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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

CYNTHIA GILBERT, an individual, on behalf of herself and all others similarly situated,

Plaintiffs,

vs.

OPTION CARE ENTERPRISES, INC., a Delaware corporation; and DOES 1 through 20, inclusive,

Defendants.

CASE NO.: 2023-CU-OE-012240

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT;

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

DATE: January 7, 2026
TIME: 1:30 p.m.
PLACE: Dept. J4

Action filed: August 1, 2023

TO ALL INTERESTED PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 7, 2026 at 1:30 P.M. in Department J4 of the above-entitled Court, located at 4353 E. Vineyard Avenue, Oxnard, California 93036, Plaintiff Cynthia Gilbert, for herself and the proposed Settlement Class ("Plaintiffs") will be bringing a Motion to seek an order of this Court as follows:

1. Preliminarily approving the Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") attached as Exhibit 1 to the Declaration of Brian D. Hefelfinger ("Hefelfinger Decl.") and ordering conditional certification of the class for settlement purposes only;

2. Appointing Plaintiff Cynthia Gilbert, as the Class Representative for settlement purposes;

3. Appointing Daniel Palay and Brian Hefelfinger of Palay Hefelfinger APC, as Class Counsel for settlement purposes;

4. Approving the proposed Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice") attached as Exhibit A to the Settlement Agreement to be mailed to the Class;

5. Directing Defendant to provide, not later than 30 days after the Court grants Preliminary Approval of the Settlement, to the Settlement Administrator the Class Members' names, last-known addresses, e-mail addresses, and last-known telephone numbers, as well as the workweek data during the Class Period; and

6. Setting a date for a hearing on final approval of the proposed settlement.

Pursuant to California Labor Code § 2699, a copy of the Class Action and PAGA Settlement Agreement, as well as information regarding the preliminary approval hearing on this matter, were submitted to the California Labor Workforce Development Agency via online filing at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html on October 28, 2025. (See Hefelfinger Dec. ¶ 47).

This request is made pursuant to Rule 3.769 of the *California Rules of Court*. This Motion is made on the grounds that the parties have reached a mediated settlement that they believe to be fair, reasonable and adequate, and in the best interests of the Class Members and parties.

This Motion is based upon the Memorandum of Points and Authorities, the Parties' Class Action and PAGA Settlement Agreement, the Declaration of Brian D. Hefelfinger, the Declaration of Cynthia Gilbert ,as well as all other papers filed in this matter, and oral argument or other evidence that the Court may consider at such hearing.

Respectfully submitted,

Date: October 28, 2025

PALAY HEFELFINGER, APC

By: ______________________
DANIEL J. PALAY
BRIAN D. HEFELFINGER
Attorneys of Record for Plaintiff

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I. INTRODUCTION

This motion seeks preliminary approval of a common fund settlement reached in this case after extensive negotiations and two separate sessions of private mediation between the parties (the "Settlement"). The parties reached this Settlement through arm's-length bargaining, contested motion practice, sufficient investigation, and discovery conducted all relating to the scope of class damage, and with the involvement of a professional mediator. The major elements of the Settlement are:

- Size of the Class: ~718 current and former nurses, pharmacists, and pharmacy techs.
- Gross Settlement Amount: $3,625,000.00 inclusive of all fees, taxes, costs of litigation, cost of administration, PAGA penalties and the class representative enhancement.
- Requested Class Representative Enhancement Award not to exceed $25,000.00, subject to Court approval.
- Defendants will not oppose Plaintiff's counsel request for attorneys' fees from the Gross Settlement Sum of not more than 33.33% of the Gross Settlement Amount, or $1,208,333.33, subject to Court approval.
- Defendants will not oppose Plaintiff's counsel request for reasonable reimbursement of verified litigation costs from the Gross Settlement Sum, subject to Court approval.
- All class administration costs shall be paid from the Gross Settlement Sum.
- An Individual Class Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks
- A payment to the LWDA and Aggrieved Employees of PAGA Penalties in the amount of $300,000.00 to be paid from the Gross Settlement Amount, with 75% ($225,000.00) allocated to the LWDA PAGA Payment and 25% ($75,000.00) allocated to the Individual PAGA Payments.

The Settlement is fair and reasonable and confers a substantial benefit upon the Class Members. Accordingly, pursuant to *California Rule of Court* 3.769, Plaintiffs request that the Court grant preliminary approval of the Settlement, set the deadline for filing objections to the Settlement, schedule a final approval hearing, and approve the proposed Notice.

