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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

CARMINA VALDEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

ADVANCED IMAGING CENTER, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 23STCV06358

*[Assigned for all purposes to the Hon. Stuart M. Rice,
Dept. SSC-1]*

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

Date: January 9, 2025
Time: 10:30 a.m.
Dept.: SSC-1

Action Filed: March 22, 2023
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 January 9, 2025 at 10:30 a.m. in Department SSC-1 of the above-entitled Court, located at 312 North
4 Spring Street, Los Angeles, California, 90012, Plaintiff Carmina Valdez (“Plaintiff”), individually and
5 on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

- 6 1. Preliminary approval of the proposed class settlement of this lawsuit;
7 2. Pursuant to section 382 of the California Code of Civil Procedure, and for settlement
8 purposes only, provisional certification of the following Settlement Class defined as follows:

9 All current and former non-exempt employees of Defendant Advanced Imaging
10 Center, Inc. in California between March 22, 2019 and the date the Court in the
11 Action grants Preliminary Approval of this settlement.

- 12 3. Preliminary appointment of Plaintiff Carmina Valdez as Class Representative;
13 4. Preliminary appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC and
14 Paul K. Haines of Haines Law Group, APC as Class Counsel;
15 5. The scheduling of a hearing to consider whether the Settlement should be finally approved
16 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
17 payable to the California Labor Workforce Development Agency, and attorneys’ fees and
18 costs to Class Counsel;
19 6. Appointment of Phoenix Class Action Administration Solutions as the third-party Settlement
20 Administrator for mailing notices; and
21 7. Approval of the proposed Notice of Class Action Settlement and Hearing Date for Final
22 Court Approval (“Class Notice”) that is attached to the Settlement as Exhibit A and an order
23 that it be disseminated to the proposed Settlement Class Members as provided in the
24 Settlement Agreement.

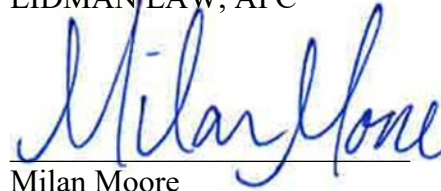
25 This Motion is based on this notice of motion, the memorandum of points and authorities, the
26 declarations of Scott M. Lidman, Milan Moore, Paul K. Haines, Plaintiff Carmina Valdez, and Jodey
27 Lawrence of Phoenix Class Action Administration Solutions, and the exhibits attached thereto, the
28

1 pleadings and other papers filed in this action, and on any further oral or documentary evidence or
2 argument presented at the time of hearing.

3
4 Dated: September 30, 2024

Respectfully submitted,
LIDMAN LAW, APC

5
6
7 By:



Milan Moore
Attorney for Plaintiff
CARMINA VALDEZ

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Carmina Valdez (“Plaintiff”) brought this class and representative action against
4 Defendant Advanced Imaging Center, Inc. (hereinafter “Advanced Imaging” or “Defendant”) alleging
5 various wage and hour and related violations. Plaintiff’s primary claims/allegations are that Advanced
6 Imaging: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3)
7 failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required
8 rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to timely pay all wages
9 upon termination; (7) engaged in unlawful business practices; and (8) is liable for civil penalties under
10 the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
12 class action settlement,¹ in which Advanced Imaging has agreed to pay One Hundred Eighty Thousand
13 Dollars and Zero Cents (\$180,000.00) on behalf of the following Settlement Class:

14 All current and former non-exempt employees of Defendant in California
15 between March 22, 2019 and the date the Court in the Action grants Preliminary
Approval of this settlement.

16 Significantly, Settlement Class Members do not need to file a claim to benefit from the
17 Settlement because all Settlement Class Members will automatically receive a payment unless they
18 affirmatively opt-out. After deducting administration costs, Plaintiff’s service payment, attorneys’ fees
19 and costs, and the PAGA Payment to the LWDA, the remaining Net Settlement Amount (“NSA”) of
20 approximately \$77,750.00 will be distributed to all Settlement Class Members who do not opt-out of
21 the Settlement. There were approximately 107 Settlement Class Members as of the date of mediation,
22 and **not** including the \$2,500.00 for 62 PAGA Members, the average payment to participating
23 Settlement Class Members is estimated to be approximately **\$703.27**.

24 This proposed Settlement is well-within the range of possible approval in light of the significant
25 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible
26 monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff

27 _____
28 ¹ The Settlement is attached to the Declaration of Milan Moore as Exhibit 2. The proposed Class Notice is attached to the
Settlement as Exhibit A.

respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES

Advanced Imaging is a medical imaging center. *See* Declaration of Milan Moore (“Moore Decl.”), ¶ 7. Plaintiff, a former employee, was employed by Advanced Imaging as an hourly, non-exempt employee from approximately November 22, 2021 through approximately May 2022. *See* Declaration of Carmina Valdez (“Valdez Decl.”), ¶ 2.

