

Kane Moon (SBN 249834)
H. Scott Leviant (SBN 200834)
Mariam Ghazaryan (SBN 341119)
MOON LAW GROUP, PC
725 S. Figueroa St., 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kmoon@moonlawgroup.com
E-mail: hsleviant@moonlawgroup.com
E-mail: mghazaryan@moonlawgroup.com

Attorneys for Plaintiff Riley J. Small

[Counsel continued on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

RILEY J. SMALL, individually, and SHARESE
CASEY, individually, and on behalf of all others
similarly situated,

Plaintiffs,

vs.

RIDGECREST REGIONAL HOSPITAL, a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: BCV-23-102418

[Assigned for All Purposes to Hon. Thomas S.
Clark, Dept. 17]

CLASS ACTION

**PLAINTIFFS SMALL AND CASEY'S
NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: February 24, 2025
Time: 8:30 a.m.
Courtroom: Dept. 17

Action Filed: July 26, 2023
Trial Date: Not Set

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
Susan J. Perez (SBN 329044)
sperez@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff Sharese Casey

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 24, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department 17 of the above-captioned Court, located at 1415 Truxtun Ave., Bakersfield, CA 93301, plaintiffs Riley J. Small and Sharese Casey (“Plaintiffs”) will and hereby do move this Court for an order:

1. Granting class certification of the Class, solely for settlement purposes pursuant to Code of Civil Procedure § 382;
2. Preliminarily approving the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Agreement”);
3. Appointing counsel for Plaintiffs, Moon Law Group, PC, and Haines Law Group, APC, as Class Counsel;
4. Appointing Plaintiffs Riley J. Small and Sharese Casey as the Class Representatives;
5. Approving the use of the proposed notice procedure and related Class Notice form;
6. Approving ILYM Group, Inc., as the third-party Settlement Administrator;
7. Directing that Class Notice be mailed to the Class; and,
8. Scheduling a hearing date for motions for final approval of class action settlement and awards of attorneys’ fees and costs.

Good cause exists to grant this Motion because: (1) the Class meets all of the requirements for

1 class certification for settlement purposes under Code of Civil Procedure § 382; (2) the Settlement
2 Agreement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted
3 by Plaintiffs; (3) Plaintiffs and Class Counsel are adequate to represent the Class; (4) the proposed notice
4 procedures and related forms comply with California Rules of Court 3.766(d) and (e), adequately apprise
5 Class Members of their rights, and fully comport with due process; and, (5) based on the foregoing,
6 notice should be directed to the Class Members and a Final Approval Hearing should be scheduled
7 (Plaintiffs suggest about 110 days after preliminary approval is granted).

8 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court,
9 which require approval by the Court of a class action settlement and permit the Court to extend the page
10 limit for memoranda.

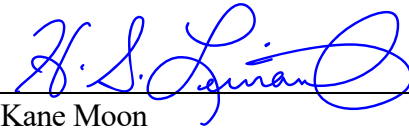
11 **TENTATIVE RULINGS:** This Court does not specify any tentative ruling procedure, as
12 described in California Rules of Court, Rule 3.1308(a).

13 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points
14 and Authorities, the Declarations of H. Scott Leviant, Andrew Rowbotham, Plaintiff Riley J. Small,
15 Plaintiff Sharese Casey, and the Settlement Administrator in support thereof, all papers and pleadings on
16 file with the Court in this action, all matters judicially noticeable, and on such oral and documentary
17 evidence as may be presented in connection with the hearing on the Motion.

18 Respectfully submitted,

19 Dated: January 22, 2025

MOON LAW GROUP, PC

20 By: 
21 Kane Moon
22 H. Scott Leviant
23 Mariam Ghazaryan

Attorneys for Plaintiff Small

HAINES LAW GROUP, APC

24 Paul K. Haines
25 Fletcher W. Schmidt
26 Andrew J. Rowbotham
27 Susan J. Perez

Attorneys for Plaintiff Casey

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. THE PRINCIPAL TERMS OF SETTLEMENT	1
III. FACTUAL AND PROCEDURAL BACKGROUND	4
A. Plaintiffs' Claims	4
B. Pre-Mediation Data Production and Analysis.....	5
C. Settlement.....	6
IV. CLASS DEFINITION	7
V. DISCUSSION.....	7
A. The Court Should Conditionally Certify the Class for Settlement Purposes	7
1. The Members of the Class Are Both Ascertainable and Numerous.	7
2. There Are Common Questions That Predominate Over Any Questions That May Be Unique to Individual Class Members.....	8
3. Plaintiffs' Claims Are Typical of Those of the Class.	9
4. Plaintiffs and Plaintiffs' Counsel Will Adequately Represent the Class.	9
5. Proceeding as a Class Action is Superior to Individual Actions.....	10
6. The Proposed Class Notice Complies with Rule 3.766(d) and (e)	10
a) The Notice Procedure Satisfies Due Process	10
b) The Class Notice is Accurate and Informative	11
B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims.....	11
1. Class Action Settlements Are Subject to Review and Approval.	11
2. The Parties Reached the Settlement Through Arms' Length Negotiations Between Experienced Counsel with the Assistance of a Highly Qualified Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.	12

1	3.	The Settlement Represents a Fair, Adequate, and Reasonable Compromise of	
2		Class Members’ Claims Based on Defendant’s Estimated Liability Exposure	
3		Given the Risks Continued Litigation Would Entail.	13
4	4.	The Proposed Method for Allocating Settlement Funds Is Fair.	17
5	5.	The Proposed Enhancement Awards to Plaintiffs Warrant Approval.	17
6	6.	The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate,	
7		and Reasonable and Merits Preliminary Approval.	18
8	7.	The Proposed Payment to the Administrator Is Fair and Reasonable.....	18
9	8.	The PAGA Allocation is Reasonable.....	19
10	VI.	THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING	20
11	VII.	CONCLUSION	20