II. STATEMENT OF THE CASE

A. Plaintiff's Allegations and Procedural History.

Plaintiff commenced this Class Action matter on August 1, 2023. Plaintiff's First Amended Complaint (filed October 5, 2023) alleges eight causes of action: (1) Failure to Pay Wages Owed, (2) Violation of California Labor Code §226(a) (Non-Compliant Wate Statements); (3) Violation of Labor

Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (4) Violation of Labor Code §226.7 (Unpaid Rest Break Premiums); (5) Violation of Labor Code § 226.7 (Unpaid Meal Break Premiums); (6) Failure to Pay Reporting Time Pay; (7) Violation of The Unfair Competition Law Business & Professions Code §, *et seq.;* and, (8) For Civil Penalties Under the Private Attorney Generals Act of 2004 (Labor Code § 2699 et seq.). Plaintiff's Second Amended Complaint (filed October 10, 2025) updated the allegations to include penalties sought for alleged violations relating to unreimbursed expenses and Paid Sick Leave requirements. (Hefelfinger Decl. ¶ 16).

In November of 2023, the action was removed to the U.S. District Court for the Central District of California, now pending as Case No. 2:23-cv-09992-SK. Written discovery was propounded in March of 2024 in the federal action. On August 19, 2024, the Parties participated in an all-day mediation presided over by Gig Kyriacou, Esq. The mediation did not result in a settlement of the Action. (Hefelfinger Decl. ¶¶ 17-18).

Discovery motions were necessitated in late 2024, after the first mediation session. (Hefelfinger Decl. ¶ 19). In January of 2025, the parties engaged in outreach to putative class members as part of the investigation and litigation of this matter, which resulted in further contested motion practice in the federal court. In April of 2025, the parties elected to resume negotiations and to re-engage the assistance of Mr. Kyriacou, the mediator. Mediated negotiations took place throughout April and May of 2025, and ultimately resulted in a Mediator's Proposal being circulated to the parties for consideration. The Proposal was ultimately accepted by the parties on or about May 30, 2025, with a long-form agreement to be subsequently drafted with detailed terms. (*Id.,* ¶¶ 20-21).

The parties jointly drafted, with further input from the mediator, the long form agreement during the period from June through August of 2025. It was circulated for signature and executed in September of 2025. (Hefelfinger Decl. ¶ 22).

B. Investigation and Discovery.

Class Counsel conducted investigation, discovery, and research during the prosecution of the Action. Such efforts included, among other things: (a) conducting a thorough pre-filing investigation; (b) propounding multiple comprehensive sets of written discovery requests and taking class member statements and interviews; (c) inspecting and analyzing voluminous data and documents produced by

Defendant to Plaintiff and the class members; (d) communicating with dozens of class members; (e) analyzing the legal arguments made by Defendant; (f) responding to Defendant's classwide outreach and Pickup Stix campaign, including with court intervention and outreach; (g) preparing an analysis of potential class-wide damages and constructing a damages model; (h) researching the applicable law with respect to the claims asserted in this Action and the potential defenses thereto. (Hefelfinger Decl. ¶ 23).

Thus, the Parties have engaged in sufficient investigation, discovery, and research to assess the relative merits of the claims of the Class, associated damages and Defendant's defenses.

C. The Settlement.

The case settled after mediation, as memorialized in the Class Action and PAGA Settlement Agreement, for the sum total of $3,625,000.00. (Ex. A, Hefelfinger Decl., Settlement Agreement, ¶¶ 14; 39). The Gross Settlement Amount roughly equates to the potential damages for alleged claims and penalties, and attorneys' fees and costs, discounted appropriately for litigation risk as identified through the mediation process and investigation, along with additional sums for civil penalties, administration costs and derivative *Labor Code* penalties. The Parties' counsel and the mediator believe that the terms of the Settlement reflect a fair and equitable compromise between the Parties. (Hefelfinger Decl., ¶¶ 24, 29-37).

Here, dividing the Total Settlement Amount by the approximately 718 Settlement Class members[1] provides for a mean settlement value of $5,048.75 before deduction of fees and costs. Put another way, the Gross Settlement Amount divided by the aggregate class workweeks (estimated to be 70,995 as of May 2025) yields about $51 per active workweek in value. Individual class member settlement payments will vary significantly, based on workweeks worked within the Class Period and position held. (Hefelfinger Decl. ¶¶ 24-26). These sums and amounts do not include additional consideration that putative class members received independently but as a result of the lawsuit nonetheless, by way of Defendant's Pickup Stix campaign that was initiated in response to Plaintiff's lawsuit and efforts. (*Id.*)

/ / /

[1] Defendant has represented that, for the relevant claim period in this Action, there are approximately 718 current and former employees that work (or have worked) for Defendant in California.

