs are eminently reasonable considering the
3 amount of time and expenses incurred by Class Counsel in this case. In that application for fees
4 and costs Class Counsel will provide a lodestar cross check and itemization of costs so that the
5 court can see the requests are reasonable. (Da Vega Decl., ¶ 32.)

6 **E. PAGA Penalty Amount, LWDA Payment, and Settlement Administrator.**

7 **\$1,000 (Thirty-Five Thousand Dollars)** of the Gross Settlement Fund is allocated to be
8 paid for the resolution of potential PAGA claims (the “PAGA Penalty Amount”). (Settlement
9 Agreement §1.25). Pursuant to PAGA, 75% of that amount, **\$750 (Seven Hundred and Fifty**
10 **Dollars)**, is to be paid to the California Labor and Workforce Development Agency (the “LWDA
11 Payment”) and 25% to the PAGA Group, **\$250 (Two Hundred and Fifty Dollars)**(the “PAGA
12 Group Amount”). (Settlement Agreement §§1.18, 1.19, 1.20, 1.24, 1.25). Prior to the Final
13 Approval/Fairness Hearing, Class Counsel will apply to the Court for payment from the Gross
14 Settlement Fund to compensate the Settlement Administrator, CPT Group, Inc., for fees and costs
15 associated with the administration of the settlement (not exceeding **\$7,500 [Seven Thousand Five**
16 **Hundred Dollars]**)(the “Settlement Administration Costs”). (Settlement Agreement §§ 1.2, 1.3).
17 (Da Vega Decl., ¶ 33).

18 **F. Class Representative Enhancement Payment**

19 Pursuant to the terms of the Settlement, Class Counsel will seek an Enhancement Payment
20 of **\$5,000 (Five Thousand Dollars)** for the Class Representative. (Settlement Agreement §§1.8,
21 2.3). The Court need not rule on the Class Representative Enhancement Payment now; a formal
22 application will be filed prior to the Final Approval/Fairness Hearing. As will be explained in
23 detail in the application, the requested Enhancement Payment is reasonable and justified based on
24 the significant time, effort and risks the Class Representative incurred in bringing this case on
25 behalf of the Class, as well as the substantial benefits the resulting Settlement provides the Class.
26 The proposed Class Representative Enhancement Payment represents only .05% of the total Gross
27 Settlement Amount and will not significantly reduce the awards of the Class Members. Public
28 policy strongly supports service awards to plaintiffs in employment class actions, and they are

1 routinely granted by courts in this state and around the country. Such awards compensate
2 plaintiffs for the efforts and risks they have undertaken on behalf of the Class, without which no
3 settlement would be possible. And, they provide an incentive for other employees to bring cases
4 that vindicate the public interest in the lawful payment of wages. (Da Vega Decl., ¶34.)

5 **VII. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD**
6 **BE PRELIMINARILY APPROVED**

7 The law favors settlements, especially of class actions. See *Potter v. Pacific Coast*
8 *Lumber Co.* (1951) 37 Cal. 2d 592, 602; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d
9 943, 950. To ensure there is no “fraud, collusion or unfairness to the class,” class claims can only
10 be settled through Court review and approval. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
11 1794, 1801. The trial court is required to determine whether the “settlement is fair, adequate and
12 reasonable,” and has “broad discretion” in making this assessment. *Id.* Nevertheless, “[d]ue regard
13 should be given to what is otherwise a private consensual agreement between the parties.” *Id.*

14 At this stage, the Court is making a preliminary assessment of whether the Settlement
15 appears to be fair, adequate, and reasonable and, thus, whether notice to the class of the settlement
16 terms and conditions and the scheduling of a final approval hearing is worthwhile. See Cal. Rules
17 of Court, rule 3.769; 4 NEWBERG ON CLASS ACTIONS § 13:13 (5th ed. 2014). (“The goal of
18 preliminary approval [of a class settlement] is for a court to determine whether notice of the
19 proposed settlement should be sent to the class, not to make a final determination of the
20 settlement’s fairness.”) “The general rule is that a court will grant preliminary approval where the
21 proposed settlement is neither illegal nor collusive and is within the range of possible of
22 approval.” 4 NEWBERG ON CLASS ACTIONS § 13:10 (5th ed. 2014). See also *Harris v. Vector*
23 *Mktg. Corp.* (N.D. Cal. Apr. 29, 2011) No. C-08-5198 EMC, 2011 WL 1627973, at *7 (“the Court
24 may grant preliminary approval of a settlement and direct notice to the class if the settlement (1)
25 appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious
26 deficiencies; (3) does not improperly grant preferential treatment to class representatives or
27 segments of the class; and (4) falls within the range of possible approval.”)