TABLE OF AUTHORITIES

CALIFORNIA DECISIONAL AUTHORITY

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000).....	12
<i>Amaral v. Cintas Corp.</i> , 163 Cal. App. 4th 1157 (2008).....	20
<i>Amaro v. Anaheim Arena Mgmt., LLC</i> , 69 Cal. App. 5th 521 (2021).....	18
<i>Brinker Rest. Corp. v. Super. Ct.</i> , 53 Cal. 4th 1004 (2012).....	7, 9, 16
<i>Cartt v. Sup. Ct.</i> , 50 Cal. App. 3d 960 (1975).....	10
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009).....	17
<i>Clothesrigger, Inc. v. GTE Corp.</i> , 191 Cal. App. 3d 605 (1987).....	8
<i>Dunk v. Ford Motor Co.</i> 48 Cal. App. 4th 1794 (1996).....	7, 12, 18
<i>Duran v. US Bank Nat’l Ass’n</i> , 59 Cal. 4th 1 (2014).....	13
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008).....	1, 3, 9, 21
<i>Global Minerals & Metals Corp. v. Superior Court</i> , 113 Cal. App. 4th 836 (2003).....	7
<i>In re Microsoft I-V Cases</i> , 135 Cal. App. 4th 706 (2006).....	12
<i>Jaimez v. Daiohs USA, Inc.</i> 181 Cal. App. 4th 1286 (2010).....	7, 8
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008).....	12
<i>Laffitte v. Robert Half Intern. Inc.</i> , 1 Cal. 5th 480 (2016).....	18
<i>Linderv. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000).....	7, 10
<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> , 103 Cal. App. 3d 573 (1980).....	11
<i>McGhee v. Bank of America</i> , 60 Cal. App. 3d 442 (1976).....	9
<i>Miller v. Woods</i> , 148 Cal. App. 3d 862 (1983).....	8
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal. App. 5th 56 (2021).....	19
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , 186 Cal. App. 4th 399 (2010).....	12
<i>Noel v. Thrifty Payless, Inc.</i> , 7 Cal. 5th 955 (2019).....	8
<i>Sav-on Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004).....	7, 8
<i>Seastrom v. Neways, Inc.</i> , 149 Cal. App. 4th 1496 (2007).....	9
<i>Stambaugh v. Superior Court</i> , 62 Cal. App. 3d 231 (1976).....	11

1	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	13
---	--	----

2

3 **FEDERAL DECISIONAL AUTHORITY**

4	<i>Miller v. CEVA Logistics U.S.A., Inc.</i> , 2015 WL 729638 (E.D. Cal. Feb. 19, 2015)	17
5	<i>O'Connor v. Uber Technologies, Inc.</i> , 201 F.Supp.3d 1110 (N.D. Cal. 2016)	19
6	<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2000)	17
7	<i>Willis v. Xerox Bus. Servs., LLC</i> , 2013 WL 6053831 (E.D. Cal. 2013)	20

8

9 **STATUTES**

10	Code of Civil Procedure § 382	7
11	Labor Code § 203	8, 15, 16
12	Labor Code § 226	15, 16, 17
13	Labor Code § 2699	17

14

15 **RULES**

16	Rules of Court, Rule 3.766	10
17	Rules of Court, Rule 3.769	7, 11

18

19 **OTHER AUTHORITIES**

20	Class Certification in California: SECOND INTERIM REPORT FROM THE STUDY OF	
21	CALIFORNIA CLASS ACTION LITIGATION - FEBRUARY 2010	16
22	Manual for Complex Litigation (“MANUAL”), (2d Ed. 1993)	11

1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769, plaintiffs Riley J. Small and Sharese Casey
3 (“Plaintiffs”) request that this Court preliminarily approve the class action settlement set forth in the
4 Class Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Agreement”) with
5 Ridgecrest Regional Hospital (“Defendant”).

6 After the exchange of documents and data, and an arm’s-length mediation session with mediator
7 Steven Rottman, Esq., Plaintiffs and Defendant (collectively referred to herein as the “Parties”) reached a
8 proposed class action settlement with a Gross Settlement Amount (“GSA”) of **\$2,780,000.00** in
9 compromise of disputed claims asserted on behalf of the below-defined Class consisting of
10 approximately **1,740** members. Plaintiffs believe this Settlement is a fair, adequate, and reasonable
11 compromise of disputed claims for alleged wage and hour violations and penalties asserted in this case.

12 Plaintiffs now submits this Motion for Preliminary Approval of Class Action Settlement, along
13 with the Agreement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], Exhibit 1 thereto).
14 For the Court’s convenience, below is a summary of the key provisions of the Settlement.

15 **II. THE PRINCIPAL TERMS OF SETTLEMENT**

16 The provisions of the proposed Settlement include the following:

- 17 • Defendant agrees not to oppose certification for purposes of Settlement only (Settlement, ¶
18 12.1);
- 19 • Class: All non-exempt, hourly employees who, during the Class Period, worked for or were
20 deployed to work for Defendant in California (the “Class Period” is the period from August
21 20, 2020 to October 9, 2024). “Participating Class Member” means a Class Member who
22 does not submit a valid and timely Request for Exclusion from the Class portion of the
23 Settlement. (Settlement, ¶¶ 1.5, 1.9, 1.12, 1.34)
- 24 • Settlement Amount: Defendant will pay a maximum of **\$2,780,000.00**, referred to as the
25 Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** benefit
26 per Class Member of about **\$1,597,70** (Settlement, ¶¶ 1.21, 3.1; Leviant Decl., ¶ 17);
- 27 • Funding of Gross Settlement Amount: Defendant shall fund half of the Gross Settlement
28 Amount within 30 days of the Effective Date, and fund the remainder of the Gross

Settlement Amount and the employer's share of any payroll taxes due on the Wage Portion of the Individual Class Payments within 6 months after the first payment. (Settlement, ¶ 4.3.)