The Plaintiff and Class Counsel believe that the claims, allegations, and contentions asserted in the action have merit. However, the Plaintiff and Class Counsel recognize and acknowledge the expense and delay of the lengthy proceedings necessary to prosecute the Action against Defendant through trial and appeals. Furthermore, Class Counsel have taken into account the risks inherent in any litigation, and the additional risk of continued litigation in complex actions such as this, including the Defendant's likely appeal. Uncertainty in Plaintiffs' ability to secure class certification, or results from a jury comprising a better outcome relative to the settlement amounts the parties have agreed upon, as well as a significant delay in Class Members receiving settlement awards after a trial for damages presented significant risk in the matter. (Hefelfinger Decl. ¶ 27).

Moreover, Class Counsel have also considered the potential for reduction (or elimination) of penalties recoverable under PAGA, given that case law and statutory authority permit a discretionary reduction to said penalties where "unjust, arbitrary, oppressive or confiscatory." Similarly, an award of penalties under *Labor Code* ¶ 203 requires a demonstration of "willfulness" on the part of the Defendant. (Hefelfinger Decl. ¶ 28).

In light of the preceding potential risks, Class Counsel believe that the Settlement set forth in the Stipulation confers substantial benefits upon the Plaintiff and each of the members of the Certified Class, and that an independent review of the Class Action and PAGA Settlement Agreement by the Court in the approval process will confirm this conclusion. Based on their own independent investigation and evaluation, Class Counsel have determined that the Settlement set forth in the Settlement Agreement is in the best interests of the Plaintiff and the members of the Certified Class. (Hefelfinger Decl., ¶ 38).

III. THE PARTIES' ATTORNEYS.

Class Counsel are experienced lawyers with substantial complex litigation experience and have extensive experience in successful prosecution of numerous class actions. They have recovered more than one hundred fifty million dollars on behalf of thousands of individuals in California and have successfully handled numerous significant wage-and-hour class and representative actions. (Hefelfinger Decl., ¶¶ 3-13, 40). Class Counsel committed significant firm resources to the prosecution of this action. Plaintiffs' counsel for this action was retained based upon a contingency fee arrangement wherein they agreed to advance all costs and receive no fee unless recovery was accomplished. Because of the anticipated need of resources for the prosecution of this case, they had to forego other work and face considerable financial risk in this Action. (Hefelfinger Decl., ¶ 41).

Counsel for Defendant are also experienced lawyers with substantial complex litigation experience, and are part of a major, nationwide employment law firm, Littler Mendelson, which focuses on labor and employment law. Counsel for Defendant have extensive experience in defending wage-and-hour class actions. (Hefelfinger Decl. ¶ 42).

IV. THE CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

A. General Description of the Settlement Agreement

The Settlement, filed concurrently with this Motion as **Exhibit 1** to the Declaration of Alejandro P. Hefelfinger, generally provides for the following (the "Agreement"):

1. Settlement Class

In the Agreement, the Settlement Class is defined as:

> All persons who worked for any Defendant in California as an hourly, non-exempt employee in the position of nurse, pharmacist, or pharmacy technician, at any time during the period of September 6, 2020 (due to the Cabrera Settlement release date), through the date of preliminary approval of the Settlement Agreement, or pursuant to the provisions of Paragraph 55. (Ex. A, Hefelfinger Decl., Settlement, Definitions, ¶ 7).

2. Settlement Amounts

This is a common fund settlement. The common fund is $3,625,000.00 (the "Gross Settlement Amount"). (Ex. A, Hefelfinger Decl., Settlement, ¶ 14). Out of that fund, the following will be paid: verified Administration costs (presently estimated to be $11,000.00); attorney's fees to Class Counsel herein in the amount of one-third (33.3%) of the Gross Settlement Amount, or $1,208,333.33; verified litigation expenses; a Service Payment to Cynthia Gilbert of not more than $25,000.00; $300,000.00 in PAGA penalties, pursuant to *Labor Code* section 2698, et seq., with 75% of this portion, $225,000.00, being paid to the State of California and the remaining 25%, $75,000.00 allocated to the Individual PAGA Payments. (Ex. A, Hefelfinger Decl., Settlement, ¶¶ 39-43).