1 Following notice to the Class, the Court will make a final determination regarding the
2 fairness of Settlement. In making this evaluation, courts consider and balance a number of
3 factors, including:

4 [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration
5 of further litigation, the risk of maintaining class action status through trial, the
6 amount offered in settlement, the extent of discovery completed and the stage of
7 the proceedings, the experience and views of counsel, the presence of a
governmental participant, and the reaction of the class members to the proposed
settlement.

8 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244–45 (quoting *Dunk v. Ford*
9 *Motor Co., supra*, 48 Cal.App.4th at 1801). Nevertheless, a presumption of fairness exists when:
10 (1) the parties reached a settlement through arm's-length bargaining; (2) the parties conducted
11 sufficient investigation and discovery to allow counsel and the Court to act intelligently; (3)
12 counsel are experienced in similar litigation; and, (4) the percentage of objectors is small. *Dunk,*
13 *supra*, 48 Cal.App.4th at 1802.

14 **A. The Settlement Is the Product of Non-Collusive, Arm's-Length, and Well-**
15 **Informed Negotiations**

16 In reaching the Settlement Agreement, counsel on both sides relied on their respective
17 substantial litigation experience in similar employment class actions, and thorough analysis of the
18 legal and factual issues presented in this case. Information obtained through Class Member
19 interviews and informal discovery informed Plaintiff's assessment of the strengths and
20 weaknesses of the case and the benefits of the Settlement Agreement. The document and data
21 exchanges have allowed the Parties to closely evaluate the claims in this case, and the benefits of
22 the proposed Settlement Agreement. *See 7-Eleven Owners for Fair Franchising v. Southland*
23 *Corp.* (2000) 85 Cal.App.4th 1135, 1150 (“[I]n the context of class action settlements, formal
24 discovery is not a necessary ticket to the bargaining table where the parties had sufficient
25 information to make an informed decision about settlement.”) (quoting *Linney v. Cellular Alaska*
26 *P'ship* (9th Cir. 1998) 151 F.3d 1234, 1239).

27 The Parties initially engaged in a full day of mediation, which resulted in an agreement to
28 certain terms of resolution. Further, even after a deal was reached in the form of a confidential

1 MOU, the Parties continued to engage with each other in regards to the terms of the long form
2 Settlement Agreement. The fact that the Settlement “was the product of extensive and hard-
3 fought adversarial negotiations between the parties” and only reached with the assistance of an
4 experience mediator is a strong indication that the settlement process was fair and non-collusive.
5 *See Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245.

6 **B. The Settlement Agreement Provides Reasonable Compensation for Class**
7 **Members’ Damages in Light of Significant Litigation Risks**

8 Class Members will share in an “Estimated Net Settlement Amount” of approximately
9 **\$27,050 (Twenty Seven Thousand and Fifty Dollars)** (\$90,000 Gross Settlement Amount minus
10 attorney fees [-\$29,700], estimated attorney costs [-\$20,000], estimated class administration costs
11 [-\$7,500], service enhancement award [- \$5,000] and PAGA payments to the State of
12 California/LWDA Payment [-\$750]), to be distributed to the Settlement Class Members. This is a
13 good recovery for the class of approximately 54 non-exempt employees (only 17 of which were
14 subject of waiting time penalties and 34 were not) making approximately \$25 to \$30/hr., and who
15 have been estimated to only be under-paid \$2,414.01 in total overtime wages and interest (of
16 which \$1,963.80 was later repaid by Defendant), and approximately \$110,908.80 in waiting time
17 penalties (for only 17 of the putative class members). **Therefore 37 of the 54 Settlement Class**
18 **Members will receive \$100 each (-\$3,700 total) and remaining 17 Class Members will receive**
19 **and equal amount of the remainder (\$23,350) ... approximately \$1,373.53 each.** (\$27,050
20 [Estimated Net Settlement Amount] - \$3,700 [\$100 payment to 37 class members] = \$23,350
21 divided by 17 class members = \$1,373.53 each.)