B. BRIEF PROCEDURAL HISTORY

On March 22, 2023, Plaintiff filed the instant putative class action complaint. Moore Decl., ¶ 7. That same day, Plaintiff submitted a letter to the California Labor & Workforce Development Agency (“LWDA”) and Advanced Imaging of her intention of filing a PAGA claim based on the Labor Code violations as alleged in her operative complaint. *Id.*, **Exhibit 1**. After exhausting her administrative remedies, on June 1, 2023, Plaintiff filed a First Amended Class and Representative Action Complaint adding a cause of action for civil penalties under the PAGA. *Id.*

Plaintiff will serve the instant Motion and proposed Settlement Agreement on the LWDA on the same date she files this Motion and will submit a supplemental declaration to the Court evidencing the submission. Moore Decl., ¶ 30.

III. DUNK/KULLAR ANALYSIS

Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement agreement was negotiated at arm’s-length by class counsel and with the assistance of a mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

A. INVESTIGATION AND DISCOVERY

In advance of mediation, Advanced Imaging produced a sampling of timekeeping and payroll data for the putative class, as well as its wage and hour policies and other relevant documents and information relevant to the claims alleged. Moore Decl., ¶ 8. Advanced Imaging also provided sufficient information for Plaintiff to calculate the necessary metrics, including without limitation, class

1 size, number of workweeks, and pay periods. *Id.* After the detailed review of the documents and data
2 produced by Advanced Imaging, Class Counsel drew on their extensive experience in similar cases to
3 assess the strengths and weaknesses of Plaintiff's case. *Id.* This informal discovery allowed the parties
4 to assess the merits and value of Plaintiff's claims and Advanced Imaging's defenses thereto. *Id.*

5 Defendant produced a random selection of timekeeping and payroll data for 20% of the putative
6 class. Plaintiff received a list of 107 unique Employee ID numbers. Moore Decl., ¶ 8. Accordingly, a
7 sample of this group is representative of the entire Settlement Class and is statistically significant and
8 reliable for purposes of evaluating a potential settlement. *See e.g., Tyson Foods, Inc. v. Bouaphakeo*,
9 136 S. Ct. 1036 (2016) (The Supreme Court held that statistical evidence was admissible to prove
10 liability and damages across a class, thereby allowing it to support class action certification.). In *Tyson*,
11 a case involving a class of employees claiming that they did not receive statutorily mandated overtime
12 pay for time spent "donning and doffing protective gear," the court upheld the use of statistical evidence
13 to calculate the additional time class members spent donning and doffing, even though differences in
14 the type of gear worn meant that plaintiffs may have taken different amounts of time to don and doff.
15 *Id.* at pp. 1042, 1048–1409.

16 Here, the statistical analysis of the time punch and payroll data was used for the limited purpose
17 of determining the predominance of rounding and meal period violations in support of Plaintiff's claims
18 that Advanced Imaging maintained policies and practices during the relevant time period of not paying
19 its non-exempt employees for all time worked and not providing all legally compliant meal periods.
20 Moore Decl., ¶ 8. Indeed, based on the time punch data produced which included actual time punches
21 and rounded paid hours, Plaintiff was able to conduct a rounding analysis and conclude that Advanced
22 Imaging's rounding practice was widespread during the entire relevant time period. *Id.* Moreover, from
23 the time and payroll data, Plaintiff was able to analyze the meal records and find an approximate 16%
24 potential meal period violation rate in which the majority of meal period violations were for late and
25 short meal periods. *Id.* The Settlement Class members were paid under the same wage and hour policies
26 and procedures. *Id.* Given these circumstances, the experiences of a subset of employees – the 20%
27 sampling- can be probative as to the experiences of all of the Settlement Class. *Lubin v. The Wackenhut*
28 *Corp.* (2016) 5 Cal.App.5th 926, 938 (As in *Tyson*, under these circumstances the percentage of the
subset of employees who signed meal agreements lacking the required revocation language during a

1 given time period is probative as to the percentage of the class that signed meal agreements lacking the
2 required revocation language.). Further, if all Settlement Class members brought lawsuits for unpaid
3 wages and/or meal period violations, they would rely on timekeeping records similar to the ones in this
4 sampling which also supports a finding that the sampling is statistically reliable. *Id.*

5 In addition to the representative sampling, Advanced Imaging produced key data points and all
6 relevant written wage and hour policies in effect during the relevant time periods. Specifically, Plaintiff
7 was provided with the following:

- 8 • Plaintiff's personnel files and timekeeping and payroll documents;
- 9 • The hire and termination dates for the putative class that enabled Plaintiff to calculate
10 key data points, including total number of employees, workweeks, and pay periods
11 during the relevant time period; and
- 12 • Exemplars of the wage statements provided during the relevant time period.

