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on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

PAOLA PADILLA, on behalf of herself and
others similarly situated,

Plaintiff,

vs.

CARDIOLOGY SPECIALISTS MEDICAL
GROUP, INC., a California corporation; and
DOES 1 to 100, inclusive,

Defendants.

Case No.: CVRI2301465

*[Assigned for all purposes to: Hon. Harold W.
Hopp, Judge; Dept. 1]*

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

*[Filed concurrently with the Declaration of
David Lavi; Declaration of Paolla Padilla;
Declaration of Jodey Lawrence; and
[Proposed] Order]*

Hearing Information

Date : October 20, 2025

Time : 8:30 a.m.

Dept. : 1

Reservation ID: 606488278196

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

3 **NOTICE IS HEREBY GIVEN** that that pursuant to Code of Civil Procedure § 382, and
4 Rule 3.769 of the California Rules of Court, on October 20, 2025, at 8:30 a.m., or as soon thereafter
5 as the matter can be heard in Department 1 of the Riverside County Superior Court located at 4050
6 Main Street, Riverside, California 92501, Plaintiff Paolla Padilla (“Plaintiff”) will, and hereby does,
7 move for an order granting preliminary approval of the proposed class action settlement between
8 Plaintiff and Defendant Cardiology Specialists Medical Group, Inc. (“Defendant”), a copy of which
9 is attached to the Declaration of David Lavi (“Lavi Dec.”) as Exhibit 1. Plaintiff will further move
10 the Court for an Order:

- 11 1. Granting preliminary approval of the Class Action and PAGA Settlement
12 Agreement and Class Notice;
- 13 2. Certifying a Class for settlement purposes;
- 14 3. Appointing Plaintiff Paolla Padilla as the Class Representative for settlement
15 purposes;
- 16 4. Appointing Plaintiff’s counsel David Lavi, Esq. and Arie Ebrahimian, Esq. of E&L,
17 LLP as Class Counsel for settlement purposes;
- 18 5. Appointing Phoenix Settlement Administrators as the third-party Settlement
19 Administrator;
- 20 6. Approving the Notice Packet which is attached as **Exhibit A** to the executed
21 Settlement Agreement, which is attached to the Declaration of David Lavi as Exhibit 1 filed
22 concurrently herewith, and the plan for distribution of the Notice; and
- 23 7. Setting a Final Approval Hearing on a date that is approximately 150 days after
24 the Court grants preliminary approval of the Settlement.

25 This Motion is based on this notice of motion, the attached memorandum of points and
26 authorities, the Declarations of Paolla Padilla, David Lavi, Jodey Lawrence of Phoenix Settlement
27 Administrators, and the exhibits attached thereto, the pleadings and other papers filed in this action,

1 and on any further oral or documentary evidence or argument presented at the time of hearing.

2 Defendant does not intend to oppose this Motion, and given the multiplicity of issues
3 addressed in this Motion, Defendant has indicated their approval of Plaintiff's expressed need to
4 exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2). Therefore, Plaintiffs
5 respectfully request that the Court consider Plaintiffs' memorandum of points and authorities, which
6 is 31 pages in length.

7
8 Dated: August 20, 2025

Respectfully submitted,
E&L, LLP

10
11 

12 By: _____

13 David Lavi, Esq.
14 Arie Ebrahimian, Esq.
15 Attorneys for Plaintiff PAOLLA PADILLA
on behalf of herself and others similarly situated

TABLE OF CONTENTS

MEMORANDUM OF POINTS AND AUTHORITIES	1
I. INTRODUCTION.....	1
II. SUMMARY OF THE LITIGATION	2
A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS- LENGTH NEGOTIATIONS.....	2
1. The Parties.....	2
2. Procedural History.....	2
3. Discovery	3
4. Arms-Length Negotiations.....	3
III. ARGUMENT	4
A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES.....	4
1. The Proposed Class Is Ascertainable and Numerous.....	5
2. Common Issues of Law and Fact Predominate	5
3. The Claims of the Named Plaintiffs Are Typical.....	6
4. Plaintiffs and Class Counsel Will Fairly and Adequately Represent the Class	6
B. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE PROPOSED CLASS ACTION SETTLEMENT BECAUSE IT IS FAIR, ADEQUATE, & REASONABLE.....	7
1. The Preliminary Approval Standard is Met	7
a. The Strength of Plaintiff's Case	8
b. Risk, Expense, Complexity, and Duration of Further Litigation	8
c. Risk of Maintaining Class Action Status	9
d. Overview of the Settlement Agreement	9
e. The Parties Engaged in Fair and Honest Negotiations.....	11
f. Amount Offered in Settlement Given Realistic Valus of Claims	11
g. The Settlement Amount is Within the Range of Possible Approval.....	22
h. The Experience Views of Counsel	23
i. Attorney's Fees and Costs.....	23
j. Administrative Costs.....	26
k. Class Representative Service Payment	26
l. PAGA Payment	27
m. Payroll Taxes and Individual Settlement Payment Tax Allocation	28
n. Uncashed Funds	28
o. Released Parties and Scope of Release	28
C. THE SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES.....	29
D. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE TO CLASS MEMBERS.....	29
E. THE COURT SHOULD SET A FINAL APPROVAL HEARING	30

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

IV. CONCLUSION 31

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal. App. 4th 1135, 1161-1162	4
<i>Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.</i> (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at *9	21
<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157	17, 20, 21
<i>Apple Computer, Inc. v. Superior Court</i> (2005) 126 Cal. App. 4th 1253, 1270	24
<i>Armenta v. Osmose, Inc.</i> 135 Cal.App.4th 314, 324 (2005)	12
<i>Atempa v. Pedrazzani</i> (2018) 27 Cal.App.5th 809	21
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> (1987) 191 Cal.App.3d 1341	6
<i>Benton v. Telecom Network Specialists, Inc.</i> (2013) 220 Cal.App.4th 701, 726	5
<i>Bowles v. Superior Court.</i> , (1955) 44 Cal.2d 574	5
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F. Supp. 610, 617	8
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004, 1049	12
<i>Capital People First v. State Dept. of Developmental Services</i> (2007) 155 Cal.App.4th 676, 697	6
<i>Ceja-Corona v. CVS Pharm., Inc.</i> , 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3	20
<i>City & County of San Francisco v. Sweet, supra</i> , 12 Cal. 4th at 110	24
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794, 1801	8
<i>Dunleavy v. Nadler</i> (9th Cir. 2000) 213 F.3d 454, 459	22
<i>Duran v. U.S. Bank National Association</i> (2014) 59 Cal.4th 1, 25	12, 14
<i>Eisen v. Carlisle & Jacquelin</i> (1974) 417 U.S. 156	29
<i>Faulkinbury v. Boyd & Assoc., Inc.</i> (2013) 216 Cal.App.4th 220	5
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	4
<i>Harris v. Marhoefer</i> (9th Cir. 1994) 24 F.3d 16	25
<i>Huntington Memorial Hospital v. Superior Court</i> (2005) 131 Cal.App.4th 893	15
<i>In re Activision Sec. Litig.</i> (N.D. Cal 1989) 723 F. Supp. 1373, 1375	25
<i>In re Beef Industry Antitrust Litigation</i> (5th Cir. 1979) 607 F.2d 167, 179	4

1	<i>In re Cellphone Fee Termination Cases</i> (2010) 186 Cal.App.4th 1380, 1393-94.....	26
2	<i>In re Immune Response Securities Litigation</i> (S.D. Cal. 2007) 497 F. Supp. 2d 1166.....	26
3	<i>In re Online DVD-Rental Antitrust Litig.</i> , 779 F.3d at 947.....	26
4	<i>In re Pacific Enterprises Securities Litigation</i> (9th Cir. 1995) 47 F.3d 373.....	23, 25
5	<i>In re Syncor ERISA Litig.</i> (9th Cir. 2008) 516 F.3d 1095.....	7
6	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n</i> (1981) 452 U.S. 905	4
7	<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116, 130	7, 11, 23
8	<i>Laffitte v. Robert Half Int'l, Inc.</i> (2016) 1 Cal.5th 480	24, 25
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10	<i>Linney v. Cellular Alaska Partnership</i> (9th Cir. 1998) 151 F. 3d 1234, 1242.....	22
11	<i>Maldonado v. Epsilon Plastics, Inc.</i> (2018) 22 Cal.App.5th 1308	16
12	<i>Mallick v. Superior Court</i> (1979) 89 Cal.App.3d 434, 438	7
13	<i>McGhee v. Bank of America</i> (1976) 60 Cal.App.3d 442.....	6
14	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399, 409	7
15	<i>Nen Thio v. Genji, LLC</i> , 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014).....	20
16	<i>Nordstrom Comm'n Cases</i> , 186 Cal. App. 4th 576, 589 (2010).....	20, 27
17	<i>Quinn v. State</i> (1975) 15 Cal. 3d 162, 168.....	24
18	<i>Rebney v. Wells Fargo Bank</i> (1990) 220 Cal.App. 3d 1117, 1139	22
19	<i>Reed v. United Teachers San Bernardino</i> (2012) 208 Cal.App.4th 322	4
20	<i>Sav-On Drug Store, Inc. v. Superior Court (Rocher)</i> (2004) 34 Cal.4th 319, 327	5
21	<i>Sevidal v. Target Corp.</i> (2010) 189 Cal.App.4th 905, 916	5
22	<i>Shine v. Williams Sonoma</i> (2018) 23 Cal.App.5th 1070	29
23	<i>Spann v. J.C. Penney Corp.</i> (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1265.....	27
24	<i>Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.</i> (9th Cir. 2006) 460 F.3d 1253	26
25	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224, 234-35.....	7, 22