22 The amount of the Settlement is reasonable given: (1) the difficulty of the claims, (2) the
23 degree of risk and uncertainty involved in further litigation, (3) the amount of time that would
24 pass before Plaintiff and the Class Members would see the fruits of any class verdict in their favor,
25 (4) ability of Defendant to pay, and (5) the relative short period (since March 10, 2021) of the
26 alleged practices and amount of alleged under-paid overtime wages. Defendant assert numerous
27 legal and factual grounds for defending this action and, protracted litigation can lead to potential
28 insolvency, and thus no recovery for any Class Member. Further, absent this Settlement,

1 Defendant would have vehemently contested the propriety of class treatment both through motion
2 practice regarding compelling arbitration and class certification and through any trial.

3 While Plaintiff remains confident that were this case to proceed in litigation, she would
4 successfully move for class certification, defeat decertification, and prove her claims at trial,
5 Plaintiff recognizes there are considerable risks, and that independent contractor and “off-the-
6 clock” class actions are particularly challenging, and that a Court may have required her to
7 individually arbitrate her claim. See *Deaver v. Compass Bank* (N.D. Cal. Dec. 11, 2015) 2015 WL
8 8526982, at *7 (approving class settlement in part because of the “difficulties [in] certifying the
9 class and establish liability on the merits of Plaintiff’s [off-the-clock] claims”); Cf. *Chu v. Wells*
10 *Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *4 (ruling that class
11 certification risk weighed in favor of settlement approval, recognizing that “the outcome of
12 plaintiffs’ case was far from certain, particularly in light of several recent decertification orders
13 and denials of certification in similar wage and hour class actions.”)

14 Further, even if Plaintiff succeeded in proving at trial that Defendant should be liable for
15 non-exempt employees under-paid their flat rate for overtime hours, Plaintiff would still have the
16 challenge of proving the extent of hours worked/under-paid. Plaintiff’s Expert analyzed under-
17 paid overtime and penalties based on the data produced and assumptions from evidence provided
18 by Class Members and Defendant. Based on Class Counsel’s investigation and Plaintiff Expert’s
19 experience from other cases, Plaintiff believes her assumptions are reasonable. Nevertheless,
20 Plaintiff is very cognizant that Defendant would challenge the assumptions as aggressive. Indeed,
21 Defendant disputes that the evidence establishes a pattern and practice of wage and hour
22 violations (e.g., failure to pay overtime correctly and/or pay back all wage amounts owed). The
23 Court could ultimately reject, either in whole or in part, Plaintiff’s model for analyzing the
24 existence of under-paid overtime work thus mooted her and class claims and damages potentially
25 leading to no recovery. See *Wren v. RGIS Inventory Specialists* (N.D. Cal. Apr. 1, 2011) 2011 WL
26 1230826, at *7 (risk associated with “challenges to their expert witnesses and damages
27 calculations” supported approval of settlement in off-the-clock class action); *In re Wells Fargo*
28 *Loan Processor Overtime Pay Litig.* (N.D. Cal. Aug. 2, 2011) 2011 WL 3352460, at *6

1 (recognizing that the potential difficulty in proving “off-the-clock” hours is a significant risk
2 which supports approval of class settlement).

3 Based on her current analysis, Plaintiff believes – and Defendant deny - that in the best-
4 case scenario, they would prove that the Class Members were owed on average a few hours of
5 under-paid overtime wages each week (see Damage Analysis above). However, “[t]he proposed
6 settlement is not to be judged against a hypothetical or speculative measure of what might have
7 been achieved had plaintiffs prevailed at trial.” *Wershba v. Apple Computer, Inc.*, *supra*, 91
8 Cal.App.4th at p. 246.

9 A settlement need not obtain 100 percent of the damages sought in order to be fair
10 and reasonable. (See *Rebney v. Wells Fargo Bank*, *supra*, 220 Cal.App.3d at p.
11 1139 [settlements found to be fair and reasonable even though monetary relief
12 provided was “relatively paltry”]; *City of Detroit v. Grinnell Corp.*, *supra*, 495
F.2d at p. 455 [settlement amounted to only “a fraction of the potential
recovery”].)