13 Moore Decl., ¶ 8. This information coupled with the representative data sampling, enabled Plaintiff to
14 extrapolate to the entire class and aided in Plaintiff's creation of a class-wide exposure model for all
15 the claims at issue, including unpaid wages and penalties potentially owed for alleged minimum and
16 overtime wages, meal and rest period violations, and unpaid wages. *Id.*

17 **B. ARMS-LENGTH NEGOTIATIONS**

18 On June 4, 2024, a mediation was held with Mark LeHocky, Esq., a well-respected wage and
19 hour class action mediator. Moore Decl., ¶ 9. During mediation, the parties vigorously debated their
20 opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the
21 claims and defenses. *Id.* Ultimately, the Parties agreed on a class-wide resolution. *Id.*

22 **C. THE EXPERIENCE AND VIEWS OF COUNSEL**

23 "Parties represented by competent counsel are better positioned than courts to produce a
24 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises*
25 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
26 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
27 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
28 Moore Decl., ¶¶ 2-5; Declaration of Scott M. Lidman ("Lidman Decl."), ¶¶ 2-8; Declaration of Paul K.

1 Haines (“Haines Decl.”), ¶¶ 2-8. Class Counsel conducted an in-depth review of Advanced Imaging’s
2 policies and timekeeping and payroll records, and drew on their extensive experience in similar cases
3 to assess the strengths and weaknesses of Plaintiff’s case. See Moore Decl., ¶¶ 4-25. The Settlement
4 was also reached with the assistance of a mediator. Moore Decl., ¶ 9. This factor strongly supports
5 preliminary approval of the Settlement. See *Kullar, supra*, 168 Cal.App.4th at 130.

6 **D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF**
7 **CLAIMS**

8 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in
9 the face of disputed claims. Plaintiff’s analysis of the maximum and realistic expected recoveries for
10 each of the theories of liability pled is set forth below:

11 Advanced Imaging Failed to Pay for All Hours Worked: Plaintiff alleges that she and the
12 Settlement Class Members were not fully compensated for all of their time worked due to unlawful
13 shaving of time worked and/or rounding such that they would not be fully paid for all time worked.
14 Moore Decl., ¶ 13. Plaintiff also alleges that this practice was not-even handed over time and would
15 almost exclusively benefit Advanced Imaging, and the employees were routinely underpaid for their
16 time worked. *Id.* Plaintiff estimates the total underpayment of wages due to unlawful rounding is
17 approximately \$128,661.00 (9,600 workweeks x .42 per workweek x \$31.91 average overtime rate).
18 *Id.*

19 Advanced Imaging contends that it compensated Settlement Class Members for all of their time
20 worked. Moore Decl., ¶ 14. Advanced Imaging also contends that its rounding practices were lawful,
21 and any unpaid time was *de minimis* and therefore non-compensable. *Id.* Advanced Imaging further
22 asserts that Plaintiff would be unable to certify a rounding class given the individualized inquiries that
23 would be required, and also that Advanced Imaging’s rounding policy/mechanism was, according to it,
24 neutral on its face and in its application. *Id.* In light of these defenses, Plaintiff discounted the
25 maximum exposure by 45% for the risk of non-certification, and an additional 30% to account for
26 Advanced Imaging’s defenses on the merits, to arrive at an estimated exposure of \$49,534.49. *Id.*

27 //

1 Advanced Imaging Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that
2 she and Settlement Class Members were not provided with all legally-compliant first meal periods
3 beginning before the end of the fifth hour of work. Moore Decl., ¶ 15. Based on a review of the
4 timekeeping data, there was an approximate 16% violation rate, with the majority of the violations being
5 for late meal periods. *Id.* Accordingly, Plaintiff calculated Advanced Imaging’s maximum exposure
6 for the alleged meal period violations at approximately \$184,471.00 ((11,657 workweeks x 5
7 shifts/week) x .93(shifts over 6.0 hours) x .16 (percentage of non-compliant MPs) x \$21.27 average
8 premium). *Id.*

9 Advanced Imaging counters that it has always maintained a lawful meal period policy and
10 provided non-exempt employees with an opportunity to take legally compliant meal periods, and any
11 non-compliant meal periods reflected in employee timekeeping records were solely the result of
12 employee choice, rather than any policy or practice of Advanced Imaging. Moore Decl., ¶ 16. Advanced
13 Imaging points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is
14 only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken,
15 and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard).
16 Finally, Advanced Imaging contends Plaintiff’s meal period claim is not suited for class certification,
17 since individual inquiries would be required to assess which employees took non-compliant meal
18 periods, how many meal periods were non-compliant or missed, and the reasons why a particular
19 employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.*
20 Accordingly, Plaintiff discounted the maximum exposure by 50% for the risk of non-certification, and
21 an additional 60% to account for Advanced Imaging’s defenses on the merits to arrive at an estimated
22 exposure of \$36,894.20. *Id.*