1
2
3
4
5
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7
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9
10
11
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14
15
16
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23
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25
26
27
28

TABLE OF AUTHORITIES

Statutes

Cal. Civ. Proc. § 382	5
Cal. Lab. Code §1194.....	18
Cal. Lab. Code §1194.2.....	18
Cal. Lab. Code §1197.....	18
Cal. Lab. Code §1198.....	18
Cal. Lab. Code §201 through 204	18
Cal. Lab. Code §204.....	18
Cal. Lab. Code §210.....	18
Cal. Lab. Code §226.....	16
Cal. Lab. Code §226(e)	16, 18
Cal. Lab. Code §226.7.....	14, 16, 18
Cal. Lab. Code §227.3.....	17, 18
Cal. Lab. Code §245.5(b)	19
Cal. Lab. Code §510.....	18
Cal. Lab. Code §512.....	18
Cal. Lab. Code §558.....	18

Other Authorities

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California Rule of Court 3.766(d)	30
California Rule of Court 3.766(e)	30
California Rule of Court 3.769	4, 7, 30
Newberg on Class Actions (4 th Ed.) §11:25.)	7

Rules

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3	19, 2018)	21
4	<i>Chu v. Wells Fargo Investments, LLC</i> , Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D.	
5	Cal. 2011)	20, 27
6	<i>Edmiston v. Loma Linda University Medical Center – Murrieta, et al.</i> , Case No. MCC 1300610,	
7	Riverside Superior Court, Hon. Craig R Riemer presiding.....	27
8	<i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D. 15, 18, <i>affd.</i> 661 F.2d 939 (9th Cir.	
9	1981).....	23
10	<i>Finder v. Leprino Foods Co.</i> (E.D. Cal. Mar. 12, 2015) Case No. 1:13-CV-2059 AWI-BAM, 2015	
11	WL 1137151 at *5	16
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13	<i>Franco v. Ruiz Food Prods.</i> , 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14	20
14	<i>Garcia v. Gordon Trucking, Inc.</i> , 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3.....	20
15	<i>Glass v. UBS Finan. Servs.</i> , Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) ..	22
16	<i>Global Minerals & Metals Corp. v. Superior Court</i> (2003) 113 Cal.App.4th 836, 859.....	4
17	<i>Green v. Lawrence Service Co.</i> (C.D. Cal. 2013) 2013 WL 3907506, *5, fn. 5.....	21
18	<i>Hopson v. Hanesbrands, Inc.</i> (S.D. Cal. Apr. 13, 2009) No. CV 08-0844 EDL, 2008 WL 3385452,	
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Paolla Padilla (“Plaintiff”) seeks approval of a proposed class and representative
4 action settlement with Defendant Cardiology Specialists Medical Group, Inc. (“Defendant”) to
5 resolve various wage and hour related violations.

6 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
7 common-fund class action settlement,¹ in which Defendant has agreed to pay Five-Hundred Seventy-
8 Five Thousand Dollars and Zero Cents (\$575,000.00) on behalf of the following Class:

9 All non-exempt employees who worked for Defendant at any time during
10 the Class Period (“Class” or “Class Members”). The “Class Period” as
11 referred to herein shall be from March 22, 2019 to July 19, 2024.

12 All non-exempt employees who worked for Defendant at any time during
13 the PAGA Period (“PAGA Period”). The “PAGA Period as referred to
14 herein shall be from March 21, 2022 to July 19, 2024.

15 Significantly, Class Members do not need to file a claim to benefit from the Settlement
16 because all Class Members will automatically receive a payment unless they affirmatively opt-out.
17 There are approximately 151 Class members, who worked approximately 13,842 workweeks,
18 rendering the average payment to Class Members to be approximately \$2,126.38. This is an excellent
19 result given the risks of non-certification due to Defendant’s numerous bona-fide defenses.

20 The Settlement was reached after the Parties attended a full day mediation session with Chris
21 Barnes, Esq., a respected wage and hour class action mediator. On May 20, 2024, the Parties
22 ultimately accepted a mediator’s proposal for a class-wide resolution of all claims alleged in the Class
23 and Representative Action Complaint, with subsequent months of negotiating the Settlement

24 ¹ The executed Class Action and PAGA Settlement Agreement and Class Notice (“Settlement”), which is
25 nearly identical to the Los Angeles Superior Court Model Class Action and PAGA Settlement Agreement and
26 Class Notice, is attached to the Declaration of David Lavi as Exhibit 1. All defined terms in this motion have
27 the same definitions as used in the Settlement. Plaintiff’s PAGA notice letter to the LWDA, which was
28 submitted on March 21, 2023, and confirmation of filing, is attached to the Declaration of David Lavi as
Exhibit 2. Plaintiff uploaded the proposed Settlement to the LWDA on August 20, 2025. The confirmation is
attached to the Declaration of David Lavi as Exhibit 3.

1 Agreement.

2 This proposed Settlement is within the range of possible approval in light of the significant
3 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the
4 monetary benefits to be received by Plaintiff and the Class. For the reasons discussed herein, Plaintiff
5 respectfully requests that the Court preliminary approve the proposed Settlement, certify the proposed
6 settlement class, approve the proposed Notice, and set a final approval hearing.

7 **II. SUMMARY OF THE LITIGATION**

8 **A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARM'S-**
9 **LENGTH NEGOTIATIONS**

10 **1. The Parties**

11 Defendant is a care provider based in County of Riverside, specializing in various
12 cardiovascular areas, including interventional cardiology, electrophysiology, women's heart health,
13 and advanced imaging. Plaintiff worked for Defendant from approximately February 2, 2021 to
14 January 27, 2023. *See* Declaration of David Lavi in Support of Plaintiff's Motion for Preliminary
15 Approval of Settlement ("Lavi Decl."), ¶ 3; *see also*, Declaration of Paolla Padilla in Support of Class
16 Action Settlement ("Plaintiff Decl.") ¶ 2. Plaintiff was employed as a medical assistant, and like the
17 vast majority of non-exempt employees, worked for Defendant on an hourly basis. *Id.* Plaintiff was
18 subjected to Defendant's wage and hour policies that are at issue in this action. *Id.*

19 **2. Procedural History**

20 Plaintiff filed a putative wage and hour class action complaint against Defendant on March
21 22, 2023, alleging class-wide causes of action for: (1) minimum wage violations; (2) failure to pay
22 all overtime wages and failure to include remuneration when calculating overtime wages; (3) meal
23 period violations; (4) rest period violations; (5) failure to pay all accrued and vested vacation/PTO;
24 (6) failure to provide sick pay at the regular rate; (7) failure to reimburse for necessary business
25 expenses; (8) failure to timely pay earned wages during employment; (9) failure to timely pay all
26 wages at the time of separation; (10) wage statement violations; and (11) unfair competition. Lavi
27 Decl., ¶ 4.

1 On January 23, 2024, Plaintiff amended her complaint to add an additional cause of action
2 (12) for civil penalties under the Private Attorneys General Act pursuant to Labor Code sections 2698
3 *et seq.* (the “Operative Complaint”). Lavi Decl., ¶ 5.