3. Calculation of the Individual Settlement Amounts

Plaintiff and Defendant have agreed upon the following payment formula to resolve all disputes of the Settlement Class during the Settlement Period:

After deducting for the amounts for Settlement Administrator's fees, Plaintiff's Service Payment, the PAGA Fund, and Class Counsel's awarded attorneys' fees and costs, the balance of the Gross Settlement Payment (the "Net Settlement Amount") will be distributed as follows:

> Individual Settlement Payments will be calculated and apportioned from the Net Class Settlement Amount based on the number of Workweeks a Qualified Class Member worked during the Class Settlement Covered Period, and their position held, as set forth below in Paragraphs 45.1 and 45.4. The administrator shall calculate the settlement shares to be paid in proportion to an individual's Effective Settlement Workweeks (defined below), divided by the aggregate total of Effective Settlement Workweeks for the Qualified Class Members. (As used herein, "Effective Settlement Workweeks" means the count of workweeks, as a proportion of the individual's actively worked Workweeks, that will be counted for purposes of his computing his or her settlement allocation. (Ex. A to Hefelfinger Decl., Settlement, ¶¶ 45-45.5).
>
> *Qualified Class Members who worked as Nurses in the LA North or South Region*.
>
> (a) An individual in this category shall have his or her Workweeks credited and counted at 100% as Effective Settlement Workweeks in this category
>
> *Qualified Class Members who worked as Nurses, in all other California regions (other than LA North or LA South)*.
>
> (a) An individual in this category shall have his or her Workweeks credited and counted at 75% in this category
>
> *Qualified Class Members who worked as Pharmacists in California.*
>
> (a) An individual in this category shall have his or her Workweeks credited and counted at 40% in this category for purposes of the settlement allocation.
>
> *Qualified Class Members who worked as Pharmacy Technicians in California.*
>
> (a) An individual in this category shall have his or her Workweeks credited and counted at 20% in this category for purposes of the settlement allocation

The allocated sums were based on the settlement value of the claims held by each subgroup (nurse; pharmacist; and pharmacy technician) encompassed in the litigation and the Settlement. (Hefelfinger Decl., ¶ 31). The allocations also took into account that certain of Option Care's regions engaged in employment practices giving rise to alleged claims held by certain nurses, but not others. (Hefelfinger Decl., ¶ 32, 33). For example, the nurses within the Los Angeles region were allegedly subject to certain workplace messaging practices and certain treatment of weekend work, which was not implemented elsewhere in the state. Similarly, the average hourly rate of pay for nurses, pharmacists, and pharmacy technicians vary greatly, thereby affecting each respective subgroup's calculations for items such as alleged wages owed and penalties. (Hefelfinger Decl., ¶ 34, 35). The parties' Settlement allocations account for these wage/hour realities, as revealed through discovery and investigation, and which are fully supported in the data. (*Id.,* at ¶ 36).

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is *uncashed* and after the void date (180 days), the Administrator shall redistribute those funds if the amount for redistribution is less than the cost of administration. If the costs of redistribution are more than the amount to be redistributed, or any unclaimed amounts remain after the redistribution, the Settlement Administrator shall issue a check of the unpaid residue or unclaimed or abandoned Class Members and/or PAGA Settlement Group Member's funds to either a suitable neutral *cy pres* beneficiary selected by the Parties (*e.g.*, CASA of Ventura County) or, the uncashed funds may be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500 *et seq.* for the benefit of those Class Members who did not opt out of the Settlement and/or PAGA Settlement Group Members but did not cash their settlement checks until such time that they claim their property and who will remain bound by the Settlement. (Ex. A to Hefelfinger Decl., Settlement, ¶ 60).

B. Individuals May Select to Opt Out and/or Object to the Settlement

The Settlement provides for both (i) an objection process for all participating Class Members, as well as (ii) an opt-out procedure. (Ex. A to Hefelfinger Decl., Settlement, ¶¶ 54, 57). A Request for Exclusion is a letter from a Settlement Class Member or his/her representative that reasonably communicates the Settlement Class Member's election to be excluded from the Settlement and includes the Settlement Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely sign and send by the Response Deadline. (Ex. A to Hefelfinger Decl., Settlement, ¶ 54).

C. The Settlement Administrator

By soliciting multiple bids for administration of this matter, the parties have selected CPT Group, Inc. to act as the Settlement Administrator. A quotation of $11,000.00 for the administration of this matter has been provided by CPT. (Hefelfinger Decl., ¶ 44). The Settlement Administrator will perform address verification measures, formatting, preparing, translating and mailing of the Notice Packets; accounting for Opt-Outs and objections; calculation and determination of payments to Participating Settlement Employees; accounting and maintenance of Settlement Fund Account;

posting of the necessary information (*e.g.*., regarding the judgment) on the administrators' website; resolution of any differences between Defendant's records and information provided by Participating Settlement Employees; distribution of payments to Participating Settlement Employees; preparation of a report for the Court indicating the total amount that was actually paid to Participating Settlement Employees; administration and payment of unclaimed and/or uncashed checks pursuant to Code of Civil Procedure § 384; preparation and issuance of checks to Class Counsel for attorneys' fees and costs; preparation and issuance of the checks to Class Representative for her Service Payment; calculation, administration, and submission of all tax-related documents concerning the Settlement; and any other issues related to the Settlement administration. (Ex. A. to Hefelfinger Decl., ¶ 63).