23 Advanced Imaging Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that she
24 and the Settlement Class Members were not authorized and permitted to take all required rest periods
25 due to Advanced Imaging’s rest period policies and practices because Advanced Imaging failed to
26 provide any rest periods on shifts worked in excess of 3.5 hours. Moore Decl., ¶ 17. Thus, Plaintiff
27 alleges the Settlement Class Members experienced at least one rest period violation on every shift
28

1 worked in excess of 3.5 hours. *Id.* Therefore, Plaintiff calculated Advanced Imaging’s maximum
2 exposure for the alleged rest period violations at approximately \$1,239,722.00 (11,657 workweeks x 5
3 shifts/week x \$21.27 average premium). *Id.*

4 Advanced Imaging contends that its policies and procedures authorized and permitted
5 Settlement Class Members to take all off-duty rest periods in compliance with California law. Moore
6 Decl., ¶ 18. Advanced Imaging also argues that Plaintiff’s rest period claim is inherently unsuited for
7 class treatment as it requires an individualized inquiry into whether each Settlement Class Member was
8 in fact authorized and permitted to take a compliant rest period, which would evolve into an
9 unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff discounted the maximum exposure by
10 60% for the risk of non-certification, and an additional 55% to account for Advanced Imaging’s
11 defenses on the merits to arrive at an estimated exposure of \$223,149.96. *Id.*

12 Advanced Imaging Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that
13 Advanced Imaging issued inaccurate wage statements in violation of Labor Code section 226 as a result
14 of the alleged unpaid minimum wages and overtime wages, and meal and rest period premium wages
15 described above. Moore Decl., ¶ 19. Plaintiff’s data analysis reflected that there were approximately
16 1,382 wage statements issued during the relevant time period. *Id.* Therefore, Plaintiff calculated
17 Advanced Imaging’s maximum exposure for wage statement violations at approximately \$135,900.00
18 ((\$50.00 x 46 current employees) + (\$100.00 x 1,336 subsequent wage statements)). *Id.*

19 Advanced Imaging argues that its alleged wage statement violations could not be shown to be
20 “knowing and intentional,” and that Plaintiff cannot show that she or any other employee “suffer[ed]
21 injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for
22 imposition of penalties. Moore Decl., ¶ 20. As such, Plaintiff discounted the calculated exposure by
23 45% for a risk of non-certification and an additional 50% for a risk of being unsuccessful on the merits,
24 to arrive at an estimated total of \$37,372.50. *Id.*

25 //

1 Advanced Imaging is Liable for Waiting Time Penalties: Plaintiff alleges that Advanced Imaging
2 is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all
3 wages and all meal and rest period premiums. Moore Decl., ¶ 21. There are approximately 48 Settlement
4 Class Members who have separated their employment during the relevant time period. *Id.* Therefore,
5 Plaintiff calculated Advanced Imaging’s maximum exposure for waiting time penalties at approximately
6 \$245,030.00 (8 hours x \$21.27 average reg. rate of pay x 30 days x 48 former employees). *Id.*

7 Advanced Imaging asserts it has strong defenses to the waiting time claim because there exist
8 good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Moore
9 Decl., ¶ 22. *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will
10 preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017)
11 (holding that “good faith dispute” over whether employee was exempt precluded imposition of waiting
12 time penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure
13 by 45% for the risk of non-certification, and an additional 40% to account for Advanced Imaging’s
14 defenses on the merits, to arrive at an estimated exposure of \$80,859.90. *Id.*

15 Advanced Imaging is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under
16 the PAGA as a result of the foregoing alleged Labor Code violations. Moore Decl., ¶ 23. Plaintiff
17 calculated Advanced Imaging’s maximum exposure at \$138,200.00 (1,382 pay periods x \$100 initial
18 violation rate). *Id.*; *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding
19 “initial” violation rate applies until employer is notified that it is violating a Labor Code provision).

20 Advanced Imaging argues that Plaintiff’s PAGA claim will fail for the same reasons that her
21 underlying claims will fail. Moore Decl., ¶ 24; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th
22 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also
23 fail.”). Advanced Imaging also maintains that, given its good faith defenses, this Court would exercise
24 its discretion to substantially reduce any PAGA penalties if it were to find Advanced Imaging liable for
25 any of Plaintiff’s claims. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012)
26 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D.
27 Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties
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1 from \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by
2 45% for a risk of being unsuccessful on the merits, and an additional 55% to account for the possibility
3 of this Court reducing penalties, to arrive at an estimated exposure of \$34,204.50. *Id.*

4 **E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL**

5 Using these estimated figures for each of the claims described above, Plaintiff predicted the
6 realistic total recovery for the Settlement Class would be approximately \$462,015.55. Moore Decl., ¶
7 25. The proposed settlement of \$180,000.00 therefore represents approximately 39% of the reasonably
8 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement
9 will provide tangible monetary relief to Settlement Class Members and will still provide an average
10 recovery to Settlement Class Members of over \$700.00. *Id.*

11 The proposed settlement reflects approximately 39% of the estimated recovery the Settlement
12 Class could reasonably expect in light of the significant litigation risks and will provide tangible
13 monetary compensation for hotly disputed claims. Moore Decl., ¶ 25. Indeed, the percentage of the
14 liability exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g.,*
15 *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-
16 sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D.
17 523, 527. Thus, Plaintiff submits that the proposed settlement is within the range of approval, such
18 that notice should be provided to the Settlement Class so that they can consider the Settlement. The
19 Court will have the opportunity to again assess the reasonableness of the Settlement after the time to
20 opt-out or object has expired.

21 **F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER**
22 **LITIGATION, AND RISK OF MAINTAINING CLASS ACTION STATUS**

23 Although the parties engaged in informal discovery throughout this action, the parties still had
24 significant discovery to complete in formal litigation had the matter not settled. Moore Decl., ¶ 29.
25 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake
26 of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.*
27 Even if the classes were certified, the parties would incur considerably more attorneys' fees and costs
28

1 through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those
2 risks and the accompanying expense. Thus, this factor supports preliminary approval.

3 **IV. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

4 California Rule of Court 3.769 conditions settlement of a class action on court approval, which
5 is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of
6 Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322.

7 As further explained below, the Settlement Class satisfies the criteria for certification of a
8 settlement class under California law because: (1) the Settlement Class is so numerous that joinder
9 would be impractical; (2) common questions of law/fact predominate over individual questions such
10 that class certification is the most efficient way to maintain this litigation; (3) Plaintiff's claims are
11 typical of the claims of absent Settlement Class Members; and (4) Plaintiff and her counsel will fairly
12 and adequately represent Settlement Class Members' interest. *See* Cal. Civ. Proc. § 382.

13 **A. NUMEROSITY IS SATISFIED.**

14 Here, the proposed Settlement Class consists of at least 107 members and is therefore
15 sufficiently numerous as to make joinder impracticable. *See* Moore Decl., ¶ 11; *See, e.g., Bowles v.*
16 *Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently
17 numerous). Thus, numerosity is satisfied.

18 Further, the class is "ascertainable" because it is defined as "All current and former non-exempt
19 employees of Defendant in California between March 22, 2019 and the date the Court in the Action
20 grants Preliminary Approval of this settlement." Moore Decl., ¶ 11; Settlement ¶ 6.a. Such members
21 can be identified from Defendant's personnel/business records.

22 **B. COMMONALITY IS SATISFIED.**

23 The focus in a certification dispute is not the merits, but rather on what types of questions,
24 "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*
25 *Court (Rocher)* (2004) 34 Cal.4th 319, 327.

26 Here, Plaintiff alleges Settlement Class Members' claims arise from Advanced Imaging's
27 common, uniform policies and practices that applied to Settlement Class Members during the class
28 period. Moore Decl., ¶ 12. Specifically, Plaintiff alleged that Advanced Imaging's common and
uniform policies and practices resulted in the following violations: (1) failure to pay all minimum wages

1 owed; (2) failure to pay all overtime wages owed; (3) failure to provide all legally required meal
2 periods; (4) failure to authorize and permit all legally required rest periods; (5) failure to provide
3 accurate, itemized wage statements; (6) failure to pay all final wages upon termination; (7) engagement
4 in unlawful business practices; and (8) liability for civil penalties under the PAGA. *Id.* As a result of
5 the common and uniform policies and practices that applied to all Settlement Class Members, their
6 claims involve common questions of law and fact as to whether in fact Advanced Imaging committed
7 these alleged violations.

8 These alleged practices result in common questions as to the affected Settlement Class
9 Members. *See e.g., Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

10 **C. TYPICALITY IS SATISFIED.**

11 The typicality requirement is satisfied where class representatives have claims that are typical
12 of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
13 1341, 1347. Here, Plaintiff's claims are typical of those held by the members of the proposed
14 Settlement Class. Plaintiff was employed by Advanced Imaging during the Class Period as a non-
15 exempt employee and was subject to Advanced Imaging's wage and hour policies at issue in this case.
16 *See Valdez Decl.*, ¶ 2. Further, Plaintiff was allegedly injured by the same challenged policies that
17 allegedly injured the Settlement Class as a whole. *Valdez Decl.* ¶¶ 3-6. Given that Advanced Imaging's
18 policies and practices applied to all non-exempt employees, Settlement Class Members possess a
19 similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, typicality is
20 satisfied.

21 **D. ADEQUACY IS SATISFIED.**

22 The adequacy requirement examines conflicts of interest between named parties and the
23 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155
24 (2007) Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiff and the
25 Settlement Class she seeks to represent. *Moore Decl.*, ¶ 28; *Valdez Decl.*, ¶ 13. Indeed, Plaintiff's
26 interests are aligned with those of the Settlement Class Members, as they all seek monetary relief under
27 the same facts and legal theories. Additionally, Class Counsel does not have any conflict of interest
28 with the Settlement Class. *Moore Decl.* ¶ 28; *See McGhee v. Bank of America* (1976) 60 Cal.App.3d
442, 450-51. Further, Class Counsel also have extensive experience in wage and hour class action

litigation and have vigorously litigated this case. *See* Moore Decl., ¶¶ 2-5; Lidman Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8.