4 **3. Discovery**

5 After agreeing to participate in mediation, Defendant produced 10% sampling data of relevant
6 time and pay records as well as wage and hour policies and other documents and information relevant
7 to the claims alleged in advance of mediation and as informal discovery. Lavi Decl., ¶ 6. Class
8 Counsel conducted a review of the time and pay records produced by Defendant prior to mediation.
9 Specifically, Class Counsel transmitted the time and pay data to their hired expert Mr. Berger, and
10 requested that Mr. Berger confirm the date range of the data provided, and extrapolate: (i) the number
11 of pay periods and shifts worked by the class during the Class Period and the PAGA period, (ii) the
12 average rate of pay for the class, (iii) the number of shifts worked over 3.5 hours, over 5.0 hours, over
13 6.0 hours, over 8.0 hours, over 10.0 hours, and over 12.0 hours, and (iv) the first and second meal
14 period violation rates based on the produced time records. *Id.* In addition, Class Counsel requested
15 that Mr. Berger review the time data produced by Defendant to determine the amount of unpaid
16 overtime due to (i) Defendant’s failure to pay daily overtime and (ii) to properly calculate the regular
17 rate of pay. *Id.* As discussed in detail below, this analysis allowed Plaintiff to determine the scope of
18 the various violations alleged in the Operative Complaint, and Defendant’s potential exposure if the
19 Parties were not able to reach a settlement at mediation. *Id.*

20 **4. Arm’s-Length Negotiations**

21 On May 20, 2024, after research and analysis, including Class Counsel’s detailed analysis of
22 Defendant’s potential exposure with the help of a retained economics expert, the Parties participated
23 in a full-day mediation with Mr. Chris Barnes, Esq., a well-respected wage and hour class action
24 mediator. Lavi Decl. ¶ 8. During mediation, the Parties vigorously debated their opposing legal
25 positions, the likelihood of certification of Plaintiff’s claims, and the legal basis for the claims and
26 defenses alleged in the Operative Complaint. *Id.* After a full day mediation, the Parties ultimately
27

1 accepted a mediator's proposal for a class and representative wide settlement \$575,000.00. *Id.*
2 Thereafter, after months of negotiations that followed, the Parties reached a settlement, the material
3 terms of which are encompassed in the Settlement Agreement, which is nearly identical to the Los
4 Angeles Superior Court Model Class Action and PAGA Settlement and Class Notice. *Id.*

5 **III. ARGUMENT**

6 **A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

7 California Rule of Court 3.769 conditions settlement of a class action on court approval, which
8 is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of
9 Civil Procedure. *See Reed v. United Teachers San Bernardino* (2012) 208 Cal.App.4th 322, 337 (Rule
10 3.769 requires the trial court to determine "that the settlement is fair, reasonable and adequate to all
11 concerned"); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 (Rule 23(e) requires the
12 trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and
13 reasonable"). Courts act within their discretion in approving settlements which are fair, not collusive,
14 and take into account "all the normal perils of litigation as well as the additional uncertainties inherent
15 in complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179,
16 *cert. den. sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S.
17 905.)

18 For settlement purposes, courts use a less stringent standard for certification of classes.
19 (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) "The reason
20 for this is that no trial is anticipated in a settlement class case, so the case management issues inherent
21 in the ascertainable class determination need not be confronted." (*Id.*; see also *7-Eleven Owners for*
22 *Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming
23 certification of class action for settlement purposes only].) Accordingly, this Court has discretion to
24 certify Plaintiffs' class for settlement purposes only.

25 As further explained below, the Class satisfies the criteria for certification of a Class under
26 California law because: (1) the Class is so numerous that joinder would be impractical; (2) common
27 questions of law and fact predominate over individual questions such that class certification is the

1 most efficient and desirable way to maintain this litigation; (3) Plaintiffs’ claims are typical of the
2 claims of absent Class Members; and (4) Plaintiff’s and his counsel will fairly and adequately
3 represent Class Members’ interest. *See* Cal. Civ. Proc. § 382.

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

5 A class is “ascertainable” where the members “may be readily identified without unreasonable
6 expense or time by reference to official [or business] records.” *See, Sevidal v. Target Corp.* (2010)
7 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Class is defined as all non-
8 exempt employees who worked for Defendant at any time during the period of March 22, 2019 to
9 July 19, 2024 (“Class Period”). *See* Settlement, ¶¶ 1.44. Therefore, Class Members can be identified
10 via Defendant’s personnel and employment records. Defense counsel represents that the Class
11 consists of approximately 151 current and former employees as of the date of settlement. Lavi Decl.,
12 ¶ 13; Settlement ¶¶ 4.1; 8. It would therefore be impracticable to bring all Class Members before the
13 Court, or for each Class Member to bring an individual lawsuit. The proposed Class therefore satisfies
14 numerosity. *See, e.g., Bowles v. Superior Court* (1955) 44 Cal.2d 574 (holding a class representing
15 10 beneficiaries of a trust sufficiently numerous).

16 **2. Common Issues of Law and Fact Predominate**

17 The focus in a certification dispute is not the merits, but rather on what types of questions,
18 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*
19 *Court (Rocher)* (2004) 34 Cal.4th 319, 327. Plaintiff’s claims are predicated on, among other issues,
20 Defendant’s alleged failure to pay overtime at the daily rate, failure to pay proper overtime rate of
21 pay, failure to reimburse for all necessarily incurred business expenditures, failure to pay sick pay at
22 the regular rate, and their meal and rest period policies/practices. *See* Plaintiff Decl., ¶ 3-6; Lavi Decl.,
23 ¶ 4. These types of claims are commonly held to be proper for class certification. *See e.g., Benton v.*
24 *Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 (certifying meal and rest period
25 claims); *Bluford v. Safeway, Inc.*, (2013) 216 Cal.App.4th 864, 871 (reversing denial for certification
26 of rest period claim); *Faulkinbury v. Boyd & Assoc., Inc.* (2013) 216 Cal.App.4th 220, 240 (certifying
27 failure to pay all wages claim).

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

2 The typicality requirement is satisfied where class representatives have claims that are typical
3 of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
4 1341, 1347 (finding typicality satisfied where named plaintiff purchased the same goods as the
5 putative class in a consumer class action). Here, Plaintiff's claims are typical of those held by the
6 members of the proposed Class. Like other Class Members, Plaintiff was employed by Defendant as
7 non-exempt hourly employee and was compensated via Defendant's pay plans during the Class
8 Period. Lavi Decl., ¶ 3; Plaintiff Decl., ¶ 2. Plaintiff alleges that she did not receive overtime pay at
9 the daily rate but instead received overtime only when she and Class Members worked over 40-hours
10 in a week, was not provided all legally compliant meal or rest periods or premium pay in lieu thereof.
11 *Id.* Moreover, Plaintiff alleged she was not paid for all hours worked or always paid at an improper
12 overtime rate of pay for overtime hours worked for Defendant's failure to include additional
13 renumeration in their pay. *Id.* Additionally, Plaintiff asserts that she routinely incurred necessary
14 business expenditures, and not adequately reimbursed for said expenses. Finally, Plaintiff asserts that
15 she did not receive all earned wages at the time of their separation of employment and received non-
16 compliant wage statements. *Id.* Because Plaintiff has suffered the same injuries as the other members
17 of the Class, the typicality requirement is satisfied.

18 **4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the**
19 **Class**

20 The adequacy requirement examines conflicts of interest between named parties and the
21 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*
22 (2007) 155 Cal.App.4th 676, 697. Plaintiff and her counsel will adequately represent the Class, as
23 there are no conflicts between Plaintiff and the proposed Class, and Plaintiff possesses claims that are
24 in line with those of the Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51
25 (adequacy satisfied where there was no indication that Class Counsel was not qualified and the named
26 plaintiff had no interests antagonistic to those of the proposed class). Moreover, Plaintiff understood
27 the requirements of a class representative and her obligations to absent class members and
28 enthusiastically took on those responsibilities for their benefit. *See* Plaintiff Decl., at ¶¶ 8-10. Class

Counsel also has experience in wage and hour class action litigation. *See* Lavi Decl., ¶ 13.

B. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE PROPOSED CLASS ACTION SETTLEMENT BECAUSE IT IS FAIR, ADEQUATE & REASONABLE

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 was negotiated at arm’s-length by Class Counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. However, the record need not contain an explicit statement of the maximum theoretical recovery:

“Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims—a number which appears nowhere in the record of this case. But *Kullar* does not, as Greenwell claims, require any such explicit statement of value; it requires a record which allows “an understanding of the amount that is in controversy and the realistic ranges of outcomes of the litigation.”

(*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the *range of reasonableness* and, therefore, whether notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4th Ed.) §11:25.) Courts have broad powers to determine whether a proposed settlement is fair under the circumstances of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-35; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.)

1. The Preliminary Approval Standard is Met

To make a fairness determination, the Court should consider several factors, including: “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the

1 risk of maintaining class action status through trial, the amount offered in settlement, the extent of
2 discovery completed and the stage of the proceedings, [and] the experience and views of counsel.”
3 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive and
4 the court is free to engage in a balancing and weighing of the factors depending on the circumstances
5 of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. As discussed below,
6 the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in
7 this case. This litigation, therefore, has reached the stage where “the Parties certainly have a clear
8 view of the strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v.*
9 *Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617). Furthermore, courts must give “proper
10 deference to the private consensual decision of the parties” because “the court’s intrusion upon what
11 is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be
12 limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of
13 fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken
14 as a whole, is fair, reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.* (9th Cir.
15 1998) 150 F.3d 1011, 1027.)