On a weekly basis, the Settlement Administrator will provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received. (Ex. A. to Hefelfinger Decl., Settlement ¶ 58).

D. The Scope of the Release

Plaintiff Gilbert will release all claims, known and unknown, asserted or not asserted against the Defendants ("Plaintiff's Release.") (Ex. A. to Hefelfinger Decl., Settlement ¶ 71). All Participating Class Members will release the Released Parties from all claims arising during the Class Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, including, but not limited to: Any claims for unpaid wages (Cal. Labor Code ("Lab. Code") §§ 200, 510, 558, 558.1, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, and/or all applicable Wage Orders); failure to provide meal periods and/or meal period premium payments (Lab. Code §§ 218, 218.6, 226.7, 512, and/or all applicable Wage Orders); failure to provide rest breaks and/or days of rest and/or rest break premium payments (Lab. Code §§ 218, 218.6, 226.7, 512, 516 and/or all applicable Wage Orders); reporting time pay (all applicable Wage Orders); failure to provide accurate wage statements (Lab. Code §§ 226, 226.3); failure to timely pay wages or vacation pay (Lab. Code §§ 201-204, 210, 219, 227.3); improper sick pay (Lab. Code § 245 *et seq.*); expense reimbursement (Lab. Code §§ 2800, 2802, 2804); claims for unfair competition and/or business practices (Cal. Bus. & Prof. Code § 17200 *et seq*.); all claims based on the foregoing under the applicable Wage Orders and/or California Code of Regulations, including but not limited to Wage Orders Nos. 5-2001, 15-2001; all claims for penalties, including, but not limited to PAGA (Lab. Code § 2698 *et seq*. with the LWDA, State of California, and/or Plaintiff as proxies for the LWDA release); all claims for interest, penalties, premiums, and/or attorney's fees in connection with any of the preceding claims (Lab. Code §§ 210, 216, 218.5, 218.6, 226, 226.3, 1194, 1194.3, 2699; Cal. Civ. Code §§ 3287, 3289; Cal. Civ. Proc. Code § 1021.5); and/or all other statutory and/or regulatory violations alleged in the Complaints or PAGA letters sent to the LWDA, any potential claims reasonably arising out of the same set of operative facts pleaded in the Complaints or PAGA letters, or any claims reasonably related to the allegations in the Complaints or PAGA letters. (Ex. A. to Hefelfinger Decl., Settlement, ¶ 29).

E. The Claims Procedure

As set forth above, the Settlement provides that Class Members are <u>not</u> required to make claims on the settlement. Instead, the Settlement Administrator will undertake diligent efforts to find a current, accurate address for each Class Member and, after final approval, a check will be mailed to each Class Member that is found and has not opted-out of the action. If, after 180 days elapse, there are mailed checks that are uncashed, the Settlement Administrator will remit payment to the remaining class members unless such costs of administration exceed the remaining amounts. Class Counsel has utilized this method in other class action matters, and it is Class Counsel's belief that this method is more effective at distributing settlement monies to class members than a "claims-made" procedure. (Ex. A. to Hefelfinger Decl., Settlement ¶ 48-54).

F. Attorneys' Fees and Costs

Class Counsel will seek fees of not more than one-third (33.3%) of the Gross Settlement Amount, which is currently estimated to be $1,208,333.33, and a will also seek cost reimbursement for verified expenses of not more than $18,000.00. Defendant does not oppose these requests for payment, provided that they do not exceed these allocated amounts.

The attorneys' fees and costs approved by the Court shall encompass (a) all work performed and costs incurred by Class Counsel in representing Plaintiff and the putative class through the date of the Settlement Agreement; (b) all work to be performed and costs to be incurred in connection with obtaining preliminary and final approval from the Court; and (c) all work and costs, if any, incurred in connection with administering the Settlement through the conclusion of the Action.

G. Enhancement Award for Named Plaintiff

Plaintiff Cynthia Gilbert will apply to the Court for a Twenty-Five Thousand Dollar ($25,000.00) Enhancement Award for her substantial efforts on behalf of the members of the Settlement Class in this Action over the past 2+ years, and for her execution of a general release of all claims. Defendant will not oppose such request. Any Enhancement Award approved by the Court will be paid to Plaintiff from the Settlement Amount and be in addition to any distribution to which she may otherwise be entitled to as a member of the Settlement Class. The Settlement is not, however, contingent upon the amount awarded as an Enhancement Award to Plaintiff Gilbert. (Ex. A. to Hefelfinger Decl., Settlement ¶ 41).

H. Effect on Other Cases and Unique Issues

There are no known other cases that would be affected by this Settlement. There are no other issues unique to this case that deserve mention in this motion.

V. PRELIMINARY APPROVAL SHOULD BE GRANTED

A class action may not be settled without the approval of the Court. (*Civ. Code* § 1781(f).) Under Federal Rule of Civil Procedure 23(e), upon which *California Civil Code* § 1781 is modeled[2], there is a defined procedure and specific criteria for settlement approval in class action settlements, as described in *Manual for Complex Litigation*, Fourth (Fed. Judicial Center 2004) ("*Manual*") §§ 21.61, 21.63. The *Manual*'s settlement approval procedure describes three distinct steps:

1. Preliminary approval of the proposed settlement at an informal hearing;
2. Dissemination of mailed and/or published notice of the settlement to all affected class members; and
3. A "formal fairness hearing," or final settlement approval hearing, at which class

[2] The California Supreme Court has authorized and urged state trial courts to use *Rule 23* and federal case law for guidance in deciding class issues. (See *Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800, 821.)

> members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.

At the preliminary approval stage, the Court has broad powers to determine whether the proposed settlement is fair under the circumstances of the case. (See *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 234-35.) Preliminary approval is warranted if the settlement falls within the "range of reasonableness." (*North County Contractors Assn. Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-1090.)

For preliminary approval, the Court makes an "initial evaluation" of the fairness of the proposed settlement on the basis of written submissions and informal presentation from the settling parties. The *Manual* summarizes the preliminary approval criteria as follows:

> The judge should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b). […] The judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct preparation of the notice of the certification, proposed settlement, and the date of the final fairness hearing.

(*Manual*, § 21.632; see also 4 *Newberg on Class Actions* (4th Ed. 2002) § 11.25.)

The California standard for approval of class settlement is similar to the federal standard: the settlement should be fair, reasonable, and adequate for class members overall. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) So, in making the fairness determination in this case, the Court should consider "the strength of the plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel…." (*Id.* at p. 1801.) A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Id.* at p. 1802.)

A. The Settlement is Within the Range of Reasonableness.

The Settlement herein is well within the range of reasonableness. Each Class Member's anticipated Settlement Payment, estimated to average about $5,048.75 in value per class member, and about $30 per workweek net of fees and costs, is on the order of the alleged compensation and penalties identified in the comprehensive audit and investigation of the amounts which were potentially at issue in the litigation with appropriate discounting for risk. (Hefelfinger Decl., at ¶ 37). Of course, individual payment amounts will vary greatly, based on position held (nurse, pharmacist or pharmacy tech), and the number of active workweeks in the Class Settlement Covered Period.

The investigation and discovery process in this matter revealed that potential liability in the matter, based on the data available and in light of the Defendant's written policies, was tabulated to be on the order of $675,000 for potential reimbursement owed, $938,000.00 for potential unpaid wages for on-call work, and another $675,000.00 for each of the claims asserting potential meal and rest break liability. (Hefelfinger Decl., at ¶ 29). Additionally, the potential wage statement liability in the matter, based on wage statements, was tabulated to be on the order of $1,380,000.00. Finally, the discovery, mediation, and expert discovery processes discerned that the other, derivative and PAGA *Labor Code* potential liability in the matter was in the order of $4.5 million, based on the available data for the Class and a PAGA civil penalty amount of $100 per employee per workweek. (*Id.*). These categories of alleged violations are, in aggregate, around $8,843,000.00. (*Id.*).

Labor Code section 203 provides, in relevant part, that "[i]f an employer **willfully** fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." *Cal. Lab. Code* § 203 (emphasis added).

Further, *Labor Code* § 2698 *et seq.* (the "PAGA") provides for a mechanism for Plaintiff to seek an award of civil penalties on behalf of the State of California, which any such penalties recovered being split 75% to the State of California, and 25% to the "aggrieved employees." *Cal. Lab. Code* § 2699(i). However, given that "a court may award a lesser amount than the maximum civil penalty amount specified by [the PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary, and oppressive, or confiscatory," there is significant uncertainty regarding an award of penalties pursuant to continued litigation. The settlement agreement here allocates an additional $300,000.00 in funds to PAGA penalties. (Ex. A. to Hefelfinger Decl., Settlement ¶ 16).

Class Counsel believes that the Settlement is fair and reasonable. It approximates the estimated damages for reimbursements owed and unpaid wages allegedly suffered by each Class Member as identified through the discovery and investigation process, and provides for additional consideration above and beyond that amount for penalties and premiums alleged in the action. (*See* further analysis of settlement valuation, Hefelfinger Decl., ¶¶ 24-37). It appropriately discounts for risk, given the challenges of proof and the existence of certain employer policies that would have raised serious defenses to certification and prevailing on the merits.

Where a proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should grant preliminary approval. (See *Newberg on Class Actions,* supra*,* at § 11.25).

Here, the Settlement will result in a substantial benefit to all Class Members. The total settlement is $3,625,000.00. The total settlement amount is in excess of 40% percent (%) of the potential aggregate recovery discussed above. After deducting the to-be-requested amounts for attorney's fees, settlement administrator fees, and actual costs for Class Counsel, the Service Payment to the Class Representative, and the PAGA payment (including the State of California's portion), the net settlement amount to be divided among the class will be approximately $2,062,666.67, with each settling Class Member receiving approximately $30 (net) for each active workweek worked during the relevant period. This compares favorably with the average recovery for wage and hour class action settlements that are routinely approved in California. (Hefelfinger Decl., ¶ 30).

B. The Settlement is the Product of Non-Collusive, Arm's-Length and Informed Negotiations.

California courts recognize that "a presumption of fairness exists where … [a] settlement is reached through arm's-length bargaining." (*Wershba*, *supra*, 91 Cal.App.4th at 245.) In this case, the Settlement was reached after two independent sessions of mediation with an experienced class-action mediator, and after significant contested motion practice and class outreach had occurred in the removed action. Prior to the mediation, the parties exchanged written discovery requests, responses, pay and time data, and documents. Defendant produced substantial documentation including company policies, and substantial data concerning the hours worked by the Class Members, along with payroll data, for mediation purposes. In reaching the Settlement, counsel on both sides relied on their respective substantial litigation experience in similar employment class actions. Plus, information gleaned from investigation and the discovery processes informed Class Counsel's assessment of the strengths and weaknesses of the case and the benefits of the Settlement. (Hefelfinger Decl., ¶ 43).

C. The Service Payment to the Named Plaintiff is Reasonable.

The proposed Service Payment of $25,000.00 to Cynthia Gilbert is intended to recognize her substantial initiative, risk, and effort on behalf of the Class. It is also reflective of the amount of time Ms. Gilbert spent engaged in the case and acting as a representative. Courts routinely approve incentive awards to compensate plaintiffs for the services they provide and the risks they incur during class action litigation. (*See Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in bringing the case).)

Ms. Gilbert initiated this action on behalf of all Class Members when she very well could have done so on her own behalf only. Additionally, Ms. Gilbert assisted Class Counsel at every stage, from reviewing the pleadings, reviewing documents and data provided, analyzing Class Counsel's damages model, providing input through repeated questions from Class Counsel regarding every aspect of this case, participating in two rounds of mediation and the follow up negotiations, assisting with class member outreach and direction, reviewing and scrutinizing the settlement agreement, and remaining in close contact with Class Counsel from day one. (Gilbert Decl., ¶¶ 3-7).

Moreover, it is important to note that Ms. Gilbert, because she is to receive this enhancement payment, is entering into a comprehensive release of *all claims, known and unknown*, unlike the rest of the Class Members, who are releasing only those claims that were or could have been litigated based on the facts alleged in the operative Complaint. (Gilbert Decl., ¶ 8). Also, due to her fee agreement with Class Counsel, Ms. Gilbert would be obligated to pay for all costs arising out of the litigation; if the case had not been certified, these costs could have been substantial for someone making a modest living, and her agreement to take on these costs put her at great financial risk. (*Id*. at ¶ 9). As such, a $25,000.00 payment to Ms. Gilbert fairly compensates her for the full release, the assistance she provided to Class Counsel and her co-employees/Class Members, and the risk she incurred.

D. The Attorney's Fees and Costs are Reasonable Under the Common Fund Doctrine.

The attorney's fees and costs requested by Class Counsel are reasonable under the common fund doctrine. The common fund doctrine has been approved by California courts. (*Wershba*, *supra*, 91 Cal.App.4th at p. 254; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26-30; *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal. 5th 480.

The doctrine is consistent with U.S. Supreme Court precedent also – in *Boeing Co. v. Van Gentert* (2008) 444 U.S. 472, the court ruled that class counsel are entitled to a reasonable fee based on the funds potentially available to be claimed, regardless of the amount actually claimed. See *Newberg*, supra, § 14:6, p. 570. In this case, Class Counsel will request 33.33% of the common fund for its attorney's fees (for a total of $1,208,333.33). Litigation costs of up to $18,000 also will be sought. This request is appropriate and should be preliminarily approved as fair and reasonable.

E. The Proposed Notice is Reasonable.

To protect the rights of absent Class Members, the Court must provide the best notice practicable of a potential class action settlement. (*Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12.) The primary purpose is to provide affected parties with the right to be heard in a meaningful manner. It does not guarantee any particular procedure; rather it requires only notice reasonably calculated to apprise interested parties of the action affecting their interests, and an opportunity to present objections. (*Ryan v. California Interscholastic Federation – San Diego Section* (2001) 94 Cal.App.4th 1048, 1072).

In this case each Class Member will be mailed a Notice of Class Action Settlement and Hearing Date for Final Court Approval, a copy of which is attached as **Exhibit A** to the Settlement. The proposed Notice informs Class Members about the terms of the Settlement; the right to receive compensation thereunder; the right to opt out of the Settlement; the right to object to the Settlement; how claim amounts are calculated; the attorney's fees and costs requested; the administration costs requested; the Enhancement requested; and the date, time, and location of the final approval hearing. The Notice is therefore calculated to ensure that Class Members are apprised of the material terms of the Settlement, in a non-confusing manner.

The Settlement Administrator will provide notice to the Class by first class mail. Defendant will provide the last-known addresses for each Class Member to the Settlement Administrator. Prior to mailing the Notice of Settlement (and other documents in the notice packet), the Settlement Administrator shall cross-reference the U.S. Postal Service National Change of Address Database and update any addresses with any new information pertaining to the Class Members. If a notice packet returns as undeliverable, the Settlement Administrator shall perform a skip-trace using the Class Member's social security number (which Defendant shall also provide to the Settlement Administrator) and, once the new address is ascertained, the Administrator shall re-mail the packet. The Settlement Administrator will attempt multiple deliveries, if needed, to each Class Member by First Class Mail. (Ex. A. to Hefelfinger Decl., Settlement ¶¶ 48-51). For each of these reasons, the proposed Notice is reasonable and should be approved.

VI. CONDITIONAL CERTIFICATION, NOTICE AND FINAL APPROVAL HEARING

Provisional and conditional class certification is appropriate at the preliminary approval stage where, as here, the proposed Class, as defined in the Settlement, has not previously been certified by the Court and the requirements for certification are met. (See 4 *Newberg*, § 11.22 *et seq.*)

Code of Civil Procedure section 382 provides in part that "[w]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue … for the benefit of all." Section 382 authorizes a class action when a Plaintiff meets her burden or establishes the existence of an ascertainable class and a well-defined community of interest. (*Lockheed Martin Corp. v. Sup. Ct.* (2003) 29 Cal.4th 1096, 1103-04.)

The California Supreme Court has held, "The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) Furthermore, "[t]he ultimate question in every case of this type is whether … the issues may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Id.* at pp. 1104-05, internal quotations omitted.)

Here, the parties have stipulated to certification by the Court of the Settlement Class for settlement purposes only. It is impracticable to bring all members of the Class, of which there are approximately 700+ individuals throughout the state, before the Court. The questions of law or fact common to the Class are substantially similar and predominate over the questions affecting the individual members; and, the claims or defenses of the Class Representative are typical of the claims or defenses of the Class. This is because all of the putative class members were subject to common payroll and wage/hour policies at Defendants, and the calculation of amounts owed was determined from common data including the actual payroll and time records of Defendant, establishing "commonality" herein. The class representative and Class Counsel will fairly and adequately protect the interests of the Class, and the Class is reasonably ascertainable, identifiable, and numerous. Finally, class certification has substantial benefits and is the superior method for ensuring a fair and efficient resolution of this controversy. For settlement purposes only, Defendant has joined in the Plaintiffs' request for provisional certification of a Class as set forth in the Settlement Agreement.

In addition to requesting approval of the Settlement, Plaintiff requests that the Court approve the form, content, and distribution of the Notice, and set a date for a final approval hearing. *California Rule of Court* 3.769(e) provides that if the Court grants Plaintiff's motion for preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the Class; and any other matters deemed necessary for the proper conduct of a settlement hearing.

Here, if the Court grants this motion, Plaintiff requests that it set a final approval hearing in April 2026, or as soon thereafter as may be convenient to the Court. Plaintiff further requests that the Court approve the Notice form, attached as **Exhibit A** to the Settlement.

VII. CONCLUSION

This arm's-length settlement avoids significant litigation risk and makes the Settlement and individual settlement amounts available to approximately 718 Class Members. The proposed attorney's fees of 33.33% of the fund are reasonable and deserved in light of Class Counsel's efforts, the results obtained, and the case law. For these reasons, Plaintiff respectfully requests that the Court approve the Settlement, approve the proposed Notice and notice plan, and set a hearing on final approval within 90 days of the date on which this motion is heard or granted, as specified above.

Date: October 28, 2025

PALAY HEFELFINGER, APC

By: ______________________________
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