V. SETTLEMENT AGREEMENT

A. THE BASICS

1. Class Definition and Release Period

The proposed Settlement Class is defined as: all current and former non-exempt employees of Defendant Advanced Imaging Center, Inc. in California between March 22, 2019 and the date the Court in the Action grants Preliminary Approval of this settlement. Moore Decl., ¶ 11.

2. Aggrieved Employees and PAGA Period

The proposed PAGA Members are defined as: all current and former non-exempt employees of Defendant Advanced Imaging Center, Inc. in California between March 22, 2022 and the date the Court in the Action grants Preliminary Approval of this settlement. Moore Decl., ¶ 11.

B. RELEASE OF CLAIMS

1. Scope of Participating Class Members' Release

All Participating Class Members release and forever discharge Defendant and each of Defendant's past, present and future parent companies, subsidiaries, affiliates, principals, and any other person, corporation, association or partnership responsible or potentially responsible for any claims made or that could have been made in the Action, and the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers predecessors, and successors and assigns of any of the foregoing ("Released Parties") from any and all class action claims made, or which could have been made, based on the facts alleged in the Action that arose during the Class Period defined above with respect to claims for (a) failure to pay all minimum wages; (b) failure to pay all overtime wages; (c) failure to provide meal periods; (d) failure to authorize and permit rest periods; (e) failure to issue accurate, itemized wage statements; (f) failure to timely pay wages upon separation of employment; and (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action, or legal theories described above, including all claims for costs, attorney's fees, civil penalties, statutory penalties, premium pay, and liquidated damages related thereto. Settlement, ¶ 3.c.

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3. Releases Effective Date

The releases described above are effective at the expiration of the opt out window, which is forty-five (45) days from the mailing date of the Notice. Settlement, ¶ 6.i. If Notice is re-mailed to an individual, the effective date of the release is extended by fourteen (14) calendar days. *Id.*

C. MONETARY TERMS OF SETTLEMENT

If the Court approves this Settlement, Advanced Imaging will pay a Gross Settlement Amount (“GSA”) of \$180,000.00.² Moore Decl., ¶ 10, Exh. 3 (Settlement, ¶ 2.). Significantly, this Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.* Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.*

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2. Deductions from Gross Settlement Amount

The monetary terms of the Settlement are summarized below:

Gross Settlement Amount (“GSA”):	\$180,000.00
Minus Court-approved attorneys’ fees (update to 1/3 of GSA):	\$60,000.00
Minus Court-approved, verified costs (up to \$20,000.00):	\$20,000.00
Minus Court-approved Class Representative Service Award:	\$7,500.00
Minus Settlement Administration Costs:	\$7,250.00
Minus PAGA payment to the LWDA:	\$7,500.00
Net Settlement Amount (“NSA”):	\$77,750.00
Settlement Class Members	107
Average Individual Payment: NSA/Settlement Class	\$726.64

After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the Settlement results in a Net Settlement Amount (“NSA”) of at least \$77,750.00 to be paid out to all Settlement Class Members who do not timely opt out. Moore Decl., ¶ 10, Exh. 3.

Therefore, this calculation of $\$77,750/107=\726.64 , assumes the Court approves the requested attorneys’ fees, maximum attorneys’ costs, service payment, settlement administration costs, and payment to the LWDA. Moore Decl., ¶ 10. This calculation also assumes that all 107 putative class members participate in the settlement and do not submit timely requests for exclusions. *Id.*

3. Class Representative Service Payment

Incentive awards are typical in class action cases and are intended to compensate class representatives for work done on behalf of the class and to make up for reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94.

Plaintiff will separately apply for a service payment at the time of seeking final approval in the amount of \$7,500.00. Moore Decl., ¶ 28, Exh. 3 (Settlement, ¶ 2.a.); Valdez Decl., ¶¶ 3-14. As will be fully briefed at the time of final approval, Plaintiff’s requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial

1 factual information and documents to Class Counsel, attending multiple meetings with Class Counsel
2 to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff
3 undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed
4 to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Moore Decl., ¶28;
5 Valdez Decl., ¶¶ 3-14; Settlement ¶ 2.a.

6 The Class Representative Service Payment awarded by the Court shall be paid by the
7 Settlement Administrator to Plaintiff from the Gross Settlement Amount within 14 days after
8 Defendant funds the Gross Settlement Amount. Settlement, ¶ 4.4.

9 4. Attorneys' Fees and Costs

10 California courts recognize an appropriate method for awarding attorneys' fees in class actions
11 is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v.*
12 *Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506. Class Counsel's request for fees of one-third of the
13 GSA is well within the range of reasonableness, and indeed is considered the typical rate for common
14 fund settlements.

15 Here, Class Counsel will apply for an attorneys' fees award of one-third of the GSA, which is
16 currently estimated to be \$60,000.00, and up to \$20,000.00 in verified costs reimbursement. *See*
17 Settlement, ¶¶ 4.d, 4.e.; Moore Decl., ¶ 26. Plaintiff submits the requested fee is fair compensation for
18 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
19 *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Moore
20 Decl., ¶ 27. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
21 analyzing Plaintiff's claims, conducting legal research, analyzing timekeeping data and payroll records,
22 preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this
23 Motion, and otherwise litigating the case. Moore Decl., ¶ 26. Class Counsel expect to expend additional
24 attorney time in attending the hearing on this Motion, overseeing the Notice process, fielding questions
25 from Settlement Class Members, preparing the final approval papers, and attending the Final Approval
26 hearing. *Id.*

26 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys'
27 fees and verified litigation costs at the time of seeking final approval of the Settlement, which will
28

1 include a lodestar analysis. Class Counsel's fees and costs awarded by the Court shall be paid by the
2 Settlement Administrator to Class Counsel from the Gross Settlement Amount 14 days after Defendant
3 funds the Gross Settlement Amount. Settlement, ¶ 4.4.

4 5. Payroll Taxes

5 The Settlement provides that Advanced Imaging's payroll taxes associated with any payments
6 made to the Class Members under the Settlement shall be paid by Defendant separately from the
7 Settlement Sum, and shall not be deducted from the Settlement Sum. Settlement ¶ 2.g.

8 6. Payment Formula

9 There were approximately 107 total Settlement Class Members as of the date of mediation.
10 Moore Decl., ¶ 11.

11 The estimated share for the Net Settlement Sum for each individual within the class definition
12 will be determined as follows: (1) A Total Value Per Workweek will be derived by dividing the Net
13 Settlement Sum by the total number of weeks that all Class Members worked within the class periods;
14 and (2) each Class Member will have their respective number of workweeks multiplied by the Total
15 Value Per Workweek to derive their respective share of the Set Settlement Sum. Settlement, ¶ 6.c.
16 Thus, the average Individual Class Payment is \$703.27. Moore Decl., ¶ 11.

17 Additionally, there were approximately 62 PAGA Members. Moore Decl., ¶ 11.

18 The PAGA Members' share of the PAGA allocation shall be divided among them on a pro rata
19 basis based on the number of pay periods they worked during the PAGA Period. Settlement, ¶ 2.i.
20 Specifically, the amount each PAGA Member is entitled to receive will be determined by the
21 Administrator by taking the number of pay periods each individual PAGA Member worked during the
22 PAGA Period and dividing that by the total number of pay period the PAGA Members worked as a
23 whole during the PAGA Period, and multiplying that fraction by the PAGA Members' share of the
PAGA allocation. *Id.*

24 Thus, the average Individual PAGA Payment is projected to be approximately **\$40.32**. Moore
25 Decl., ¶ 11.

1 7. Tax Allocation

2 Ninety percent (90%) of the payment of the Net Settlement Sum to eligible Class Members will
3 consist of 1099 income representing payment for statutory penalties and interest, and ten percent (10%)
4 of the payment of the Net Settlement Sum to eligible Class Members will consist of W-2 income
5 representing payment for wages. Settlement, ¶ 6.d.

6 8. PAGA Penalty

7 The parties have agreed to a PAGA award of \$10,000.00 and in accordance with California
8 Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties
9 – or \$7,500.00. Settlement ¶ 2.c. This \$10,000.00 represents roughly 5.5% of the \$180,000.00 Gross
10 Settlement Amount and is above the zero to two percent range for PAGA claims approved by Courts.
11 *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1
12 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Nordstrom Comm'n*
13 *Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims
14 and PAGA claims under which no money was allocated to the PAGA claims).

15 **VI. NOTICE ADMINISTRATION**

16 **A. SETTLEMENT ADMINISTRATOR**

17 Phoenix Class Action Administration Solutions's ("Phoenix") costs are estimated not to exceed
18 \$7,250.00. *See* Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary
19 Approval filed concurrently herewith ("Lawrence Decl."). This request is reasonable in light of the
20 proposed class size of approximately 107 Settlement Class Members and the costs and expenses
21 associated with administering the notices and distributing the awards. Additionally, Phoenix will
22 translate the Class Notices and mail them in both English and Spanish to Settlement Class Members.

23 Phoenix has extensive experience administering class action matters. Phoenix has administered
24 complex wage and hour, labor and employment, consumer/ product liability, TCPA, FLSA, FACTA,
25 ERISA and PAGA class action matters, through final approval and distribution. Phoenix has developed
26 a system of quality assurance measures, to ensure the highest quality service is provided in our cases
27 and to class members. Lawrence Decl., ¶ 5.

28 //

1 **B. CLASS LIST FROM DEFENDANT**

2 Within seven (7) calendar days after the date that the Court grants preliminary approval of the
3 Settlement, Defendant shall provide the Administrator with all information needed to identify and locate
4 the Class Members and PAGA Members, process payments, and process claims for payments.
5 Settlement, ¶ 6.f.

6 The class list and any other data provided by Defendant to the Administrator shall be treated as
7 confidential, and shall not be subject to disclosure by the Administrator. Settlement, ¶ 6.g.

8 **C. CLASS LIST UPDATED PRIOR TO INITIAL MAILING AND MAILING**

9 Within twenty-one (21) calendar days from the date the Court preliminarily approves this
10 Agreement, the Administrator will perform a National Change of Address database check to determine
11 the Class Members' current addresses using the information provided by Defendant, and will mail the
12 court approved notices to the Class Members at those updated addresses. Settlement, ¶ 6.i.

13 **D. NOTICE COMPLIES WITH CAL. RULES OF COURT, RULE 3.766(D)**

14 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it
15 advises Settlement Class Members of the nature of the claims, basic contentions and denials of the
16 parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement
17 and the procedures by which to do so, explains the recovery formula and expected recovery amount
18 for each Settlement Class Member, provides them the opportunity to contest their total workweeks
19 included in the notice, and advises them that they will be bound by the terms of the Settlement if they
20 do not opt-out. *See* Settlement, Exh. A. The proposed Class Notice will also notify Settlement Class
21 Members of the final approval hearing date and provides Settlement Class Members the contact
22 information for Class Counsel and advises Settlement Class Members that they may enter an
23 appearance through counsel if they wish to. This manner of giving notice satisfies California Rule of
24 Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class Members.

25 Moreover, the Class Notice includes the sentence, "To ensure that you receive your check, you
26 should immediately notify the Administrator if the address this Notice was sent to is not your current
27 mailing address."
28

1 **E. PROCESSING OF PAYMENTS**

2 Within 14 days after Defendant funds the Settlement Sum, the Administrator will mail to
3 Participating Class Members their pro-rata share of the Set Settlement Sum. Settlement, ¶ 6.1. Before
4 mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using
5 the National Change of Address Database. Settlement, ¶ 6.i.

6 **F. UNDELIVERABLE SETTLEMENT NOTICES**

7 Should a notice be returned as undeliverable or advises that the Class Member is no longer at
8 the listed address, within three (3) business days of being informed, the Administrator will perform a
9 skip-trace on that Class Member and will re-mail the notice to the new address found as the result of
10 the skip-trace. Settlement, ¶ 6.i.

11 The Administrator will send checks for Individual Settlement Payments to all Participating Class
12 Members (including those for whom Class Notice was returned undelivered). Settlement, ¶ 6.1. The
13 Administrator will send checks for Individual PAGA Payments to all PAGA Members including Non-
14 Participating Class Members who qualify as PAGA Members. Settlement, ¶ 6.1.

15 **VII. RESPONSES TO SETTLEMENT NOTICE**

16 **A. REQUESTS FOR EXCLUSION**

17 Class Members who wish to exclude themselves from (opt-out of) the Class Settlement must do
18 so not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for
19 Class Members whose Class Notice is re-mailed). Settlement, ¶ 6.i.

20 **B. RE-MAILED NOTICES**

21 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay
22 Periods, and Requests for Exclusion will be extended an additional 14 calendar days beyond the 45 days
23 otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. Settlement, ¶
24 6.i.

25 **C. OBJECTION PROCEDURES**

26 Only Participating Class Members may object to the class action components of the Settlement.
27 A Participating Class Member who elects to send a written objection to the Administrator must do so
28 not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14
calendar days for Class Members whose Class Notice was re-mailed). Settlement, ¶ 6.i.

1 **VIII. DISTRIBUTION OF UNCASHED FUNDS**

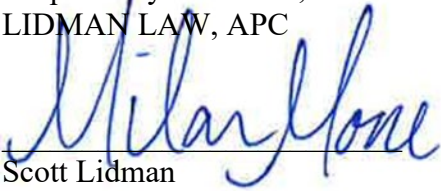
2 Class Members will have 180 days to cash their settlement checks before the checks are voided.
3 Settlement, ¶ 6.l.

4 For any Class Member whose Individual Class Payment check or Individual PAGA Payment
5 check is uncashed and cancelled after the void date, the Administrator shall transmit the funds
6 represented by such checks to the California Controller's Unclaimed Property Fund in the name of the
7 Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of
8 Civil Procedure Section 384, subd. (b). Settlement, ¶ 6.m.

9 **IX. CONCLUSION**

10 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve
11 the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order
12 Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

13
14 Dated: September 30, 2024

15
16 By: 
17 Scott Lidman
18 Milan Moore
19 Attorney for Plaintiff
20 CARMINA VALDEZ
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