13 *Id.* at 250. See also *Officers for Justice v. Civil Serv., Commission* (9th Cir. 1982) 688 F.2d 615,
14 624, 628 (recognizing that “the very essence of a settlement is compromise, a yielding of
15 absolutes and an abandoning of highest hopes” and that “[i]t is well-settled law that a cash
16 settlement amounting to only a fraction of the potential recovery will not per se render the
17 settlement inadequate or unfair.”) (internal quotation omitted).

18 Considering the significant challenges faced by Plaintiff, including Defendant's legal and
19 factual defenses, there is a great risk the Class would do substantially worse in litigation than
20 under the Settlement or receive nothing at all. Further, absent a settlement, Class Members might
21 not receive any recovery at all or may not see any recovery until after years of litigation, including
22 appeals. See *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221
23 F.R.D. 523, 526 (“In most situations, unless the settlement is clearly inadequate, its acceptance
24 and approval are preferable to lengthy and expensive litigation with uncertain results.”) (internal
25 quotation omitted).

26 On the other hand, the Class Member non-exempt employee will receive anywhere from
27 \$100 to \$1,373.53 under the Settlement. This is a good recovery similar to many other wage and
28 hour actions brought on behalf of hourly paid workers. See *e.g. Ogbuehi v. Comcast of*

1 *California/Colorado/Florida/Oregon, Inc.* (E.D. Cal. June 9, 2015) 2015 WL 3622999, at *7, 10
2 (approval of wage settlement where the average non-exempt/hourly class member was receiving
3 \$531.67); *Gardner v. GC Servs., LP* (S.D. Cal. Apr. 2, 2012) 2012 WL 1119534, at *4 (average
4 settlement award for the non-exempt/hourly employee class was “around several hundred dollars”
5 – “a good result for the class”); *Collins v. Cargill Meat Solutions Corp.* (E.D. Cal. 2011) 274
6 F.R.D. 294, 302 (preliminary approval of wage settlement where the average non-exempt/hourly
7 class member was receiving \$685). In sum, the Settlement provides meaningful, prompt relief for
8 the disputed wage and hour violations and is well within the range of reasonableness.

9 **C. The Class Settlement Payment Process is Fair and Reasonable**

10 All Settlement Class Members will be eligible to receive a share of the Estimated Net
11 Settlement Fund based upon whether they were subject to waiting time penalties or not during the
12 Class Period. (See Settlement Agreement §§ 1.13, 7.1). This method of distribution is reasonably
13 designed so that Settlement Class Members subject to waiting time penalties will receive a larger
14 share of the Settlement. Significantly, the proposed payment process ensures that the maximum
15 possible Estimated Net Settlement Fund will actually be received by Settlement Class Members.
16 As stated in the Class Notices, the Settlement Class Members need not take any further action to
17 receive a Settlement payment other than cash the settlement checks they receive in the mail. Class
18 Members who may be hesitant to take affirmative action to claim monies from Defendant will not
19 face the barrier of taking affirmative action to recover their portion of the Settlement. If they do
20 not opt-out of the settlement they will simply receive a check in the mail that they can
21 deposit/cash. Any settlement checks not cashed after 150 days from the date of the class-wide
22 distribution shall be void and the sums correlating to those checks not cashed and any residual
23 amounts shall be returned to the Settlement Administrator and will be paid out per guidelines in
24 CCP § 384. (Settlement Agreement §7.4).

25 **D. The Settlement of Penalties Under the Labor Code Private Attorney General**
26 **Act of 2004 (PAGA) is Reasonable**

27 The settlement of the PAGA claim for **\$1,000** is within the range of reasonable PAGA
28 settlement amounts. See, e.g. *Nelson v. Avon Prod., Inc.* (N.D. Cal. Feb. 24, 2017) 2017 WL