- Class Size: About **1,740** individuals who worked about 173,918 workweeks (Settlement, ¶ 8.);
- PAGA Group Size: An estimated **1,140** aggrieved employees who worked about 38,700 pay periods during the PAGA Period (Settlement, ¶ 8);
- PAGA Period: October 4, 2022 to October 9, 2024 (Settlement, ¶ 1.30);
- Kullar/Munoz Analysis: Plaintiffs address the claims analysis herein, at Part V.B.3, and in the Declaration of Leviant, at Paragraph 18;
- No Reversion: The Settlement is a **non-reversionary** settlement (Settlement, ¶ 3.1);
- Certification: Plaintiffs address certification requisites herein, at Part V.A., and in the Declaration of Leviant, at Paragraphs 34-40;
- No Claim Form: No claim form is required (Settlement., ¶ 3.1);
- Class Release: In sum, the Settlement will release wage-and-hour claims for Participating Class Members (those Class Members who do not opt out of the Settlement) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint (Settlement, ¶ 5.2);
- PAGA Release: Aggrieved Employees and the LWDA will release all PAGA penalties that were alleged, or could have been alleged, based on the facts stated in the PAGA Notice and respective complaints, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶ 5.3);
- Net Settlement Amount Available to the Class: After deducting Class Counsels' attorneys' fees and costs, service payments to Plaintiffs, administration costs, and the PAGA penalty, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of Workweeks each Class Member worked for Defendant within the Class Period. The Net Settlement Amount is estimated to be at least **\$1,507,000.00**, resulting in an average **net** payment per Class

- Member of approximately **\$866.09**, before any tax withholdings (Settlement, ¶ 1.27.);
- Tax Allocation: The amounts distributed to Class Members will be characterized as 15% alleged unpaid wages, 85% to interest and penalties, and PAGA Settlement payments to Aggrieved Employees will be allocated as 100% penalties (Settlement, ¶¶ 3.2.4.1, 3.2.5.);
 - Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSA (Settlement, ¶ 3.1);
 - Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, ILYM Group, Inc. ("ILYM"), with the costs of administration at a flat rate of up to \$40,000.00. ILYM's estimate for settlement administration services in the amount of **\$40,000.00** was selected as the lowest bid from a competitive bidding process (Settlement, ¶ 3.2.3; Mullins Decl.);
 - Class Data for Administration: The Settlement Administrator will receive the Class Data within 15 calendar days of Preliminary Approval, use the National Change of Address ("NCOA") database to update the Class Data, and then use skip tracing on returned Class Notices (Settlement, ¶¶ 4.2; 1.10);
 - Class Notice: The Class Notice will issue within 14 days of receipt of the Class Data (Settlement, ¶ 7.4.2). The Class Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion (Settlement, ¶¶ 7.5 – 7.7);
 - Class Notice Language: Class Notice will issue in English and Spanish (Settlement, ¶ 1.11; 7.4.2);
 - Objections: Objections can be submitted in person, by attorney, or in writing to the Administrator, with no pre-requisite to being heard (Settlement, ¶¶ 7.7.1 – 7.7.3);
 - Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a written objection (Settlement, ¶¶ 7.5.1 and 7.7.2);
 - PAGA Allocation: From the GSA, **\$200,000.00** will be allocated to settle claims brought

pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.*

(“PAGA”), and seventy-five percent (75%) of the PAGA allocation, or **\$150,000.00**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶ 1.33; 3.2.5);

- Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Leviant Declaration;
- Enhancement/Service Award to Plaintiffs: Defendant will not oppose the application for Class Representatives Service Payments of up to **\$10,000.00** for Plaintiffs Riley J. Small and Sharese Casey (for a combined total of \$20,000.00), to be paid from the GSA (Settlement, ¶ 3.2.1);
- Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to exceed 35% of the GSA (**\$973,000.00**), and actual costs, in an amount not to exceed **\$40,000.00**, to be paid out of the GSA (Settlement, ¶ 3.2.2);
- Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 4.4.1);
- Uncashed Checks: Any settlement checks that are mailed to the Class Members (or PAGA settlement member) and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys represented by such checks will be sent to the California Controller’s Unclaimed Property Division in the name of the Class Member (or PAGA settlement member) failing to cash the check (Settlement, ¶ 4.4.3);
- Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after entry (Settlement, ¶ 7.8.1);
- Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ 12.2).

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiffs’ Claims

On July 26, 2023, Plaintiff Small commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to pay minimum and regular rate wages, failure to pay overtime

1 compensation, failure to provide meal periods, failure to authorize and permit rest breaks, failure to
2 indemnify necessary business expenses, failure to timely pay final wages at termination, failure to provide
3 accurate itemized wage statements, and unfair business practices. (Leviant Decl., ¶ 4.) On October 4,
4 2023, Plaintiff Casey filed her Complaint alleging that Defendant failed to pay all overtime wages, pay all
5 minimum wages, provide all lawful meal periods, authorize and permit all lawful rest periods, issue
6 accurate itemized wage statements, pay all wages due at the time of separation, and comply with
7 California’s unfair competition laws. (*Id.*) Defendant provides healthcare services at several facilities.
8 (*Id.*)

9 Pursuant to Labor Code section 2699.3(a), Plaintiffs gave timely written notice to Defendant and
10 the LWDA by sending the PAGA Notices. (Leviant Decl., ¶ 5.) The LWDA did not indicate that it
11 intended to investigate the alleged violations referenced in the letters, and the 65-day time period
12 permitted for the LWDA to provide such a notification expired. (*Id.*) On September 29, 2023, Plaintiff
13 Small filed a First Amended Complaint alleging an additional cause of action against Defendant for
14 violation of PAGA. (*Id.*) On December 11, 2023, Plaintiff Casey filed her First Amended Complaint to
15 include a cause of action for civil penalties under PAGA. (*Id.*) On January 23, 2024, the Court deemed
16 the *Small* and *Casey* cases related. (*Id.*) On October 23, 2024, Plaintiff Small filed a Second Amended
17 Complaint, adding Plaintiff Casey as a second-class representative to the Action and incorporating all
18 claims and factual allegations alleged by Casey in her prior Complaints. (*Id.*) The Second Amended
19 Complaint is the operative complaint in the Action (the “Operative Complaint.”). (*Id.*) On November 4,
20 2024, Plaintiff Casey requested dismissal of the separate but related *Casey* case, Kern County Superior
21 Court Case No. BCV-23-103337. (*Id.*) Defendant denies the allegations in the PAGA Notices and each
22 and all of the aforementioned Complaints, including the Operative Complaint, denies any failure to
23 comply with the laws identified in any Complaint including the Operative Complaint and denies any and
24 all liability for the causes of action alleged.