16 **a. The Strength of Plaintiff’s Case**

17 Although Plaintiff steadfastly maintains that her claims are meritorious, Plaintiff
18 acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As
19 described below, Defendant presented multiple defenses to Plaintiff’s claims, both on the merits and
20 with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through
21 class certification, and ultimately trial, success was far from certain.

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

23 Although the Parties engaged in informal discovery in advance of mediation, the Parties still
24 had additional discovery to complete in formal litigation had the matter not settled. Lavi Decl., ¶¶ 11-
25 12. This would have required expenditure of substantial time and resources by both Parties that would
26 have very likely spanned several years. *Id.* Moreover, even if Plaintiff was able to certify the classes,
27 the Parties would incur considerably more attorney fees and costs through a possible decertification

1 motion, trial, and possible appeal. *Id.* This settlement avoids those risks and the accompanying
2 expense. *Id.*

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

4 Plaintiff has not yet filed her motion for class certification, and as such, the extent to which
5 Plaintiff's proposed class is certifiable is somewhat speculative. Absent settlement, there was a risk
6 that there would not be a certified class at the time of trial, or if there were, it would consist of a
7 significantly smaller group of employees than the proposed Class (either due to a narrowing of the
8 class definition in a Court order on a contested motion for class certification, or through settlement
9 agreements entered into by Defendant with individual Class Members by way of *Pick Up Stix* type
10 settlement agreements and the expected recovery could be significantly reduced, given the settlement
11 amounts that are typically offered through the *Pick Up Stix* process). Thus, these factors support
12 preliminary approval of the Settlement.

13 **d. Overview of the Settlement Agreement**

14 If the Court preliminarily approves this Settlement, Defendant will pay a Gross Settlement
15 Amount ("GSA") of \$575,000.00. *See* Settlement, ¶ 3.1. The Settlement Administrator shall hold all
16 portions of the Gross Settlement Amount for the benefit of the Class until the time for disbursement.
17 *See* Settlement, ¶ 4.3. Significantly, this Settlement is non-reversionary, and no Class Member will
18 have to submit a claim form to receive an Individual Class Payment and Individual PAGA Payment.
19 *See* Settlement, ¶ 3.1. Each Class Member will automatically receive an Individual Class Payment
20 and Individual PAGA Payment, if eligible, unless he or she affirmatively opts out of the Settlement.
21 *See* Settlement, ¶ 7.5.1. Each Class Member will automatically receive an Individual PAGA Payment,
22 if eligible, regardless if he or she affirmatively opts out of the Settlement. *See* Settlement, ¶ 7.5.4.

23 The Settlement Administrator shall hold all portions of the Maximum Settlement Amount in
24 an interest-bearing account for the benefit of the Settlement Class until the time for disbursement. *See*
25 Settlement, ¶ 4.3.

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The monetary terms of the Settlement are summarized below:

Gross Settlement Amount (“GSA”):	\$575,000.00
Minus Court-approved attorney’s fees (1/3 of GSA):	\$191,666.67
Minus Court-approved, verified costs (not to exceed):	\$25,000.00
Minus Court-approved Service Payment (not to exceed):	\$10,000.00
Minus Settlement Administrator costs (not to exceed):	\$7,250.00
Minus PAGA Payment to Aggrieved Employees:	\$5,000.00
Minus PAGA Payment to the LWDA:	\$15,000.00
Net Settlement Amount (“NSA”):	\$321,083.33

After deducting amounts for the Court-approved attorneys’ fees and verified costs, the Class Representative Service Payment to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the Settlement requires Defendant to pay a Net Settlement Amount (“NSA”) amount of approximately \$321,083.33 to all Class Members who do not timely opt out (“Class Members”). *See* Settlement, ¶¶ 7.5; 3.1-3.2 *et seq.*² The NSA shall be distributed to all Class Members based on each participating Class Member’s proportionate number of eligible Workweeks that he or she has worked during the Class Period. *See* Settlement, ¶ 3.2.4. Five-Thousand Dollars and Zero Cents (\$5,000.00) is 25% of the PAGA Penalties (“PAGA Amount”) and shall be distributed to Aggrieved Employees proportionally based on the number of pay periods worked during the PAGA Period. *See* Settlement, ¶¶ 3.2.5; 3.2.5.1.

According to Defendant, there are approximately 151 total Class Members who worked approximately 13,842 workweeks during the Class Period. *See* Settlement, ¶4.1; Lavi Decl., ¶¶ 8; 14. Therefore, the average Individual Settlement Payment is projected to be approximately \$3,909.91. *Id.* Class Members will have forty-five (45) days from the mailing date of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶ 7.5.1. The deadline will be extended fourteen (14) calendar days for any Class Member who is remailed a Notice by the Settlement Administrator. *See* Settlement, ¶¶ 7.5.1. The Class Members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant included within the Settlement through the Class Period. *See*

² Defendant will pay the employer’s share of payroll taxes separately from, and in addition to, the Gross Settlement Amount. *See* Settlement, ¶ 3.1.

Settlement, ¶ 7.5.3.

e. The Parties Engaged in Fair and Honest Negotiations

The Settlement resulted from an exchange of informal information, arm's-length negotiations by counsel, a full day of mediation before an experienced wage and hour mediator, and additional months of negotiating the long-form settlement agreement. Lavi Decl., ¶¶ 9-12. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff carefully vetted the claims at issue and reviewed Class Members' relevant records and conducted a detailed analysis of the data with the assistance of an economics expert to arrive at the estimated class wide damages figures. *See* Lavi Decl., ¶¶ 6-7; 15-33. Thus, this factor supports preliminary approval.

f. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a fair and reasonable recovery for the Class in the face of disputed claims. Plaintiff conducted an analysis of underpaid wages and penalties due to Defendant's alleged unlawful failure to pay overtime at the daily rate, failure to pay overtime at the proper rate of pay, unlawful meal and rest period policies/practices, failure to reimburse, failure to properly pay sick pay, wage statement and waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiffs' exposure analysis are discussed below:

Overtime Violations (Failure to Pay Daily Overtime): \$24,353.28

Plaintiff alleges that Defendant maintained an unlawful policy and practice of failing to pay overtime compensation in accordance with California law. Lavi Decl., ¶ 15. Rather than compensating Class Members for all hours worked in excess of eight (8) hours in a single workday, Defendant instead applied a standard by only paying overtime when employees exceeded forty (40) hours in a workweek. *Id.* A review of Defendant's timekeeping and payroll data confirms that overtime compensation was calculated and paid based on total weekly hours, without regard to whether an employee worked more than eight hours in a day. *Id.* Plaintiff alleged that Defendant's policy and practice of paying overtime violates California's daily overtime requirements and resulted in the systematic underpayment of wages owed to Class Members who regularly worked overtime

1 hours on a daily basis but did not exceed forty hours in a week. As a result, Plaintiff alleged that Class
2 Members who worked more than eight hours in a single workday, but fewer than forty hours in the
3 workweek, were not paid any overtime premium whatsoever. *Id.* Defendant's alleged failure to pay
4 Class Members for all hours worked, if established, would violate California law, which is designed
5 to ensure payment for all hours worked. *See Armenta v. Osmose, Inc.*, (2005) 135 Cal.App.4th 314,
6 324 ("California's labor statutes reflect a strong public policy in favor of full payment of wages for
7 all hours worked"). Plaintiff alleges that Defendant's failure to pay daily overtime results in Class
8 Members underpaid 4,832 hours during the Class Period, nearly all which constitute overtime hours.
9 *Id.* Accordingly, Plaintiffs estimated Defendant's exposure as follows: 4,832 unpaid overtime hours
10 x \$9.00 (half time premium) average overtime rate of pay = \$43,488. *Id.*

11 Defendant countered that throughout the Class Period they maintained and enforced a policy
12 and practice of paying Class Members for all hours worked, including overtime. Lavi Decl., ¶ 16.
13 Defendant argued further that by its very nature this claim is not suited for class treatment, as not all
14 Class Members worked overtime hours. *Id.*; *see also Duran v. U.S. Bank National Association* (2014)
15 59 Cal.4th 1, 25 (holding that the defendant must be provided an opportunity to litigate affirmative
16 defenses, even when they turn on individual questions). Defendant asserted that by their practice,
17 most Class Members worked a shift of less than 8 hours during the Class Period, and countered that
18 to the extent that overtime was not paid at a daily rate, it only impacted a certain number of subgroup
19 employees.

20 In light of these defenses, Plaintiffs discounted the maximum amount for these claims by 30%
21 for risk of non-certification, and an additional 20% for being unsuccessful on the merits, to arrive at
22 an estimated exposure of \$24,353.28. Lavi Decl., ¶ 17.

23 **First & Second Meal Period Violations: \$158,709.58**

24 Plaintiff alleges that she and the Class Members were routinely denied timely and proper meal
25 periods in favor of working through them, and that meal periods were not routinely received prior to
26 the end of their fifth hour worked. *See* Lavi Decl., ¶ 18; *Brinker Restaurant Corp. v. Superior Court*,
27 (2012) 53 Cal.4th 1004, 1049 ("Under the wage order, as under the statute, an employer's obligation

1 is to provide a first meal period after no more than five hours of work.”). While Defendant’s meal
2 period policies are generally compliant, Plaintiff alleges that she and the Class Members in reality
3 were subject to an inconsistent meal period policy and practice that did not serve to allow them either
4 timely, uninterrupted, or compliant meal periods. *Id.* Accordingly, Plaintiff alleges that she and the
5 Class Members often did not receive timely meal periods and when they did, the meal periods were
6 often late and not duty-free as they were subject to the whims of their supervisor’s desires to meet
7 expectations of Defendant and clientele needs. *Id.*; *Brinker, supra*, 53 Cal.App.4th at 1040 (“[w]age
8 orders and governing statute do not countenance an employer’s exerting coercion against the taking
9 of, creating incentives to forgo, or otherwise encouraging the skipping of legally protected breaks.”)
10 Plaintiff also alleged that second meal periods were not provided on shifts over 10.0 hours thus
11 providing further exposure based on second meal period violations. *Id.* Indeed, the records provided
12 to Plaintiff for analysis reflect approximately 21,005 unique meal period violations³ during the class
13 period taking into account that (1) 11,048 shifts reflected meal periods being exercised after the
14 conclusion of the 5th hour worked; (2) 908 shifts between 5 and 6 hours without a recorded 1st meal
15 break; (3) 411 shifts greater than 6 hours reflected no first meal break; (4) 12.892 shifts with shorter
16 than 30 minutes for their first meal break. As such, Plaintiff alleges that at nearly 38% of shifts worked
17 by the putative class were unlawful and trigger meal period violations due to this rounded practice.
18 *Id.* Based on the timekeeping records provided in connection with mediation, Plaintiff estimated
19 Defendant’s maximum exposure for first and second meal period violations at \$377,879.95 (21,005
20 meal period violations x \$17.99 average meal premium). *Id.*

21 However, Defendant maintains that they have always provided legally compliant first and
22 second meal periods to Class Members and maintained and enforced lawful meal period policies
23 which provide for timely and duty-free meal periods. Lavi Decl., ¶ 19. Additionally, Defendant argues
24 that any allegations of systemic meal period violations should not apply to the entire Class because

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26 ³ Unique meal period violations are defined as shifts with at least one of the following: 1) recorded 1st meal
27 break after the end of the 5th hour for shifts greater than 5 hours; 2) first meal break less than 30 minutes for
shifts greater than 5 hours; 3) no 1st meal break for shifts greater than 5 hours; or 4) no 2nd meal break for shifts
greater than 10 hours.

1 the alleged practice was one that, if it occurred, was limited to a handful of employees who voluntarily
2 skipped meal periods without Defendant's knowledge. *Id.* Additionally, Defendant argues that to the
3 extent Plaintiff's allegations of meal period violations are premised on the fact that meal period
4 punches were short, that they had no knowledge of Class Members returning back to work early since
5 there was adequate number of employees to cover their shifts. *Id.* Defendant further argues that this
6 claim would not be certified due to the lack of any common evidence tying together the reason that
7 Class Members experienced a first meal period violation as the experiences of their employees varied
8 greatly depending on the job duties. *Id.* Defendant also argues that the presence of these affirmative
9 defenses as to the voluntariness of a particular meal period decision would preclude class certification.
10 *Id.*; see *Duran, supra*, 59 Cal.4th at 25 (holding that the defendant must be provided an opportunity
11 to litigate affirmative defenses, even when they turn on individual questions).

12 Therefore, Plaintiff discounted the maximum amount that the class could potentially recover
13 for meal period violations by 30% for a risk of non-certification, and an additional 40% for a risk of
14 losing on the merits, or having exposure reduced due to Defendants' waiver arguments, to arrive at
15 an estimated exposure amount of \$158,709.58. Lavi Decl., ¶ 20.

16 **Rest Period Violations: \$291,536.50**

17 Plaintiff argues that Defendant failed to authorize duty-free rest periods and that they and the
18 Class Members were made to work through the entirety of their shifts without rest periods. Lavi Decl.,
19 ¶ 21; see also *Brinker, supra*, 53 Cal.4th at 1028-31 (discussing the rate at which rest periods must
20 be authorized and permitted). Plaintiff alleges that Defendant's did not ensure that Plaintiff and the
21 Class Members were able to exercise legally compliant rest periods due to their patient demand and
22 necessities imposed by Defendant to ensure that patients are attended to with quick turnarounds. *Id.*
23 Such a practice by its nature violates California law which requires that "[d]uring required rest
24 periods, employers must relieve their employees of all duties and relinquish any control over how
25 employees spend their break time," just as they must do doing meal periods. See *Augustus v. ABM*
26 *Security Svcs., Inc.*, (2016) 2 Cal.App.5th 257, 260. Moreover, Defendant also failed to pay any rest
27 period premium wages per Labor Code Section 226.7 and Defendant failed to maintain any pay code

1 for paying rest period premium wages per Labor Code Section 226.7. *Id.*; *See, Safeway, Inc. v.*
2 *Superior Court (Esparza)*, (2016) 238 Cal.App.4th 1138, 1159 (2015) (certifying a UCL class based
3 on failure to make premium payments). Therefore, Plaintiff calculated Defendant's maximum
4 exposure for rest period violations, assuming a rest period violation on all shifts over 3.5 hours, as
5 follows: 58,929 rest period violations x \$17.99 average rest period premium = \$1,060,132.71. *Id.*

6 However, Defendant contends that, despite Plaintiff's arguments to the contrary, they
7 maintained legally compliant rest period policies and practices throughout the Class Period, authorized
8 and permitted all rest periods to Class Members, and in practice did not prevent the Class Members
9 from leaving the job site during rest periods. Lavi Decl., ¶ 22. Defendant further argues that Plaintiff's
10 rest period claim is inherently unsuited for class treatment as there are no records of whether or not
11 rest periods were taken, therefore requiring an individualized inquiry into whether each class member
12 failed to take rest periods on each shift, which would devolve into an unmanageable series of mini-
13 trials, especially in light of the fact that members of the class held different job responsibilities
14 throughout the Class Period, and therefore any alleged restrictions on authorizing rest periods would
15 be unique to the specific job duty. *Id.* In light of these defenses, Plaintiff discounted the maximum
16 amount for this claim by 45% for risk of non-certification, and an additional 50% for a risk of being
17 unsuccessful on the merits or having the amount of violations determined to be less than Plaintiffs
18 allege to arrive at an estimated exposure of \$291,536.50. *Id.*

19 **Regular Rate Claim: \$100.00**

20 Plaintiff alleged that Defendant paid their employees non-discretionary bonus payments that
21 were not factored into the Class' respective regular rates of pay for overtime purposes. Lavi Decl., ¶
22 23. As stated, these non-discretionary payments must be included in the regular rate of pay when
23 calculating employees' overtime rates of pay. *Id.*; *see e.g., Huntington Memorial Hospital v. Superior*
24 *Court* (2005) 131 Cal.App.4th 893, 902-903 (discussing regular rate calculation requirements); *Clark*
25 *v. AMN Servs., LLC*, 987 F.3d 848, 850 (9th Cir. 2021) ("[t]he record establishes that the contested
26 benefits functioned as compensation for work rather than as reimbursement for expenses incurred,
27 and that the per diem benefits were thus improperly excluded from Plaintiffs' regular rate of pay for

purposes of calculating overtime pay.”). Plaintiff’s expert determined that Defendant’s failure to include these bonuses when calculating an overtime rate of pay led to a total underpayment of \$100.00 during the Class Period. *Id.*

Wage Statement Violations: \$68,046.00

With respect to wage statement violations, Plaintiff contends that for each pay period in which there is a meal or rest period violation, or overtime violation, Plaintiff and the Class Members would have received a non-compliant wage statement in violation of Labor Code section 226. Lavi Decl., ¶ 24. These types of derivative claims are routinely certified. *See, e.g., Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) Case No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151 at *5 (“Thus, this court relies on *Murphy* in finding that Section 226.7 premiums constitute wages, and are therefore required to be included in wage statements under Section 226”). Plaintiff’s data analysis reflected that there were approximately 2,110 total wage statements issued during the relevant period and approximately 96 unique employees during the relevant time period. *Id.* Plaintiff calculated Defendant’s maximum exposure for wage statement violations at \$184,000.00 (96 employees * \$4,000 aggregate penalty) = \$384,000.00. *Id.*; *see also* Labor Code § 226(e). (However, should staking be argued, then Defendant’s maximum exposure for wage statement violations is [\$50 x 96] + [\$100 x (2,110-96)] = \$206,200). *Id.*

Based on Defendant’s arguments that: (i) no violations occurred, (ii) any alleged violations were not “knowing and intentional” as required by Labor Code § 226(e), (iii) no injury was suffered, and (iv) the decision in *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, which holds that there is no wage statement violation when the wage statements accurately reflect the compensation received by an employee, Plaintiff discounted the calculated exposure by 40% for a risk of non-certification and an additional 45% for a risk of being unsuccessful on the merits or having the number of violations reduced since only a subset of the wage statements contained an alleged derivative violation based on failure to pay all overtime wages to arrive at an estimated total of \$68,046.00. Lavi Decl., ¶ 25.

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1 discovered that this was an issue individualized to Plaintiff, and not a claim typical of other Class
2 Members. As such, Plaintiff assigned no value to this claim.

3 **Sick Pay: No Value**

4 Plaintiff contends Defendant failed to include non-discretionary bonuses and incentives in
5 employees' regular rate of pay for purposes of sick leave pay. According to Plaintiff's expert's
6 analysis, the sum of pay period overtime calculated at base rate in addition to one-half of the regular
7 rate of pay is \$100. Lavi Decl., ¶ 30. Plaintiff alleges that Defendant paid employees non-discretionary
8 bonuses and incentives but failed to include these amounts when calculating sick leave pay. As a
9 result, sick leave compensation was allegedly underpaid. Because these regular rate issues can often
10 be identified through a review of payroll records, Plaintiff argues that these claims are well-suited for
11 class certification, which reduces the risk of denial at the certification stage. However, Plaintiff's
12 expert did not determine that any regular rate of pay affected sick pay, and therefore Plaintiff assigned
13 no value to this claim.

14 **Vacation Pay: No Value**

15 Plaintiff additionally alleged that Defendants as a matter of policy/practice failed to
16 compensate Plaintiff and the Class Members for all vested, unused vacation pay at the time of their
17 separation of employment in violation of Labor Code § 227.3. Upon further investigation, however,
18 Plaintiff discovered that this was not an issue, and not a claim typical of other Class Members. As
19 such, Plaintiff assigned no value to this claim.

20 **PAGA Penalties: \$223,179.00**

21 Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor
22 Code violations. Lavi Decl., ¶ 32. The specific statutory violations upon which Plaintiff bases the
23 claim under PAGA are: (i) Cal. Lab. Code §§ 1194, 1194.2, 1197 for failing to pay all minimum
24 wages owed; (ii) Labor Code §§ 204, 510, 558, 1194, and 1198 for failing to pay all overtime wages
25 owed; (iii) Labor Code §§ 226.7, 512, and 558 for meal period violations; (iv) Labor Code §§ 226.7,
26 and 558 for rest period violations; (v) Labor Code § 226(e) for failing to provide accurate, itemized
27 wage statements; (vi) Labor Code §§ 201 through 204, and 210 for failing to pay all timely wages,

1 including wages owed upon termination; and (vii) Labor Code §§ 2800 and 2802 for failure to
2 reimburse necessary business expenses. *Id.*

3 Plaintiff also alleged penalties for failure to provide sick pay at the regular rate in violation of
4 Labor Code § 246, and failure to pay vacation/PTO at time of separation, in violation of Labor Code
5 § 227.3, however after further investigation into these claims Plaintiff found no value to be afforded
6 to the violations based on review of the data by Plaintiff's expert. Based on the violations addressed
7 above, Plaintiff contends that Defendant is liable for PAGA civil penalties for each of the estimated
8 2,110 pay periods⁴ worked during the PAGA Period. *Id.* Accordingly, Plaintiff estimates Defendant's
9 exposure as follows:

10 a. PAGA For Waiting Time Penalty: PAGA for Waiting Time Penalty: 31
11 Former Employees x \$100 violation = **\$3,100.00**

12 b. PAGA for Unpaid Wages: for 86 employees for 947 pay periods, at \$100 per
13 initial violation, and \$100 per subsequent violation, the PAGA penalty is [\$100 x 86 aggrieved
14 employees] + [\$100 x (947-86)] = **\$94,700.00**

15 c. PAGA for Overtime (Regular Rate of Pay): for 56 employees with 44 pay
16 periods, at \$100 per initial violation, and \$100 per subsequent violation, the PAGA penalty is \$100 x
17 56 aggrieved employees + [\$100 x (44-56)] = **\$4,400.00**

18 d. PAGA for Meal Breaks: for 96 employees with 1,537 pay periods, (\$100 x 96
19 aggrieved employees) + [\$100 x (1,537-96)] = **\$153,700.00**

20 e. PAGA for Rest Breaks: for 96 employees with 2,094 pay periods, at \$100 per
21 initial violation, and \$100 per subsequent violation, the PAGA penalty is (\$100 x 96 aggrieved
22 employees) + [\$100 x (2,094-96)] = **\$209,400.00**

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26 ⁴ Plaintiff's expert analysis was performed on the factor of 2,110 Pay Periods, rather than the 1,917
27 pay periods agreed upon in the Settlement Agreement. Consistent with the analysis, the numbers
projected during mediation and for this brief are based on the number factored by Plaintiff's expert,
which have a higher valuation than 1,917 pay periods.

f. PAGA for Wage Statement Violation: for 96 employees with 2,110 pay periods, at \$100 per initial violation, and \$100 per subsequent violation, the PAGA penalty is [\$100 x 96 aggrieved employees] + [\$100 x (2,110-96)] = **\$211,000.00**

g. Total PAGA exposure: \$676,300.00

See, Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation rate applies until the employer is notified that it is violating a Labor Code provision)

Regarding the PAGA penalty exposure analysis, as an initial matter, in wage and hour class action cases that settle, which are the overwhelming majority of such cases, very little of the total settlement is paid to PAGA penalties in order to maximize payments to class members. *See, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (no abuse of discretion to approve class action settlement allocating \$0 to PAGA claims); *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 (E.D. Cal. Jan. 14, 2015) (preliminarily approving \$10,000 in PAGA penalties out of a total settlement amount of \$900,000), report and recommendation adopted, 2015 U.S. Dist. LEXIS 25730, 2015 WL 925598 (E.D. Cal. Mar. 3, 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (preliminarily approving \$10,000 in PAGA penalties out of a total settlement amount of \$1,250,000); *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 (E.D. Cal. Nov. 27, 2012) (granting final approval of \$10,000 in PAGA penalties out of a total settlement amount of \$2,500,000); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012) (granting final approval of \$10,000 in PAGA penalties out of a total settlement amount of \$3,700,000); *Chu v. Wells Fargo Invs., LLC*, 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1 al. Feb. 16, 2011) (granting final approval of \$10,000 in PAGA penalties out of a total settlement amount of \$6,900,000). In these settlements, the parties generally maximize statutory penalties and minimize PAGA penalties. *See, e.g., Franco*, 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *2, *14 (approving a \$10,000 PAGA award out of a total settlement amount of \$2,500,000).

However, Defendant asserts a number of credible defenses to Plaintiff’s claims. First, the vast majority of these penalties derive from the underlying wage and hour violations discussed above,

1 which Defendant vigorously disputes. Lavi Decl., ¶ 34; *see e.g., Green v. Lawrence Service Co.* (C.D.
2 Cal. 2013) Case No. LA CV12-06155 JAK (VBKx), 2013 WL 3907506, *5, n.5 (explaining that a
3 PAGA claim’s success was determined by the merits of its underlying claims). Defendant also
4 maintains that given their good faith defenses, this Court would exercise its discretion to substantially
5 reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiffs’ claims. *Id.*
6 Defendant further alleges that none of the violations would be deemed knowing and intentional as
7 there is no evidence to suggest Defendant intentionally violated the Labor Code and that Defendant’s
8 policies and procedures demonstrate that Defendant acted in good faith in regards to paying the Class
9 Members all wages due. *Id.* For these reasons, Defendant argues the Court would drastically reduce
10 any award of PAGA penalties as “confiscatory.” *Id.*; *see Thurman v. Bayshore Transit Mgmt., Inc.*,
11 (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties). Indeed, courts while
12 considering the issue have refused to “stack” PAGA penalties. *See Carrington v. Starbucks*
13 *Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving
14 PAGA penalty reduction to \$5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27 Cal.App.5th
15 809. California’s appellate courts have held that “[u]ntil the employer has been notified that it is
16 violating a Labor Code provision (whether or not the commissioner or court chooses to impose
17 penalties), the employer cannot be presumed to be aware [of the violation]” and therefore, until a
18 Court or the Commissioner issues a finding of a violation, the initial \$100 violation rate applies for
19 each pay period in which the alleged violation occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163
20 Cal.App.4th 1157, 1209; *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit*
21 *Service, Inc.* (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at *9 (“[u]nder California law, courts
22 have held that employers are not subject to heightened penalties for subsequent violations unless
23 and until a court or commissioner notifies the employer that it is in violation of the Labor Code”).
24 Therefore, Plaintiff discounted the maximum PAGA exposure by 40% for risk of losing on the merits,
25 and an additional 45% to account for the possibility of this Court reducing penalties, to arrive at an
26 estimated exposure of \$223,179.00. *Id.*

1 **g. The Settlement Amount is Within the Range of Possible Approval**

2 Using these estimated figures for each of the claims described above, Plaintiffs predicted that
3 the potential recovery for the Class would be approximately \$856,853.02. Lavi Decl., ¶ 35. The
4 proposed settlement of \$575,000 therefore represents approximately 67% of the reasonably forecasted
5 recovery for the Class. *Id.* Preliminary approval is appropriate since the Settlement will provide
6 significant monetary relief to Class Members, which is consistent with what Plaintiff's counsel
7 believes could have been recovered had the case proceeded through trial. *Id.*

8 As stated, the proposed settlement reflects approximately 67% of the estimated recovery the
9 Class could reasonably expect in light of the significant litigation risks, and will provide tangible,
10 monetary compensation for hotly disputed claims desperately needed by Class Members now more
11 than ever due to the looming economic recession. Indeed, the percentage of the liability exposure
12 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS*
13 *Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving
14 settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* 213 F.3d 454, 459
15 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural*
16 *Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that
17 a proposed settlement may be acceptable even though it amounts to only a fraction of the potential
18 recovery that might be available to the Class Members at trial"). There are significant legal
19 uncertainties associated with cases such as this as they can be factually complex and require protracted
20 litigation to resolve. A settlement is not judged solely against what might have been recovered had
21 plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be
22 fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242;
23 *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117,
24 1139.) Instead, "[c]ompromise is inherent and necessary in the settlement process...even if the relief
25 afforded by the proposed settlement is substantially narrower than it would be if the suits were to be
26 successfully litigated, this is no bar to a class settlement because the public interest may indeed be
27 served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"

1 (Wershba, 91 Cal.App.4th at 250.)

2 Thus, Plaintiff submits that the proposed settlement is within the range of possible approval,
3 such that notice should be provided to the Class so that they can consider the Settlement. The Court
4 will have the opportunity to again assess the reasonableness of the Settlement after the Class has had
5 the opportunity to opt-out or object.

6 **h. The Experienced Views of Counsel**

7 “Parties represented by competent counsel are better positioned than courts to produce a
8 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
9 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378 . The view of the attorneys actively conducting
10 the litigation “is entitled to significant weight” in deciding whether to approve the settlement. (*Fisher*
11 *Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *Ellis v. Naval Air*
12 *Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel*
13 *Corp., supra*, 485 F.Supp. at 617). Here, Plaintiff is represented by competent, experienced counsel
14 who possess experience prosecuting wage-and-hour class actions. Lavi Decl., ¶ 37. Class Counsel
15 conducted an in-depth review of Defendant’s relevant policies and Class Members’ records with the
16 assistance of a retained expert, and drew on their extensive experience in similar cases in preparing
17 their analysis to assess the strengths and weaknesses of Plaintiffs’ case. Lavi Decl., ¶¶ 6-8; 37. The
18 Settlement was also reached with the assistance of an experienced and respected wage and hour class
19 action mediator. *Id.*; Lavi Decl., ¶¶ 7; 13. These factors strongly supports preliminary approval of the
20 Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

21 **i. Attorney’s Fees and Costs**

22 Class Counsel will also apply for an attorney’s fees award of one-third of the GSA, which is
23 currently estimated to be \$191,666.67 and up to \$25,000.00 in verified costs reimbursement. *See*
24 *Settlement*, ¶ 3.2.2. Plaintiff submits the requested fee is fair compensation for undertaking complex,
25 risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel has
26 incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff’s claims,
27 engaging in informal discovery, conducting legal research, reviewing Defendant’s documents and

1 policies, analyzing Class Members’ relevant records, working with a retained expert to create a
2 comprehensive damages model, preparing for and attending a full day mediation, negotiating and
3 preparing the long-form Settlement Agreement over a period of months, preparing this Motion, and
4 otherwise litigating the case. Lavi Decl., ¶ 39. Class Counsel expects to expend additional attorney
5 time in attending the hearing on this Motion, overseeing the notice process and fielding questions
6 from Class Members, preparing the final approval papers, and attending the Final Approval Hearing.
7 *Id.*

8 California courts have recognized that an appropriate method for awarding attorney’s fees in
9 class actions is to award a percentage of the “common fund” created as a result of the settlement. See
10 e.g., *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (holding “the percentage of fund
11 method survives in California class action cases”). (*City & County of San Francisco v. Sweet* (1995)
12 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15 Cal. 3d 162, 168; see also *Apple Computer, Inc.*
13 *v. Superior Court* (2005) 126 Cal. App. 4th 1253, 1270; *Lealao v. Beneficial California, Inc.* (2000)
14 82 Cal. App. 4th 19, 26.) The basis of the common fund is fairness to the successful litigant, who
15 might otherwise receive no benefit because his recovery might be consumed by the expenses;
16 correlative prevention of an unfair advantage to others who are entitled to share in the fund and who
17 should bear their share of the burden of its recovery; encouragement of the attorney for the successful
18 litigant, who will be more willing to undertake and diligently prosecute proper litigation for the
19 protection or recovery of the fund if he is assured that he will be properly and directly compensated
20 should his efforts be successful. (*City & County of San Francisco v. Sweet, supra*, 12 Cal. 4th at
21 111.) In *Quinn*, the California Supreme Court stated: “[O]ne who expends attorneys’ fees in winning
22 a suit which creates a fund from which others derive benefits may require those passive beneficiaries
23 to bear a fair share of the litigation costs.” (*Quinn v. State, supra*, 15 Cal. 3d at 167.) Similarly, in
24 *Sweet*, the California Supreme Court recognized that the common fund doctrine has been applied
25 “consistently in California when an action brought by one party creates a fund in which other persons
26 are entitled to share.” (*City & County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 110.) Lavi
27 Decl., ¶ 40.

1 Several courts have expressed frustration with the alternative “lodestar” approach for
2 deciding fee awards, which usually involves wading through voluminous and often indecipherable
3 time records. (*Lealao, supra*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D. Cal
4 1989) 723 F. Supp. 1373, 1375].) The percentage approach is preferable to the lodestar because: (1)
5 it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution
6 of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
7 demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79.) The Ninth
8 Circuit now routinely uses the percentage of the common fund approach to determine the award of
9 attorney’s fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific Enters. Sec. Litig.* (9th Cir.
10 1995) 47 F.3d 373, 378-79 [approving attorney’s fee of 33%].)

11 Class Counsel’s request for fees of one-third of the GSA is well within the range of
12 reasonableness, and indeed is considered the typical rate for common fund settlements. Historically,
13 courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of
14 the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013). Moreover, as part of the final
15 approval motion, Class Counsel will provide the necessary information regarding hours reasonably
16 expended and Class Counsel’s reasonable hourly rate to allow the Court to perform a lodestar cross-
17 check. Lavi Decl., ¶ 40; *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503-506.

18 The settlement also provides for reimbursement of costs reasonably incurred not to exceed
19 \$25,000.00. *See* Settlement, ¶ 3.2.2. To date, Class Counsel has incurred approximately \$13,866.45
20 in litigation costs. Lavi Decl., ¶ 41. Counsel anticipates additional charges pertaining to filing the
21 instant motion and motion for final approval, and supplemental filings requested by the Court, and
22 the costs of any future appearance. *Id.* As part of Plaintiff’s motion for final approval, Class Counsel
23 will request only the reimbursement of costs reasonably incurred supported by declaration with an
24 itemized cost sheet. The costs Plaintiff seeks are the types of costs routinely approved by courts. *See,*
25 *e.g., Harris v. Marhoefer* 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover “those out-of-pocket
26 expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre* (N.D. Cal. 2011),
27 No. 05-03759 CW, 2011 WL 825713, at * 3 (“costs of reproducing pleadings, motions and exhibits

are typically billed by attorneys to their fee-paying clients” and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.* 460 F.3d 1253, 1258-59 (9th Cir. 2006)(legal research costs are reimbursable); *In re Immune Response Securities Litigation* 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).

j. Administrative Costs

Phoenix Settlement Administrators settlement administration fees have been quoted at no more than \$7,250.00 after having factored in the hard and hourly costs associated with administering the settlement. *See* Declaration of Jodey Lawrence (“Lawrence Decl.”). This request is reasonable in light of the proposed class size of approximately 151 Class Members and the costs and expenses associated with administering the notices and distributing the awards. Lavi Decl., ¶ 51

k. Class Representative Service Payment

Plaintiff will separately apply for a Class Representative Service Payment at the time of seeking final approval of the proposed class action settlement in the amount of \$10,000.00 for her service to the Class. *See* Settlement, ¶3.2.1. “[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. As will be fully briefed at the time of final approval, Plaintiff’s requested Class Representative Service Payment is intended to recognize the time and effort Plaintiff expended on behalf of the Class, including providing substantial factual information and documents to Class Counsel, attending multiple virtual meetings with Class Counsel to discuss the claims and theories at issue in the litigation, reviewing and discussing policies produced by Defendant, actively participating in the prosecution of the putative class claims, discussing the claims and case strategy during the full-day mediation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case. Lavi Decl., ¶ 43; Plaintiff Decl. ¶ 8-12. *see, e.g., In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 947 (approving an award of \$45,000 in enhancement payments, which was roughly 417 times greater than average award but, in

1 aggregate, only 0.17% of gross settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp.
2 3d 1244, 1265 (awarding enhancement payment of \$10,000, approximately 50 times average award
3 and less than 0.02% of gross settlement); *Ross v. U.S. Bank Nat'l Ass'n*, Civ. (N.D. Cal. Sept. 29,
4 2010) No. 3:07-2951 SI, 2010 WL 3833922, at *3 (approving award of \$14,000 to each of the four
5 named plaintiffs where settlement fund was \$1,050,000, based on their contributions to litigation and
6 risk that being a class representative would harm their reputation). *Id.*

7 **I. PAGA Payment**

8 The Parties have agreed to designate \$20,000.00 of the GSA as PAGA penalties, of which
9 \$15,000.00 (75%) will be paid to the LWDA, with the remaining \$5,000.00 (25%) part of the NSA
10 for distribution to the Class. *See* Settlement, ¶¶ 3.2.5, 3.2.4.1. The estimated total number of
11 employees during the PAGA Period and the estimated total Pay Periods therein are 94 and 1,917,
12 respectively. This \$20,000.00 represents roughly 3.5% of the \$575,000.00 Gross Settlement Amount
13 and is consistent with the zero to two percent range for PAGA claims approved by courts. *See e.g.*,
14 *In re M.L. Stern Overtime Litig.* (S.D. Cal. Apr. 13, 2009) No. CV 07-0118 BTM (JMAx), 2009 WL
15 995864, at *1 (approving PAGA settlement of 2 percent, or \$14,000); *Hopson v. Hanesbrands, Inc.*
16 (S.D. Cal. Apr. 13, 2009) No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (approving a PAGA
17 settlement of 0.3 percent, or \$1,500); *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010)
18 (approving settlement of wage and hour class action claims and PAGA claims under which no money
19 was allocated to the PAGA claims); *Poisson v. Dispatch Transportation, Inc., et al.*, Case No.
20 RIC1504851, Riverside Superior Court, Hon. Craig Riemer presiding (approving \$14,000 PAGA
21 allocation in a \$970,000 settlement); *Edmiston v. Loma Linda University Medical Center – Murrieta,*
22 *et al.*, Case No. MCC 1300610, Riverside Superior Court, Hon. Craig Riemer presiding (approving
23 \$10,000 PAGA allocation in a \$912,500 settlement); *Chu v. Wells Fargo Investments, LLC* (N.D. Cal.
24 2011) Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (approving PAGA payment of \$7,500 to
25 LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal.
26 2013).

27 Further, neither the Court nor a jury has made a factual finding of a violation of any Labor

Code provision such that approving an amount that is less than the statutory maximum is appropriate. Lavi Decl., ¶ 45. As discussed above (and without waiving the mediation privileges and confidentiality agreements), the Parties specifically negotiated the payment, like the other terms of the settlement, and ultimately agreed to resolve the PAGA claim for \$20,000.00 at mediation. *Id.* Approval of less than the statutory maximum is inappropriate in this case because Defendant expressly denies and continues to deny any liability. *See* Settlement, ¶ 2.1.1.

m. Payroll Taxes and Individual Settlement Payment Tax Allocation

The Settlement provides that the employer's share of payroll taxes shall be paid separately from, and in addition to, the Gross Settlement Amount. Settlement, ¶ 3.1. Moreover, the Parties have agreed to allocate 20% of the Individual Settlement Payments as unpaid wages and 80% as penalties and interest. Settlement, ¶ 3.2.4.1; Lavi Decl., ¶ 46.

n. Uncashed Funds

The Settlement provides that Class Members will have 180 days from the date the Settlement Administrator mails the checks to negotiate them. *See* Settlement, ¶ 4.4.1. The funds from any uncashed checks shall be transferred by the Settlement Administrator to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure § 384, subdivision (b). *See* Settlement, ¶ 4.4.3. After final distribution of the settlement funds, Class Counsel will submit a declaration regarding disbursement of Settlement funds. *See* Settlement, ¶ 7.8.6. The declaration shall state the date the checks were mailed, the total number of checks mailed to Class Members, the average amount of those checks, the number of checks that remain uncashed, the total value of those uncashed checks, the average amount of the uncashed checks, and the nature and date of the disposition of those unclaimed funds. *Id.*; Lavi Decl., ¶ 47.

o. Released Parties and Scope of Release

The scope of the release includes all claims and factual allegations that were or could have been alleged in the in the Operative Complaint, as set forth more fully in the Settlement Agreement. *See* Settlement, ¶ 5.2. Therefore, the language expressly confirms that the scope of the release is

1 limited to the claims which could have been asserted based on the same allegations as set forth in the
2 Operative Complaint. *Id.*, ¶ 2.1. This type of release is permissible in wage and hour class action
3 settlements such as this one. *Shine v. Williams Sonoma* (2018) 23 Cal.App.5th 1070, 1078 (“[A]
4 judgment pursuant to a class settlement can bar [subsequent] claims based on the allegations
5 underlying the claims in the settled action. This is true even though the precluded claim was not
6 presented, and could not have been presented, in the class action itself (citation omitted).”) Lavi Decl.,
7 ¶ 48.

8 C. THE SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES

9 Preliminary approval of the Settlement is also warranted because there are no obvious
10 deficiencies. The Settlement will provide monetary relief to Class Members. The amounts proposed
11 for Class Counsel’s attorney’s fees and costs, the Class Representative Service Payment, and the
12 PAGA allocation are all reasonable and appropriate based on the facts of this case. Further, the Parties
13 utilized the judicially crafted LASC Model Class Action and PAGA Settlement Agreement and Class
14 Notice, giving rise to the presumption that the terms of the settlement are fair and comprehensive.
15 Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.
16 Lavi Decl., ¶ 49.

17 D. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED 18 NOTICE TO CLASS MEMBERS

19 This Court should order distribution to the Class of the proposed Class Notice by U.S. Mail,
20 postage prepaid, using last known mailing address information provided by Defendant. *See*
21 Settlement, ¶ 7.4 *et seq.* This manner of giving notice is the “best notice practicable” under the
22 circumstances because it provides “individual notice to all members who can be identified through
23 reasonable effort.” *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff
24 proposes that the Settlement be administered by Phoenix Settlement Administrators (“Phoenix”), an
25 experienced class action settlement administrator. *See generally* Declaration of Jodey Lawrence
26 (“Lawrence Decl.”) and attached exhibits. Class Members’ addresses will be ascertainable through
27 Defendant’s personnel and payroll records, which Defendant will provide to Phoenix within fifteen

(15) days of preliminary approval of the Settlement. *See* Settlement, ¶ 4.2. Within fourteen (14) days of receipt of the class list information, Phoenix will run the addresses through the United States Postal Service Notice of Change of Address database (which provides updated addresses for any individual who has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address) and mail the notices to Class Members. *See* Settlement, ¶ 7.4.2. To the extent that any notices are returned, Phoenix will perform a “skip trace” to track any Class Member’s current mailing address. *See* Settlement, ¶ 7.4.3.

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Class Members of the nature of the claims, basic contentions and denials of the Parties and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Class Member, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Lavi Decl., Exh. 1, Exh. A. Class Members to whom Notice Packets are re-sent after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to mail a Request for Exclusion, challenge or objection. *See* Settlement, ¶¶ 7.4.4., 7.5.1., 7.6, 7.7.2. The proposed Notice will be sent in Spanish and English. Lavi Decl., ¶ 51; Settlement ¶ 7.4.2. The proposed Class Notice will also notify Class Members of the final approval hearing date and provide the contact information for Class Counsel. The proposed Notice further provides that relevant case documents, including the final judgment, and any changes to the final approval hearing date and time will be posted on the Settlement Administrator’s website. This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Class Members.

E. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, this Court should set a hearing for final approval of the Settlement on a date appropriately scheduled to follow the deadline by which Class Members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

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