1 733145, at *2 (approving class settlement of \$1.8 Million with \$10,000 attributed to PAGA
2 claim); *Taylor v. Shippers Transp. Express, Inc.* (C.D. Cal. May 14, 2015) 2015 WL 12658458, at
3 *19 (approving payment of \$50,000 for PAGA penalties from a \$11 Million class settlement,
4 finding that “[t]he proposed PAGA payment is greater than awards deemed reasonable and
5 approved in other cases,” and citing cases); *Franco v. Ruiz Food Prod., Inc.* (E.D. Cal. Nov. 27,
6 2012) 2012 WL 5941801, at *14 (approving PAGA payment of \$10,000 from a \$2.5 Million class
7 settlement, finding the “amount comports with settlement approval of PAGA awards in other
8 cases,” and citing cases); *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037
9 [preliminarily approving class action settlement allocating a PAGA set-aside worth a fraction of
10 the PAGA claim’s potential value, where the defendant’s obligations were “genuinely unclear”
11 and there was no evidence the defendant acted deliberately or negligently failed to learn about its
12 obligations].) Pursuant to Labor Code § 2699(i), the LWDA will receive 75% of this amount
13 (\$750), and the remaining 25% (\$250) will be shared by the PAGA Group. (Settlement
14 Agreement §§ 1.18, 1.19, 1.23, 1.24, 1.25).

15 **E. The Settlement’s Provision for Attorneys’ Fees, Expenses, and Costs is**
16 **Reasonable, Fair, and Appropriate Under the Circumstances**

17 In connection with the final settlement approval/Fairness Hearing, Class Counsel will
18 apply to the Court for reasonable attorney’s fees and costs. The Settlement Agreement allows
19 Counsel to seek one-third (33%) of total Settlement fund (\$29,700) in attorney fees. Fee awards
20 of 33% are commonly awarded by courts. See, e.g. *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.
21 5th 480, 503 (affirming fee award of one-third of the common fund in a wage and hour class
22 action and recognizing the following advantages in using the percentage method: “relative ease of
23 calculation, alignment of incentives between counsel and the class, a better approximation of
24 market conditions in a contingency case, and the encouragement it provides counsel to seek an
25 early settlement and avoid unnecessarily prolonging the litigation”) (internal quotation omitted);
26 *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 (“Empirical studies show that,
27 regardless whether the percentage method or the lodestar method is used, fee awards in class
28 actions average around one-third of the recovery.”) (internal quotation omitted); *Smith v. CRST*

1 *Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) 2013 WL 163293, at *5 (recognizing the California
2 benchmark for fee awards in class actions as 33%).

3 The Court need not rule on Class Counsel's fees and costs now; a formal application will
4 be filed prior to the Final Approval Hearing. As will be explained in detail in the application,
5 including a lodestar cross-check, a fee award of one-third (33%) of the Settlement fund is
6 reasonable and well-justified in consideration of the risks Class Counsel has undertaken in
7 pursuing this case on a contingency basis and the good result achieved on behalf of the Class.
8 Class Counsel expended significant time and resources on this matter and will continue to do so
9 over the next approximate six months as they oversee the administration of the Settlement. Class
10 Counsel will further request reimbursement of their incurred, reasonable costs, not exceeding
11 \$20,000. See *Thieriot v. Celtic Inc. Co.* (N.D. Cal. Apr. 21, 2011) 2011 WL 1522385, *7 ("Class
12 counsel are entitled to reimbursement of reasonable out-of-pocket expenses.")

13 **F. Class Representative Enhancement Payments Are Reasonable and**
14 **Routinely Awarded**

15 Prior to the Final Approval Hearing/Fairness Hearing, Class Counsel will file a motion
16 seeking a reasonable Class Representative Enhancement Payment for the Class Representative.
17 The Court need not rule on this request now. At present, it is sufficient for the Court to determine
18 that the award provided for in the Settlement Agreement does not render the overall Settlement
19 inherently unfair and is not an obstacle to preliminary approval.

20 Courts routinely approve service ("incentive" or "enhancement") awards to compensate
21 class representatives for the services they provide and the risks they incur during class litigation.
22 See *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393 ("incentive
23 awards are fairly typical in class action cases . . . and are intended to compensate class
24 representatives for work done on behalf of the class, to make up for financial or reputational risk
25 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a
26 private attorney general.")