25 **B. Pre-Mediation Data Production and Analysis**

26 The Parties conducted extensive informal discovery and investigation of the facts and law.
27 (Leviant Decl., ¶ 6.) The Parties have analyzed time clock, pay and other data pertaining to Plaintiffs and
28 the Class during the relevant Class Period, including but not limited to the numbers of former and current

1 members of the Class, average workweeks and pay periods, and average rate of hourly pay. Time and
2 pay data were used for Plaintiffs' pre-mediation analysis. In addition, Defendant also provided other
3 data pertaining to Plaintiffs and the Class during the relevant Class Period, including but not limited to
4 documents reflecting wage and hour policies and practices during the Class Period. (*Id.*)

5 After reviewing documents regarding Defendant's wage and hour policies and practices and
6 other information obtained during the exchange of informal discovery, Class Counsel were able to
7 evaluate the probability of class certification, success on the merits, and the reasonably obtainable
8 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
9 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the
10 claims and defenses asserted in the litigation. (Leviant Decl., ¶ 7.)

11 C. Settlement

12 On July 9, 2024, the Parties participated in an all-day mediation presided over by the experienced
13 and highly-regarded wage and hour class and representative PAGA action mediator, Steven Rottman,
14 Esq., which led to this Agreement to settle the Action. (Leviant Decl., ¶ 8.) The Parties discussed at
15 length the burdens and risks of continuing with the litigation as well as the merits of claims and defenses.
16 (*Id.*) After the mediation, and the eventual settlement, the Parties then signed a long-form Class Action
17 and PAGA Settlement Agreement (the "Agreement"). (*Id.*)

18 Plaintiffs and Class Counsel are aware of the burdens of proof necessary to establish liability for
19 the claims asserted in the Action, both generally and in response to Defendant's defenses thereto.
20 (Leviant Decl., ¶ 9.) Plaintiffs and Class Counsel have also taken into account Defendant's agreement to
21 enter into a Settlement that confers substantial relief upon the Class. (*Id.*)

22 Based on the foregoing, Plaintiffs and Class Counsel have determined that the Settlement set
23 forth in the Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the
24 Class. (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the Parties agree that the
25 requirements for establishing class action certification with respect to this Class have been met and are
26 met. (*Id.*) If this Settlement is not approved by the Court for any reason, Defendant reserves the right to
27 contest class certification. (*Id.*) This Settlement, if approved, will result in termination of the litigation
28 through the entry of the Judgment and the release of all Released Class Claims for all Class Members,

including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)
If approved, it will also result in the release of all Released PAGA Claims.

IV. CLASS DEFINITION

The Class is defined as follows:

All non-exempt, hourly employees who, during the Class Period, worked for or were deployed to work for Defendant in California (the “Class Period” is the period from August 20, 2020 to October 9, 2024). “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Settlement, ¶¶ 1.5, 1.9, 1.12, 1.34)

(Leviant Decl., ¶ 34 and Exhibit 1.)

V. DISCUSSION

A. The Court Should Conditionally Certify the Class for Settlement Purposes

The Class should be provisionally certified for settlement because: (1) the Class is ascertainable and numerous; (2) there exists a well-defined community of interest; and (3) a class action is the superior method of adjudication for this settlement. Code of Civ. Proc. § 382; *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012); *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000); *Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement *only*, Defendant stipulates to conditional certification. (Settlement ¶ 12.1.)

“The certification question is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” *Id.*, at 326, quoting *Linder*. Indeed, the certification question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). “[I]t is also well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996).

In view of these standards, the Class should be certified for purposes of settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

1. The Members of the Class Are Both Ascertainable and Numerous.

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of

1 the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal. App. 3d
2 862, 873 (1983). A class is ascertainable when “it is defined ‘in terms of objective characteristics and
3 common transactional facts’ that make ‘the ultimate identification of class members possible when that
4 identification becomes necessary.’” *Noel v. Thrifty Payless, Inc.*, 7 Cal 5th 955, 980 (2019). The Class
5 definition is sufficiently specific to enable the Parties, Class Members, and the Court to determine the
6 parameters of the Class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 617 (1987). Here,
7 there were about 1,740 Class Members, all of whom may be identified by reference to Defendant’s
8 records. The Class is not only ascertainable, but also numerous. (Leviant Decl., ¶ 35.)

9 **2. There Are Common Questions That Predominate Over Any Questions That**
10 **May Be Unique to Individual Class Members.**

11 The community of interest requirement embodies three factors: (1) predominant questions of law
12 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
13 representatives who can adequately represent the class. *Dunk*, 48 Cal. App 4th at 1806; *Richmond*, 29
14 Cal. 3d at 473-75. A question of law or fact is common to the members of a class if it may be resolved
15 through common proof. *See, Jaimez*, 181 Cal. App. 4th at 1305. As for predominance, it “is a
16 comparative concept, and ‘the necessity for class members to individually establish eligibility and
17 damages does not mean individual fact questions predominate.’” *Sav-on*, 34 Cal 4th at 334.

18 In this case, common questions include, but are not limited to: i. Whether or not Defendant paid
19 proper wages to the Class; ii. Whether or not Defendant provided meal periods to the Class; iii. Whether
20 or not Defendant provided rest periods to the Class; iv. Whether or not Defendant paid compensation
21 timely upon separation of employment to former Class Members; v. whether or not Defendant paid
22 compensation timely throughout Class Members’ employment; vi. Whether or not Defendant provided
23 accurate itemized wage statements to the Class; vii. Whether or not waiting-time penalties are available
24 to the Class for violation of California Labor Code § 203; and, viii. Whether or not Defendant engaged in
25 unlawful or unfair business practices affecting the Class in violation of the UCL. (Leviant Decl., ¶¶ 37-
26 38.)

27 In the Action, Plaintiffs’ claims present sufficient common issues of law and fact that
28 predominate over individual issues and warrant class certification. From their review of the

documentation provided, Class Counsel determined that for purposes of these claims, Defendant's policies and practices are either identical, or sufficiently similar, to raise the same questions of liability, and applied to all Class Members. Because Class Members would have to prove the same issues of law and fact to prevail, and because their potential legal remedies are identical, it would be preferable to resolve all Class Members' claims by means of the Settlement than to require each Class Member to litigate his or her individual claims. Therefore, common questions predominate over questions that may be unique to individual Class Members, and class-wide settlement is superior to any other resolution.

3. Plaintiffs' Claims Are Typical of Those of the Class.

Typicality "requires a showing that the class representative has claims or defenses typical of the class." *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App 4th 1524, 1534 (2008), approved by *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal 4th 1004 (2012). California law does not require that plaintiffs have claims identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct. *Seastrom v. Neways, Inc.*, 149 Cal. App 4th 1496, 1502 (2007).

In light of these standards, Plaintiffs are typical of class members. Like other Class Members, Defendant employed Plaintiffs Riley J. Small and Sharese Casey as hourly employees during the Class Period, and Plaintiffs claim that they were subject to the same policies alleged to have impacted the entire class. (Leviant Decl., ¶ 36.) Plaintiffs allege that they and other Class Members share the same claims stemming from Defendant's alleged violations of the Labor Code and relevant wage order. In addition, Defendant's main defenses, and that the wage and hour policies and practices fully comply with California law, apply equally to the claims of all Class Members. Thus, Plaintiffs are typical of the Class.

4. Plaintiffs and Plaintiffs' Counsel Will Adequately Represent the Class.

Adequacy is shown where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to class members. *McGhee v. Bank of America*, 60 Cal. App. 3d 442, 451 (1976). In other words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that might hinder the

1 plaintiff's ability to represent the class. *Id.* In the Action, Plaintiffs have no conflicts of interest with
2 other Class Members and have agreed to place Class interests above their own. (Small Decl., ¶¶ 5-19;
3 Casey Decl., ¶¶ 7-8; Leviant Decl., ¶ 39.) Moreover, Plaintiffs' counsel are experienced in wage and
4 hour class litigation and have no conflicts of interest with absent Class Members. (Leviant Decl., ¶¶ 21-
5 26, 39; Rowbotham, ¶¶ 1-9.) Thus, this Court should appoint Plaintiffs as Class Representatives and
6 appoint Plaintiffs' Counsel as Class Counsel.

7 **5. Proceeding as a Class Action is Superior to Individual Actions**

8 Plaintiffs contend that proceeding as a class action is a superior means of resolving this dispute,
9 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
10 the only means to deter and redress the alleged Labor Code violations. *See Linder v. Thrifty Oil Co.* 23
11 Cal 4th at 434. Furthermore, individual actions arising out of the same operative facts would unduly
12 burden the courts and could result in inconsistent results, which may be avoided by class certification.

13 **6. The Proposed Class Notice Complies with Rule 3.766(d) and (e)**

14 Notice requirements are set forth in Rules of Court, Rule 3.766. In determining the manner of
15 notice, the court must consider interests of the class, relief requested, stakes of individual class members,
16 costs of notifying class members, resources of the parties, possible prejudice to class members who do
17 not receive notice, and the *res judicata* effect on class members. Rules of Court, Rule 3.766(e).

18 *a) The Notice Procedure Satisfies Due Process*

19 The proposed procedure for distributing the proposed Class Notice is robust and meets the
20 requirement that it have "a reasonable chance of reaching a substantial percentage of the class members."
21 *Cartt v. Sup. Ct.*, 50 Cal.App.3d 960, 974 (1975). There is no statutory or due process requirement that
22 all class members receive actual notice, but in this matter, the Class Members will receive direct notice.
23 Here, the proposed procedure includes safeguards, including, but not limited to, mailing notice to Class
24 Members' last known addresses; skip tracing; searches for address changes; and the re-mailing of
25 returned Class Notices to any forwarding addresses. This manner of giving notice complies with Rule of
26 Court 3.766(c) because it provides a reasonable chance that Class Notice will reach most if not all Class
27 Members.
28

1 b) *The Class Notice is Accurate and Informative*

2 The proposed Class Notice should be approved for dissemination to the Class Members because
3 its content complies with Rule of Court 3.766(d) in that it contains a brief explanation of the case,
4 including the basic contentions or denials of the Parties, detailed information about Class Members’
5 rights to be excluded from the Settlement and object to the Settlement; a statement that the Settlement
6 will bind all members who do not timely opt-out. Thus, the Class Notice also satisfies Rule of Court
7 3.769(f) regarding the contents of settlement notices.

8 The Class Notice also fulfills the requirement of neutrality in class notices. 3 NEWBERG § 8.39.
9 It summarizes the proceedings and the terms and conditions of the proposed Settlement, in an
10 informative and coherent manner, in compliance with the Manual for Complex Litigation
11 (“MANUAL”), (2d Ed. 1993), which states that “the notice should be accurate, objective, and
12 understandable to Class Members . . .” MANUAL, § 30.211. It makes clear that the Settlement does
13 not constitute an admission of liability by Defendant and recognizes that this Court has not ruled on the
14 merits. It also states that the final settlement approval decision has yet to be made. Accordingly, the
15 Class Notice complies with the standards of fairness, completeness, and neutrality required of a
16 combined settlement-certification class notice.

17 **B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair,**
18 **Adequate, and Reasonable Compromise of Disputed Wage Claims**

19 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
20 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
21 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
22 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). For the reasons discussed below, this Court
23 should preliminarily approve the Settlement, allow the Parties to give notice to the Class as proposed,
24 and schedule a final fairness and final approval hearing.

25 **1. Class Action Settlements Are Subject to Review and Approval.**

26 Any settlement of class litigation must be reviewed and approved by the presiding court. Rules
27 of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review and (2) a
28 subsequent (final) review after notice has been distributed to the class members. The Preliminary

1 Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks
2 *preliminary approval* and the setting of a Final Approval Hearing.