27 At the Final Approval Hearing/Fairness Hearing, Class Counsel will ask the Court to
28 approve an Enhancement Payment of **\$5,000 for the Class Representative**. Based on Class

1 Representative's significant time, effort and risks incurred in bringing this case on behalf of the
2 Class, as well as the substantial benefits the resulting Settlement provides the Class, the requested
3 service awards should ultimately be found to be reasonable. See, *e.g. Hasty v. Elec. Arts, Inc.* (San
4 Mateo Cty. Super. Ct., Sept. 22, 2006) No. CIV 444821 (approving an award of \$30,000 to the
5 class representative in a wage and hour class action); *Meewes v. ICI Dulux Paints* (Los Angeles
6 Cty. Super. Ct. Sept. 19, 2003) No. BC265880 (approving service awards of \$50,000, \$25,000 and
7 \$10,000 to the named plaintiffs); *In re High-Tech Employee Antitrust Litig.* (N.D. Cal. Sept. 2,
8 2015) No. 11-CV-02509-LHK, 2015 WL 5158730, at *17 (awarding service awards of \$80,000
9 and \$120,000).

10 The requested Class Representative Enhancement Payment is also reasonable in proportion
11 to the overall Settlement. The award represents only a small fraction of the total Settlement fund
12 and thus barely impacts the recovery of the Class Members. See *Singer v. Becton Dickinson & Co.*
13 (S.D. Cal. June 1, 2010) 2010 WL 2196104, at *9 (awarding \$25,000 to class representative from
14 \$1 Million wage and hour case settlement (2.5% of fund)); *Thieriot v. Celtic Inc. Co, supra* 2011
15 WL 1522385 at *8 (awarding \$25,000 service award to class representative from class settlement
16 of \$1.375 Million (1.8% of fund)).

17 In sum, the proposed Attorneys' fees, costs and Class Representative Enhancement
18 Payment are within the typical range of approval, and are justified given the facts of this case.
19 Regardless, both the attorneys' fees, costs and Enhancement Payment are subject to the Court's
20 approval and should be assessed at the final approval stage/Fairness Hearing after Class Counsel
21 formally applies for fees, costs and Class Representative Enhancement Payment and the Class
22 Members have an opportunity to respond.

23 **G. CPT Group Should Be Appointed as the Settlement Administrator**

24 Pursuant to the Settlement Agreement, the Parties seek to have CPT Group, Inc. appointed
25 as the Settlement Administrator. Amongst other things, the Settlement Administrator will be
26 responsible for: processing class data from Defendant; mailing Notices to Class Members;
27 handling returned Class Notices, using skip-tracing and last-known telephone numbers to obtain
28 current addresses for Class Members; creating and overseeing a Qualified Settlement Fund (QSF);

1 calculating the Class Settlement Payments (with the assistance and input of the Parties);
2 distributing the Individual Settlement Amount and PAGA Group Payments to Class/PAGA
3 Members; and tax reporting of Class Settlement Payments. CPT Group is a competent and
4 experienced settlement administration company. Plaintiff will apply to the Court for payment for
5 CPT's fees and costs, which it estimates at **\$7,500**. Based on the amount of work demanded of the
6 Settlement Administration, this sum is reasonable. See, e.g. *McNeal v. RCM Techs. USA Inc.*
7 (C.D. Cal. Mar. 16, 2017) 2017 WL 1807595, at *3 (preliminarily approving \$327,000 class
8 settlement where the Claims Administrator would receive fees not exceeding \$20,000).

9 **VIII. THE COURT SHOULD CONDITIONALLY CERTIFY A PROVISIONAL**
10 **SETTLEMENT CLASS**

11 When a negotiated class action settlement has been reached prior to certification—as
12 here—the Parties may agree that a defined class be conditionally (or provisionally) certified
13 for settlement purposes only. Cal. Rules of Court, Rule 3.769(d). In such circumstances, the
14 decision to certify a class is purely a procedural one and should be based on the allegations in the
15 Complaint and not on the perceived factual or legal merit of the class claims. *Linder v. Thrifty*
16 *Oil Co.*, 23 Cal.4th 429, 439-41 (2000). Therefore in a class action settlement context the
17 Parties are not required to stipulate to certification as contemplated by California Rules of Court,
18 Rule 3.764(e).

19 In support of conditional class certification, a party must show that (1) the class is
20 “ascertainable and sufficiently numerous;” (2) there are “predominant common questions of law
21 or fact;” (3) the class representatives have “claims or defenses typical of the class;” (4) the class
22 representatives can “adequately represent the class;” and (5) the benefits of a class action make it
23 “superior to the alternatives.” *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004,
24 1021.

25 *Ascertainability and Numerosity:* For settlement purposes the Class Members are
26 identifiable from Defendant's records, and they total approximately 54 individuals. For purposes
27 of administering this Settlement, the Class is ascertainable and sufficiently numerous as to make
28

1 joinder impracticable. *Citizens of Humanity, LLC v. Ramirez* (2021) 63 Cal.App.5th 117, 130–
2 131.

3 *Common Legal and Factual Questions Predominate:* For settlement purposes, the
4 common questions include, without limitation: (i) whether Class Members were paid for all hours
5 worked and wages to which they were entitled; (ii) whether Class Members were paid for all
6 overtime hours worked and wages to which they were entitled at the appropriate rate; (iii)
7 whether Class Members are entitled to recover waiting time penalties under California law; and
8 (iv) whether Class Members received compliant wage statements. *See, e.g. Williams v. Superior*
9 *Court* (2013) 221 Cal.App.4th 1353, 1369-1371 (overturning decertification of off-the-clock
10 class and ruling the plaintiffs had adequately shown that defendants had a company wide practice
11 of having class members work off-the-clock).

12 *Typicality of Claims:* “The test of typicality is whether other members have the same or
13 similar injury, whether the action is based on conduct which is not unique to the named plaintiffs,
14 and whether other class members have been injured by the same course of conduct.” *Johnson v.*
15 *GlaxoSmithKline, Inc.* (2008) 166 Cal.App.4th 1497, 1509. Like all Class Members, Plaintiff
16 was engaged as a non-exempt Medical Assistant float employee and alleges that she and others
17 were subject to the same or similar policies and practices of Defendant whereby they were not
18 paid the correct rate for all overtime hours worked. Further, Plaintiff alleges that as a result of
19 these policies and practices she – like other Class Members – was: denied overtime pay at the
20 correct rate, not provided accurate and timely wage statements, and subject to waiting time
21 penalties. *See Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 239 (class
22 representative typical as “all of the class members [including the class representative] here
23 suffered a common alleged wrong.”)

24 *Adequate Representation:* Plaintiff will adequately represent the Class. She has the same
25 interest in maintaining this action as any Class Member would have. Further, she has hired
26 counsel experienced in class actions and wage and hour law. *See McGhee v. Bank of America*
27 (1976) 60 Cal.App.3d 442, 450 (“Adequacy of representation depends on whether the plaintiff's
28

1 attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not
2 antagonistic to the interests of the class.”)

3 *Superiority of Class Action:* Further, the maintenance of the Class results in “substantial
4 benefits” to the Parties, including the Class Members, and the Court. *Linder v. Thrifty Oil Co.*
5 (2000) 23 Cal. 4th 429, 435. It would be inefficient and a waste of the Court’s and Parties’
6 resources to require 54 Class Members to separately litigate the same issues in different lawsuits.
7 *Capitol People First v. Dep't of Developmental Servs.* (2007) 155 Cal.App.4th 676, 702 (“without
8 class treatment there could be multiple actions that would burden the litigants and the courts with
9 cumulative and excessive expenses, discovery efforts and evidence.”) The class action procedure
10 is an ideal method for resolving the relatively modest individual claims of 54 current and former
11 non-exempt employees, many of whom would be deterred from bringing individual claims due to
12 the costs of litigation and concerns that bringing a lawsuit could adversely affect current or future
13 employment. *See Bibo v. Fed. Exp., Inc.* (N.D. Cal. Apr. 21, 2009) 2009 WL 1068880, at *9
14 (“Class treatment will increase class members’ access to redress because it unifies what may be a
15 series of small claims . . . Additionally, class treatment may relax any concerns that current
16 employees may have about retaliation if they were to bring a suit against FedEx, as unity of the
17 employee class would prevent retaliation.”)

18 Accordingly, the Class should be conditionally certified as a provisional settlement class.

19 **IX. THE COURT SHOULD APPROVE THE PROPOSED CLASS NOTICE**

20 A court is afforded broad discretion in determining appropriate notice to class members.
21 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. The Class Notice should be provided
22 in a manner that “has a reasonable chance of reaching a substantial percentage of the class
23 members.” *Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 251 (internal quotation
24 omitted). “In regard to the contents of the notice, the notice given to the class must fairly apprise
25 the class members of the terms of the proposed compromise and of the options open to dissenting
26 class members.” *Id.* (internal quotation omitted).

27 The proposed Class Notices is attached to the Settlement Agreement as **Exhibit C: Notice**
28 **of Class Action Settlement.** The Settlement Agreement is attached as Exhibit 1 to the Da Vega

Decl., which is filed in support of this motion.

A notice will be sent to Class Members. **The Notice Period / “Response Deadline” will be 45 calendar days.** The Class Notice clearly and accurately describes (a) the case information and the nature of the action; (b) the terms of Settlement Agreement; (c) the definition of the class; (d) the formula for calculating the Net Settlement Fund (including the amounts sought for the Class Counsel Award, Class Representative Enhancement Payment, Settlement Administration Costs and the LWDA Payment) and Individual Settlement Amounts; (e) the dates which comprise the Class Period, (f) instructions on how to submit a Dispute, Request for Exclusion, or Objection, and (g) the deadlines by which Disputes, Requests for Exclusion, or Objections to the Agreement must be submitted to the Settlement Administrator. It also describes that Class Members who do not opt-out, will be bound by the Settlement Agreement, including the release of claims and PAGA, if the Agreement is approved by the Court; the process to appear at the Final Approval Hearing/Fairness Hearing to state objections; and that a Class Member may retain separate counsel to appear on the Class Member’s behalf. *See* Cal. Rules of Court, rule 3.766(d) & 3.769(f).

The proposed plan for distributing the Class Notice is also reasonable and satisfies the notice requirements of California Rules of Court, Rules 3.766 & 3.769(f) and all other legal and due process requirements. Individual notice will be mailed to Class Members, which is a reasonable and practicable way of reaching all of the Class Members. 4 NEWBERG ON CLASS ACTIONS § 8:15 (5th ed. 2014). The notices will have contact information for Class Counsel. Defendant will provide the Settlement Administrator with a Class List containing each Class Members: (1) full name; (2) last known mailing address; (3) last known telephone number; and (4) Social Security number; to the extent any or all such information is reasonably available to Defendant. (Settlement Agreement §1.6).

Prior to the mailing of the Class Notice, the Settlement Administrator will run the list of all Class Members through the United States Postal Service’s National Change of Address database (“NCOA”). (Settlement Agreement §4.3). However, if Class Notices are returned because the address of the recipient is no longer valid, the Settlement Administrator will perform skip traces to

1 locate Class Members. (Settlement Agreement §4.4). Further, as necessary, the Settlement
2 Administrator will use Class Members' last-known telephone numbers (and telephone numbers
3 updated through public and proprietary databases) to obtain Class Members' current addresses.
4 The proposed mailing and distribution of the Class Notice constitutes the best notice practicable.

5 **X. A FINAL APPROVAL / FAIRNESS HEARING SHOULD BE SCHEDULED**

6 The last step in the settlement approval process is a final approval hearing, at which the
7 Court may hear all evidence and argument necessary to evaluate the proposed Settlement. *See*
8 California Rules of Court, Rules 3.769(g). Plaintiff respectfully requests that the Court schedule
9 the Final Approval / Fairness Hearing and set deadlines for the submission of motion and
10 supporting papers.

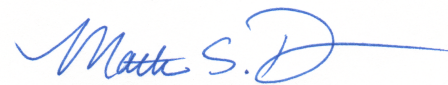
11 **XI. CONCLUSION**

12 For the reasons set forth above and in the accompanying papers, Plaintiff respectfully
13 requests that the Court grant Plaintiff's Motion for Preliminary Approval of the Class Settlement.
14

15 **DATED:** January 5, 2023

DA VEGA | FISHER | MECHTENBERG LLP

16
17 By: _____



18 Matthew S. Da Vega
19 Attorneys for Plaintiff and Class
20
21
22
23
24
25
26
27
28