3 To evaluate a settlement, the trial court must receive “*basic*” information about the nature and
4 magnitude of the claims in question and the basis for concluding that the consideration being paid for the
5 release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
6 App. 4th 116, 133 (2008). However, the record need *not* contain an explicit statement of the maximum
7 theoretical amount that the class could recover. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*,
8 186 Cal. App. 4th 399, 409 (2010).

9 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
10 **Between Experienced Counsel with the Assistance of a Highly Qualified**
11 **Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

12 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
13 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
14 experienced in similar litigation, and the percentage of objectors is small.¹ *Dunk*, 48 Cal.App.4th at 1802;
15 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
16 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In exercising the power to approve a settlement,
17 the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable,” *Dunk*,
18 at 1801, considering “the complexity and likely duration of further litigation, the risk of maintaining class
19 action status through trial, the amount offered in settlement, the extent of discovery completed and the
20 state of the proceedings, the experience and views of counsel, the presence of a governmental participant,
21 and the reaction of the class members to the proposed settlement. *Id.* These factors require balancing, are
22 non-exhaustive, and, as such, trial courts should tailor the factors considered to each case and give due
23 regard to “what is otherwise a private consensual agreement between the parties.” *Id.*

24 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
25 counsel with the assistance of a skilled mediator, Steven Rottman, Esq. (Leviant Decl., ¶¶ 8-10.)

26
27 ¹ Because the fourth prerequisite for the presumption to arise cannot be addressed until the final
28 approval hearing, only the first three prerequisites are relevant at this preliminary stage of the settlement
approval process.

1 Plaintiffs obtained data from Defendant and then carefully reviewed that information. Counsel for
2 Plaintiffs also examined relevant policies and interviewed witnesses in detail about their work
3 experiences and Defendant's practices.

4 Based on the review of data, Plaintiffs estimated potential exposure and then estimated risk
5 factors to adjust the reasonable expected outcome. The investigation that Plaintiffs' counsel conducted
6 was sufficient to provide them with enough information to intelligently evaluate the estimated exposure
7 for purposes of negotiating the Settlement in view of the risks discussed below and was sufficient to
8 allow this Court to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245
9 (2001). A thorough data analysis was conducted.

10 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**
11 **of Class Members' Claims Based on Defendant's Estimated Liability**
12 **Exposure Given the Risks Continued Litigation Would Entail.**

13 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
14 trial and does not have to provide 100% of damages sought to be fair and reasonable. "In the context of a
15 settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the
16 complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba*, 91
17 Cal. App. 4th at 250. Accordingly, because settlements involve compromise, even one that provides for
18 substantially narrower relief than would likely be obtained if the suit were successfully litigated can be
19 reasonable given that "the public interest may indeed be served by a voluntary settlement in which each
20 side gives ground in the interest of avoiding litigation." *Id.*

21 With respect to the claims asserted here, there are serious risks that support this Settlement. These
22 risks include, but are not limited to: (i) the risk that Plaintiffs would be unable to establish liability for
23 unpaid wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"); (ii) the
24 risk that Defendant's meal and rest period policies might not support class certification or a class-wide
25 liability finding; (iii) the risk that uncertainties about the legality of Defendant's policies and practices
26 could preclude class-wide awards of statutory penalties; (iv) the risk that individual differences between
27 Class Members could be construed as pertaining to liability and not just damages; (v) the risk that any
28 penalty award under PAGA could be reduced by the Court in its discretion; (vi) the risk that lengthy trial

1 or appellate litigation could ensue; (vi) the risk that violation rates could prove lower than expected; and,
2 (vii) the risk that Wage Order provisions unique to healthcare workers could preclude class treatment of
3 some or all claims. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

4 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
5 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of
6 course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to
7 liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be
8 given the opportunity to opt-out, allowing those who feel they have claims that are greater than the
9 benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the approximately
10 **1,740** members of the Class, the average **gross** benefit is **\$1,597.70** per class member, and the estimated
11 average **net** recovery for each Class Member would be approximately **\$866.09**. (*Id.*) Given that
12 Defendant could challenge certification and liability, this is the best result that could have been achieved
13 in settlement. Moreover, a Class Member who worked a greater number of workweeks will receive a
14 larger Settlement share than a Class Member who worked for a shorter time during the class period. (*Id.*)

15 After analyzing the claims in this matter, Plaintiffs have concluded that the Gross Settlement
16 Amount of **\$2,780,000.00** is about 90% of the **\$3,077,325.57** estimate of *risk-adjusted* recovery
17 (excluding interest) at this stage in the litigation. (Leviant Decl., ¶ 18.) This assessment is based on a
18 carefully constructed model of the current fair value of the case, using estimated risks, average wage
19 rates, numbers of employees, and the amount of time covered by the class period. (*Id.*)

- 20 • A reasonably estimated exposure for unpaid off-the-clock wages was calculated, with the
21 assistance of an expert, to be approximately **\$1,899,238.00**, based on an assumption of four
22 minutes of off-the-clock work for every shift for every Class Members. However, with the
23 high risk factor discounts for certification and liability proof, the value of that claim is
24 estimated by Plaintiffs' counsel to be approximately **\$227,908.56**, assuming certification
25 probability of 30% and merits success at 40%. The off-the-clock time resulted from
26 timeclock line delays and COVID temperature checks, a claim that was disputed by
27 Defendant. Here, a \$227,908.56 exposure has a value of about 12% of its maximum, given a
28 likelihood of success on both certification and the merits, which is an approximation of the
chain probability of certification multiplied by merits chances: $0.3 \times 0.4 = 0.12$. This theory
of recovery has a high degree of risk because it depends on Class Member estimates of the
frequency and duration and is testimony dependent.
- A reasonably estimated exposure for unpaid wages due to rounding was estimated, with the
assistance of an expert, to be approximately **\$12,500.00**. However, with the risk factor
discounts for certification and liability proof, the value of that claim is estimated by
Plaintiffs' counsel to be approximately **\$6,125.00**, assuming certification probability of 70%

and merits success at 70%. The rounding resulted from a timeclock system that adjusted time punches. Here, a \$6,125.00 exposure has a value of about 49% of its maximum, given a likelihood of success on both certification and the merits, which is an approximation of the chain probability of certification multiplied by merits chances: $0.7 \times 0.7 = 0.49$. While rounding claims are now more potent following *Camp v. Home Depot U.S.A., Inc.*, 84 Cal. App. 5th 638 (2022), pet. for rev. granted (Feb. 1, 2023), the true value of a rounding claim arises from derivative penalties, and Defendant has a strong argument that it believed, in good faith, that rounding was permissible.

- A reasonably estimated exposure for rest break violations over the class period was calculated at **\$2,510,109.20**, but with chances of certification and proof of liability (20% and 20% respectively) for a risk-adjusted exposure of **\$100,404.33**. This claim is based entirely on class member testimonials that rest breaks were sometimes missed due to work demands, Plaintiffs asserted value for settlement purposes, while understanding that this theory carries the potential for high risk given that employees were often allowed to determine when to take rest breaks. The exposure assumes every class member missed one rest break every pay period.
- A reasonably calculated exposure for meal break violations over the class period was calculated at **\$2,414,553.50**, with chances of certification and liability risks (40% and 40% respectively) resulting in a risk-adjusted exposure of **\$386,328.56**. This exposure is based upon facial violations. Employee choice is a serious issue in the context of a meal period claim. So long as an employee has the opportunity to take a lawful meal period, an employee can choose to take it late, cut it short, or skip it.
- The risk-adjusted penalty recovery for Labor Code § 203 penalties was estimated to be approximately **\$1,198,085.28**, on a maximum exposure of **\$4,278,876.00** (with certification and merits success chances of 70% and 40% respectively, based on all theories of unpaid wages, adjusted for the additional risk of needing to prove other elements in addition to the underlying wage claim). The need to show a knowing and intentional violation constitutes an additional risk factor.
- The risk-adjusted penalty recovery for wage statement penalties were estimated to be approximately **\$594,468.00**, on a maximum exposure of **\$2,123,100.00** (with certification and merits success chances of 70% and 40% respectively, based on all theories of unpaid wages, adjusted for the additional risk of needing to prove other elements in addition to the underlying wage claim). The value of this claim was just dealt a severe blow by the recent California Supreme Court decision of *Naranjo v. Spectrum Security Services, Inc.* (May 6, 2024), which significantly strengthened the good faith defense to Section 226 penalties.
- Performing risk-adjusted valuations for all claims yields a total value in the range of **\$2,595,733.07**, excluding PAGA.²
- Plausible PAGA penalties exposure was calculated to be **\$4,815,925.00**. But, assuming issues with proof and cooperation of aggrieved employees, along with the Court's power to reduce penalties, the realistic exposure was calculated to be **\$481,592.50**.

² It is difficult to assign specific percentages to future events, but it does provide a method for attempting to reduce the concept of "very high risk" or "high risk" to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel. The numbers explain with math what can also be described conceptually in words.

1 (See, Leviant Decl., ¶ 18.)

2 This result here is fully supportable as reasonable. First, it is important to recognize the
3 wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶
4 19.) Second, rest break and meal period claims have been challenging to certify for many years, even
5 after *Brinker*. (Leviant Decl., ¶ 19.) Arbitration agreements present a very high risk to all class claims.
6 The Judicial Council’s Class Certification in California: SECOND INTERIM REPORT FROM THE
7 STUDY OF CALIFORNIA CLASS ACTION LITIGATION - FEBRUARY 2010 (“Second Interim
8 Report”), at page 5, states that “less than a quarter of disposed cases in the study sample were certified,
9 either through a litigated motion for certification or as part of a classwide settlement agreement.” See,
10 Second Interim Report, at 5 (emphasis added).³ That “*or*” is significant. The certification rates
11 identified in the study of less than 25% includes *both* contested certifications and settlement
12 certifications, which are the majority of certifications. In other words, one must assume in any wage and
13 hour class action prior to certification that a contested certification motion will have a success rate of well
14 under 25%, and probably closer to 10% as a starting point for risk evaluation. The facts of each case
15 have significant bearing on these percentages. But it cannot be disputed that certification is an
16 exceptionally difficult procedural hurdle to successfully overcome. Thus, it is not unreasonable to start
17 from the proposition that a pre-certification settlement that is 10% to 15% of the maximum plausible
18 exposure is a valid starting point for valuation. If roughly 10% of class actions are certified on a
19 contested basis, then, on average, 90% of the time a class will not be certified and the result for the class
20 is *zero* dollars.

21 Here, the estimated certification probabilities are *above* the average rate at which cases were
22 certified in California over the study years, based upon data available through the California Courts
23 websites. (Leviant Decl., ¶ 19.) In sum, well *under* 20% of all cases filed as proposed class actions are
24 ultimately certified by way of a *contested* motion. (*Id.*) Here, the recovery falls within the expected
25 outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to evaluate the result
26

27 ³ The report is available at <https://www.courts.ca.gov/documents/classaction-certification.pdf> (last
28 viewed March 12, 2024).

by examining only the premium wages at issue (approximately \$6,836,399.70, *with no risk reduction*), excluding penalties and interest.⁴ This Settlement achieves the goals of the litigation.

4. The Proposed Method for Allocating Settlement Funds Is Fair.

The proposed method of allocating the Settlement Fund to Class Members also is fair and reasonable. The Net Settlement Amount is to be allocated between all Class Members, based on time worked by the Class Member during the Class Period, in relation to the total amount of time worked by all participating Class Members. This proposed method is fair and reasonable because each Class Member's actual potential damages vary based on the number of workweeks he, she or they worked (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when a higher number of incidents occur). A Class Member who worked a greater number of work weeks will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time. (Leviant Decl., ¶¶ 13, 17.)

5. The Proposed Enhancement Awards to Plaintiffs Warrant Approval.

The proposed enhancements of \$10,000.00 each to Plaintiffs Small and Casey are intended to recognize substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. Factors considered when awarding an incentive include the actions the plaintiff has taken to protect the class, the degree to which the class has benefitted, the amount of time and effort the plaintiff expended in the litigation, the risk to the class representative in commencing suit (financial and otherwise), the notoriety and personal difficulties encountered, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed by the plaintiff as a result of the litigation. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785,

⁴ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser amount than the maximum civil penalty amount specified by this part...")), and, second, courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics U.S.A., Inc.*, 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a defendant's exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).

804 (2009). Here, Plaintiffs contributed time to the prosecution of this matter, including, answering questions and providing assistance prior to the mediation with information and substantial time conferring with counsel over the course of this litigation and before it was filed. (Small Decl., ¶¶ 5-19; Casey Decl., ¶¶ 7-8; Leviant Decl., ¶ 32.) The enhancements also recognize risks Plaintiffs took to be personally liable for costs regardless of the success of the litigation, as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiffs sued an employer, making future employment less certain.

6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Preliminary Approval.

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorney's fees in California Courts. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁵ Thus, this Court may and, pursuant to *Laffitte*, *should* award fees to Plaintiffs' counsel based upon the percentage of the fund methodology.

Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund method or the lodestar method is used, the outcome is roughly the same: "[F]ee awards in class actions average around one-third of the recovery' regardless of 'whether the percentage method or the lodestar method is used.'" *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521 (2021). This is also consistent with counsels' experience in class cases. Here, Plaintiffs' attorneys intend to request attorneys' fees of up to \$973,000.00 (35% of the GSA), and costs capped at \$40,000.00 (which includes payment for mediations, filing fees, service of process fees, and other standard expenses). (Leviant Decl., ¶ 31.) Given the efforts and risks involved in this case, as well as the results achieved, these amounts are within the range of reasonableness and warrant *preliminary approval*.

7. The Proposed Payment to the Administrator Is Fair and Reasonable

ILYM, which has been selected due to its competitive bid, states that administration can be

⁵ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases." *Laffitte*, 1 Cal. 5th at 501.

performed for a flat rate of **\$40,000.00**. In counsel’s experience, based on similar wage-and-hour actions, an estimated cost of **\$40,000.00** is a fair and reasonable amount for administration fees and should be preliminarily approved. (Leviant Decl., ¶ 33.) ILYM has also confirmed its capabilities and security protocols in the accompanying declaration.

8. The PAGA Allocation is Reasonable

The ultimate decision as to the amount of penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part 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.”

Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the wage and hour claims is robust and serves the deterrent purpose of PAGA. *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA.”). *Moniz* provided explicit confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with federal courts that have considered how to evaluate a PAGA settlement, concluded that the class action factors are appropriately considered, along with a consideration of whether the settlement furthers “PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.”

As to the first set of elements (the class-type analysis), it is embodied in Plaintiffs’ discussion of the adequacy of the settlement generally. Here, the expense, complexity and likely duration of future litigation was to some extent an unknown. However, what is certain is that to adequately establish the violations that would support a substantial penalty, tremendous time and expense would be invested.

The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,

1 PAGA's purposes include (1) remediation of present labor law violations, (2) deterrence of future
2 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
3 portion of settlement funds to Class Members still advances the goal of labor law violation remediation.
4 The allocation of a major portion of settlement funds to Class Members also deters future violations. This
5 is a \$2,780,000.00 settlement, a good result. Deterrence is fulfilled. Finally, allocation of a major portion
6 of settlement funds to Class Members still advances the goal of enforcement of state labor law. This
7 Settlement is, by definition, a response to alleged violations of labor laws, balanced against risks.

8 In addition, there is no evidence that a court or a commissioner had informed Defendant that its
9 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
10 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013). And in *Cotter*, the court found a
11 significant reduction of the PAGA claim would be appropriate because "[t]his does not appear to be a
12 case where a company has deliberately sought to evade the law." *Cotter*, 176 F. Supp. 3d at 941.

13 Finally, the PAGA allocation is fair. The LWDA is receiving \$150,000.00. The Class is
14 receiving, net, an estimated \$1,507,000.00 for the releases of *all* other claims. While the proportion is
15 tipped in favor of employees, the allocation satisfies California's wage and hour policies.

16 **VI. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING**

17 Plaintiffs request that the Final Approval Hearing in this case be scheduled for about 110 days
18 after issuance of the Court's Order granting Preliminary Approval. Under the Settlement, Defendant will
19 have 15 days to provide the data to ILYM, which will then have 14 calendar days to mail out Class
20 Notice. Class Members have 30 days after mailing of the Class Notice to submit exclusions or
21 objections (with a 14-day extension available for re-mailed notices). Therefore, Plaintiffs propose a
22 Final Approval Hearing scheduled for the first available hearing date that is about 110 days after
23 Preliminary Approval is granted.

24 **VII. CONCLUSION**

25 For all the foregoing reasons, because the Class meets the requirements for certification, because
26 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the
27 proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant
28 this Motion for Preliminary Approval, adopt the [Proposed] Order Granting Preliminary Approval of

1 Class Action Settlement submitted herewith, and schedule a Final Approval Hearing.

2 Respectfully submitted,

3 Dated: January 22, 2025

4 **MOON LAW GROUP, PC**



5 By: _____

Kane Moon

H. Scott Leviant

Mariam Ghazaryan

7 Attorneys for Plaintiff Small

8 **HAINES LAW GROUP, APC**

9 Paul K. Haines

Fletcher W. Schmidt

10 Andrew J. Rowbotham

Susan J. Perez

11 Attorneys for Plaintiff Casey

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

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 725 S. Figueroa St., Suite 3100, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **PLAINTIFFS SMALL AND CASEY'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

LIGHTGABLER LLP
Chandra A. Beaton
cbeaton@lightgablerlaw.com
Kathleen M. Fellows
kfellows@lightgablerlaw.com
760 Paseo Camarillo, Suite 300
Camarillo, CA 93010
Facsimile: (805) 248-7209

Counsel for Defendant

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

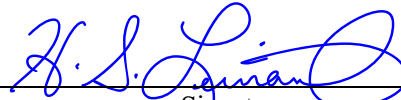
☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **January 22, 2025** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature