

Kane Moon (SBN 249834)
H. Scott Leviant (SBN 200834)
Jaeyoung Lee (SBN 344198)
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: jlee@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 AND PAGA ACTION

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

Date: July 8, 2025

Time: 8:30 a.m.

Courtroom: Dept. 17

Action Filed: July 26, 2023

FAC Filed: September 29, 2023

SAC Filed: October 23, 2024

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 July 8, 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. Finally 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. Ruling that Settlement Class Members who did not timely submit requests for exclusion from the settlement as set forth in the Agreement have released their claims against Defendant and the other Released Parties as set forth in the Agreement;

6. Ruling that Settlement Class Members who did not timely object to the settlement pursuant to the terms set forth in the Agreement are barred from prosecuting or pursuing any appeal of the Court’s Order;

1 7. Awarding the sums requested in the Motion;

2 8. Entering a Final Judgment; and,

3 9. Without affecting the finality of the final judgment, reserving continuing
4 jurisdiction over the parties for the purposes of implementing, enforcing and/or administering
5 the settlement as set forth in the Agreement or enforcing the terms of the Final Judgment.

6 Good cause exists to grant this Motion because: (1) the Class meets all of the requirements for
7 class certification for settlement purposes under Code of Civil Procedure § 382; (2) the Settlement
8 Agreement is a fair, adequate, and reasonable compromise of the highly disputed wage and hour claims
9 asserted by Plaintiffs; (3) Plaintiffs contend that Plaintiffs and Class Counsel are adequate to represent
10 the Class; (4) the notice procedures and related forms comply with California Rules of Court, Rule
11 3.766(d) and this Court's Order granting preliminary approval of the Settlement, and adequately apprised
12 Class Members of their rights and fully comport with due process.

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

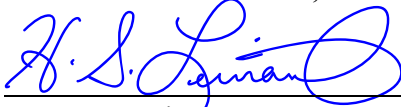
16 **TENTATIVE RULINGS:** This Court does not specify any tentative ruling procedure, as
17 described in California Rules of Court, Rule 3.1308(a).

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

23 Respectfully submitted,

24 Dated: June 4, 2025

MOON LAW GROUP, PC

25 By: 
26 _____

 H. Scott Leviant

27 Attorneys for Plaintiff Small
28

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. THE NOTICE PROCESS WAS COMPLETED WITHOUT ISSUE	1
III. THE PRINCIPAL TERMS OF SETTLEMENT	2
IV. FACTUAL AND PROCEDURAL BACKGROUND	5
A. Plaintiffs' Claims	5
B. Pre-Mediation Data Production and Analysis	6
C. Settlement	7
V. CLASS DEFINITION	7
VI. DISCUSSION	8
A. Consistent with the Court's Findings at the Time of Preliminary Approval, the Court Should Certify the Class for Settlement Purposes	8
B. The Court Should Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims	8
1. Class Action Settlements Are Subject to Review and Approval.	9
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.	9
3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise of Claims Based on Defendant's Estimated Liability Exposure Given the Risks Continued Litigation Would Entail	10
a) The Class Settlement is Fair, Adequate and Reasonable	10
b) The PAGA Allocation is Reasonable	14
4. The Proposed Method for Allocating Settlement Funds Is Fair.	15
5. The Proposed Service Payment to Plaintiffs Warrant Approval	16

1	6.	The Proposed Award of Class Counsel Attorneys’ Fees and Costs Is Also Fair,	
2		Adequate, and Reasonable and Merits Approval.....	17
3	a)	Plaintiffs’ Counsel Should be Awarded Fees Based on a Percentage of the	
4		Fund Recovered, Consistent with the Common Fund Method.....	17
5	b)	A Lodestar Cross Check Confirms that Class Counsel’s Requested	
6		Attorneys’ Fees Are Reasonable.....	18
7	c)	Class Counsel’s Costs Are Reasonable.....	19
8	7.	The Requested Payment to the Administrator Is Fair and Reasonable.....	19
9	VII.	CONCLUSION.....	19

TABLE OF AUTHORITIES

CALIFORNIA DECISIONAL AUTHORITY

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000).....	9
<i>Amaral v. Cintas Corp.</i> , 163 Cal. App. 4th 1157 (2008).....	15
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008)	17
<i>City and County of San Francisco v. Sweet</i> , 12 Cal. 4th 105 (1995).....	17
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009)	16
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996).....	8, 9, 17, 18
<i>Duran v. US Bank Nat’l Ass’n</i> , 59 Cal. 4th 1 (2014).....	10
<i>In re Consumer Privacy Cases</i> , 175 Cal. App. 4th 545 (2009).....	17
<i>In re Microsoft I-V Cases</i> , 135 Cal. App. 4th 706 (2006)	9
<i>Jaimez v. Daiohs USA, Inc.</i> 181 Cal. App. 4th 1286 (2010).....	8
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008)	9
<i>Laffitte v. Robert Half Intern. Inc.</i> , 1 Cal. 5 th 480 (2016)	17
<i>Linderv. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000).....	8
<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> , 103 Cal. App. 3d 573 (1980).....	8
<i>MBNA American Bank, N.A. v. Gorman</i> , 147 Cal. App. 4th 1 (2006)	19
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal. App. 5th 56 (2021)	14, 15
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , 186 Cal. App. 4th 399 (2010)	9
<i>Nightengale v. Hyundai Motors America</i> , 31 Cal. App. 4th 99 (1994).....	18
<i>PLCM Group, Inc. v. Drexler</i> , 22 Cal. 4th 1084 (2000).....	19
<i>Ramos v. Countrywide Home Loans, Inc.</i> , 82 Cal. App. 4th 615 (2000)	18
<i>Sav-on Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004).....	8
<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	17, 18
<i>Stambaugh v. Superior Court</i> , 62 Cal. App. 3d 231 (1976).....	8
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	10, 18

FEDERAL DECISIONAL AUTHORITY

<i>Jordan v. Multnomah County</i> , 815 F.2d 1258 (9th Cir. 1987).....	18
<i>Miller v. CEVA Logistics U.S.A., Inc.</i> , 2015 WL 729638 (E.D. Cal. Feb. 19, 2015).....	14
<i>Moreno v. City of Sacramento</i> , 534 F.3d 1106 (9th Cir. 2008).....	18
<i>O'Connor v. Uber Technologies, Inc.</i> , 201 F.Supp.3d 1110 (N.D. Cal. 2016)	14
<i>Parkinson v. Hyundai Motor America</i> , 796 F.Supp.2d 1160 (C.D. Cal. 2010).....	19
<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2000).....	14
<i>Willis v. Xerox Bus. Servs., LLC</i> , 2013 WL 6053831 (E.D. Cal. 2013)	15

STATUTES

Code of Civil Procedure § 382	8, 19
Labor Code § 226.....	12, 13, 16
Labor Code § 2699.....	14

RULES

Rules of Court, Rule 3.769	8, 9
----------------------------------	------

OTHER AUTHORITIES

Class Certification in California: SECOND INTERIM REPORT FROM THE STUDY OF CALIFORNIA CLASS ACTION LITIGATION - FEBRUARY 2010	13
--	----

1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rule 3.769, plaintiffs Riley J. Small and Sharese Casey
3 (“Plaintiffs”) request that this Court finally approve the class action and California Private Attorneys
4 General Act, Labor Code § 2699 *et seq.* (“PAGA”) representative action settlement set forth in the Class
5 Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Agreement”) with
6 Ridgecrest Regional Hospital (“Defendant”).

7 After the exchange of documents and data, and an arm’s-length mediation session with mediator
8 Steven Rottman, Esq., Plaintiffs and Defendant (collectively referred to herein as the “Parties”) reached a
9 proposed class action settlement with a Gross Settlement Amount (“GSA”) of **\$2,780,000.00** in
10 compromise of disputed claims asserted on behalf of the below-defined Class consisting of **1,823**
11 members.¹ Plaintiffs believe this Settlement is a fair, adequate, and reasonable compromise of disputed
12 claims for alleged wage and hour violations and penalties asserted in this case.

13 Plaintiffs now submit this Motion for Final Approval of Class and Representative Action
14 Settlement (“Motion”), along with the Agreement (attached to the Declaration of H. Scott Leviant
15 [“Leviant Declaration” or “Leviant Decl.”], Exhibit 1 thereto). For the Court’s convenience, Part III,
16 below, contains a summary of significant provisions of the Settlement.

17 **II. THE NOTICE PROCESS WAS COMPLETED WITHOUT ISSUE**

18 Plaintiffs and Defendant have fulfilled the class notice procedures set forth in the Settlement and
19 as dictated by the Court’s preliminary approval Order. The Administrator, ILYM Group, Inc.
20 (“Administrator” or “ILYM”), sent individual Court Approved Notice of Class Action Settlement and
21 Hearing Date for Final Court Approval (“Notice Packets”) to 1,823 Class Members on March 25, 2025.
22 (Declaration of Nick Castro of ILYM Group, Inc. in Support of Motion for Final Approval of Class
23 Action Settlement [“Castro Decl.”], ¶ 7.) There have been **no** requests for exclusion from the Settlement
24 and **no** written objections. (*Id.*, at ¶¶ 11-12.) Of the 1,823 Notices that were mailed, 27 have been
25 deemed undeliverable after no updated address could be found for those returned Notices. (*Id.*, at ¶ 10.)

27 ¹ While the Class size is slightly larger than estimated at the time of Settlement, the total work week
28 count is slightly lower.

III. THE PRINCIPAL TERMS OF SETTLEMENT

The provisions of the proposed Settlement include the following:

- Defendant agrees not to oppose certification for purposes of Settlement only. (Settlement, ¶ 12.1.)
- Class: 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.)
- Settlement Amount: Defendant will pay a maximum of **\$2,780,000.00**, referred to as the Gross Settlement Amount (or “GSA” herein), resulting in an estimated average **gross** benefit per Class Member of **\$1,524.96**. (Settlement, ¶¶ 1.21, 3.1; Leviant Decl., ¶ 17.)
- Funding of Gross Settlement Amount: Defendant shall fund half of the Gross Settlement 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 six months after the first payment. (Settlement, ¶ 4.3.)
- Class Size: **1,823** individuals who worked 172,644 workweeks. (Castro Decl., ¶ 5.)
- PAGA Group Size: **1,231** aggrieved employees who worked 41,084 pay periods during the PAGA Period. (Castro Decl., ¶ 13.)
- PAGA Period: October 4, 2022 to October 9, 2024. (Settlement, ¶ 1.30.)
- Kullar/Munoz Analysis: Plaintiffs address the claims analysis herein, at Part VI.B.3, and in the Leviant Declaration, at Paragraph 18.
- No Reversion: The Settlement is a **non-reversionary** settlement. (Settlement, ¶ 3.1.)
- Certification: Plaintiffs address certification requisites herein, at Part VI.A. Certification was addressed in greater detail in the Motion for Preliminary Approval of Class and Representative Action Settlement [“Motion for Preliminary Approval”].

- 1 • No Claim Form: No claim form is required. (Settlement., ¶ 3.1.)
- 2 • Class Release: For Participating Class Members (those Class Members who do not opt out of
- 3 the Settlement), the Settlement will release, in sum, all claims that were alleged, or
- 4 reasonably could have been alleged, based on the facts stated in the Plaintiffs' respective
- 5 PAGA Notices, any amended PAGA notice letters sent to the LWDA, original complaints
- 6 and amended complaints, including but not limited to the Operative Complaint. (Settlement,
- 7 ¶ 5.2.)
- 8 • PAGA Release: Aggrieved Employees and the LWDA will release, in sum, all PAGA
- 9 penalties that were alleged, or could have been alleged, based on the facts stated in the PAGA
- 10 Notices and respective complaints and amended complaints, including but not limited to the
- 11 operative complaint, regardless of whether they opt out of the class portion of the Settlement.
- 12 (Settlement, ¶ 5.3.)
- 13 • Net Settlement Amount Available to the Class: After deducting Individual PAGA
- 14 Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class
- 15 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the
- 16 Administration Expenses Payment., the remainder will be available for distribution to Class
- 17 Members who do not opt out (i.e. Participating Class Members), with each Participating
- 18 Class Member receiving a share based on the number of Workweeks each Participating
- 19 Class Member worked for Defendant within the Class Period. The Net Settlement Amount
- 20 is estimated to be at least **\$1,543,589.71**, resulting in an average **net** payment per Class
- 21 Member of at least **\$846.73**, before any tax withholdings. (Settlement, ¶ 1.27.)
- 22 • Tax Allocation: The amounts distributed to Class Members as Individual Class Payments
- 23 will be characterized as 15% alleged unpaid wages and 85% interest and penalties.
- 24 Individual PAGA Payments to Aggrieved Employees will be characterized as 100%
- 25 penalties. (Settlement, ¶¶ 3.2.4.1, 3.2.5.)
- 26 • Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes
- 27 (e.g., FICA, FUTA, etc.) owed on any Individual Class Payments that constitute wages will
- 28 be paid separate and apart from the GSA. (Settlement, ¶ 3.1.)

- 1 • Settlement Administrator: The notice portion of the Settlement will be administered by a
2 third-party Administrator, ILYM, with the costs of administration at a flat rate of up to
3 \$40,000.00. ILYM's bid of **\$12,950.00** was selected as the lowest bid from a competitive
4 bidding process. (Settlement, ¶ 3.2.3; Castro Decl., ¶ 14.)²
- 5 • Class Data for Administration: The Settlement Administrator received the Class Data
6 within 15 calendar days of Preliminary Approval, used the National Change of Address
7 ("NCOA") database to update the Class Data, and then used skip tracing on returned Class
8 Notices. (Settlement, ¶¶ 4.2; 1.10.)
- 9 • Class Notice: The Class Notice issued within 14 days of receipt of the Class Data
10 (Settlement, ¶ 7.4.2). The Class Notice describes how to dispute workweeks, submit an
11 objection in writing, in person, or through an attorney, or request exclusion. (Settlement, ¶¶
12 7.5 – 7.7.)
- 13 • Class Notice Language: Class Notice issued in English and Spanish. (Settlement, ¶ 1.11;
14 7.4.2.)
- 15 • Objections: Objections can be submitted in person, by attorney, or in writing to the
16 Administrator, with no pre-requisite to being heard. (Settlement, ¶¶ 7.7.1 – 7.7.3.)
- 17 • Exclusion Requests: The procedure for exclusion requests, mailing a request to the
18 Settlement Administrator, is the same as the procedure for submitting a written objection.
19 (Settlement, ¶¶ 7.5.1 and 7.7.2.)
- 20 • PAGA Allocation: From the GSA, **\$200,000.00** will be allocated to settle claims brought
21 pursuant to PAGA, and seventy-five percent (75%) of the PAGA allocation, or
22 **\$150,000.00**, will be paid to the California Labor & Workforce Development Agency
23 ("LWDA"). (Settlement, ¶ 1.33; 3.2.5.)
- 24 • Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is
25

26 ² At preliminary approval, Plaintiffs' Motion for Preliminary Approval incorrectly stated that
27 ILYM's bid was for \$40,000.00. The bid was for \$12,950.00. \$40,000.00 was the amount set aside by
28 the Parties as a reasonable ceiling on administration. This means that more funds will be available to
Class Members than the amount estimated at the time of Preliminary Approval.

attached to the Leviant Declaration.

- Enhancement/Service Award to Plaintiffs: Defendant will not oppose the application for Class Representative Service Payment 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 (an award of actual costs of **\$30,460.29** is requested). (Settlement, ¶ 3.2.2; Leviant Decl., ¶ 32.)
- 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 Participating Class Members (or PAGA Aggrieved Employees) 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 Participating Class Member (or PAGA Aggrieved Employee) 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.)

IV. 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 compensation, failure to provide meal periods, failure to authorize and permit rest breaks, failure to indemnify necessary business expenses, failure to timely pay final wages at termination, failure to provide accurate itemized wage statements, and unfair business practices. (Leviant Decl., ¶ 4.) On October 4, 2023, Plaintiff Casey filed her Complaint alleging that Defendant failed to pay all overtime wages, pay all

1 minimum wages, provide all lawful meal periods, authorize and permit all lawful rest periods, issue
2 accurate itemized wage statements, pay all wages due at the time of separation, and comply with
3 California’s unfair competition law. (*Id.*) Defendant provides healthcare services at several facilities. (*Id.*)

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

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

21 The Parties conducted extensive informal discovery and investigation of the facts and law.
22 (Leviant Decl., ¶ 6.) The Parties have analyzed time clock, pay and other data pertaining to Plaintiffs and
23 the Class during the relevant Class Period, including but not limited to the numbers of former and current
24 members of the Class, average Workweeks and PAGA Pay Periods, and average rate of hourly pay.
25 Time and pay data were used for Plaintiffs’ pre-mediation analysis. In addition, Defendant also provided
26 other data pertaining to Plaintiffs and the Class during the relevant Class Period, including but not limited
27 to documents reflecting wage and hour policies and practices during the Class Period. (*Id.*)

28 After reviewing documents regarding Defendant’s wage and hour policies and practices and

1 other information obtained during the exchange of informal discovery, Class Counsel were able to
2 evaluate the probability of class certification, success on the merits, and the reasonably obtainable
3 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
4 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the
5 claims and defenses asserted in the litigation. (Leviant Decl., ¶ 7.)

6 **C. Settlement**

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

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

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

26 **V. CLASS DEFINITION**

27 The Class is defined as follows:

28 All non-exempt, hourly employees who, during the Class Period, worked for or were

1 deployed to work for Defendant in California (the “Class Period” is the period from
2 August 20, 2020 to October 9, 2024). “Participating Class Member” means a Class
3 Member who does not submit a valid and timely Request for Exclusion from the Class
4 portion of the Settlement. (Settlement, ¶¶ 1.5, 1.9, 1.12, 1.34)

(Leviant Decl., ¶ 34 and Exhibit 1.)

5 **VI. DISCUSSION**

6 **A. Consistent with the Court’s Findings at the Time of Preliminary Approval, the** 7 **Court Should Certify the Class for Settlement Purposes**

8 Under Code of Civil Procedure § 382, class certification is warranted so long as there is a
9 numerous and ascertainable class with a well-defined community of interest and that a “class action
10 proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *See, e.g., Sav-*
11 *on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement
12 *only*, Defendant stipulated to conditional certification. (Settlement ¶ 12.1.)

13 “The certification question is ‘essentially a procedural one that does not ask whether an action is
14 legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
15 (2000). The certification question asks whether the theory of recovery advanced by the plaintiff is likely
16 to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286,
17 1298 (2010). As the court noted in *Dunk*, although certification requirements are intended “to protect the
18 interests of the non-representative class members,” that concern is “protected by the trial court’s fairness
19 review of the settlement.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1807 n. 19 (1996). In view
20 of these standards, *as discussed more thoroughly as part of the preliminary approval motion*, the
21 Settlement Class should be certified for settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

22 **B. The Court Should Approve the Settlement Because It Is a Fair, Adequate, and** 23 **Reasonable Compromise of Disputed Wage Claims**

24 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
25 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
26 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
27 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary
28 settlement approval, notice being given to class members, and a final fairness and approval hearing being

1 held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed
2 below, this Court should finally approve the Settlement and enter Judgment.

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

4 Any settlement of class litigation must be reviewed and approved by the presiding court. Rules
5 of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review and (2) a
6 subsequent (final) review after notice has been distributed to the class members. The Preliminary
7 Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks
8 *final approval* and the entry of a Judgment.

9 To evaluate a settlement, a court must receive “basic information about the nature and magnitude
10 of the claims in question and the basis for concluding that the consideration being paid for the release of
11 those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
12 116, 133 (2008). But the record need *not* contain an explicit statement of the maximum theoretical
13 recovery. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

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

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

1 Here, the Settlement resulted from thorough, arms' length negotiations between experienced
2 counsel with the assistance of a skilled mediator, Steven Rottman, Esq. (Leviant Decl., ¶¶ 8-10.)
3 Plaintiffs obtained data from Defendant and then carefully reviewed that information. Counsel for
4 Plaintiffs also examined relevant policies and interviewed witnesses in detail about their work
5 experiences and Defendant's practices.

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

11 Finally, the Class was notified about the proposed terms of the Settlement, and *no* Class member
12 requested exclusion and *no* Class member submitted a written objection.

13 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**
14 **of Claims Based on Defendant's Estimated Liability Exposure Given the**
15 **Risks Continued Litigation Would Entail.**

16 *a) The Class Settlement is Fair, Adequate and Reasonable*

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

25 With respect to the claims asserted here, there are serious risks that support this Settlement. These
26 risks include, but are not limited to: (i) the risk that Plaintiffs would be unable to establish liability for
27 unpaid wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"); (ii) the
28 risk that Defendant's meal and rest period policies might not support class certification or a class-wide

1 liability finding; (iii) the risk that uncertainties about the legality of Defendant's policies and practices
2 could preclude class-wide awards of statutory penalties; (iv) the risk that individual differences between
3 Class Members could be construed as pertaining to liability and not just damages; (v) the risk that any
4 penalty award under PAGA could be reduced by the Court in its discretion; (vi) the risk that lengthy trial
5 or appellate litigation could ensue; (vi) the risk that violation rates could prove lower than expected; and,
6 (vii) the risk that Wage Order provisions unique to healthcare workers could preclude class treatment of
7 some or all claims. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

8 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
9 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of
10 course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to
11 liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be
12 given the opportunity to opt-out, allowing those who feel they have claims that are greater than the
13 benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the **1,823** members
14 of the Class, the average **gross** benefit is **\$1,524.96** per class member, and the average **net** recovery for
15 each Class Member will be more than **\$846.73**. (*Id.*) Given that Defendant could challenge certification
16 and liability, this is the best result that could have been achieved in settlement. Moreover, a Participating
17 Class Member who worked a greater number of Workweeks will receive a larger Settlement share than a
18 Class Member who worked for a shorter time during the Class Period. (*Id.*)

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

- 24 • A reasonably estimated exposure for unpaid off-the-clock wages was calculated, with the
25 assistance of an expert, to be approximately **\$1,899,238.00**, based on an assumption of four
26 minutes of off-the-clock work for every shift for every Class Members. However, with the
27 high risk factor discounts for certification and liability proof, the value of that claim is
28 estimated by Plaintiffs' counsel to be approximately **\$227,908.56**, assuming certification
probability of 30% and merits success at 40%. The off-the-clock time resulted from
timeclock line delays and COVID temperature checks, a claim that was disputed by
Defendant. Here, a \$227,908.56 exposure has a value of about 12% 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: $0.3 \times 0.4 = 0.12$. 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

1 **\$2,513,319.77**, excluding PAGA.³

- 2 • Plausible PAGA penalties exposure was calculated to be **\$4,815,925.00**. But, assuming
3 issues with proof and cooperation of aggrieved employees, along with the Court’s power to
4 reduce penalties, the realistic exposure was calculated to be **\$481,592.50**.

5 (See, Leviant Decl., ¶ 18.)

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

24 ³ It is difficult to assign specific percentages to future events, but it does provide a method for
25 attempting to reduce the concept of “very high risk” or “high risk” to a quantifiable amount.
26 Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is
27 either certified or it is not. But the current expected value is best quantified by applying a risk reduction,
28 based on the total experience of counsel. The numbers explain with math what can also be described
conceptually in words.

⁴ The report is available at <https://www.courts.ca.gov/documents/classaction-certification.pdf> (last
viewed March 12, 2024).

1 is zero dollars.

2 Here, the estimated certification probabilities are *above* the average rate at which cases were
3 certified in California over the study years, based upon data available through the California Courts
4 websites. (Leviant Decl., ¶ 19.) In sum, well *under* 20% of all cases filed as proposed class actions are
5 ultimately certified by way of a *contested* motion. (*Id.*) Here, the recovery falls within the expected
6 outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to evaluate the result
7 by examining only the premium wages at issue (approximately \$6,836,399.70, *with no risk reduction*),
8 excluding penalties and interest.⁵ This Settlement achieves the goals of the litigation.

9 *b) The PAGA Allocation is Reasonable*

10 The ultimate decision as to the amount of penalties is always up to the discretion of the Court.
11 Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee seeking recovery of a civil
12 penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil
13 penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do
14 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

15 Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources
16 of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in
17 federal court decisions. In their view, a PAGA allocation, even if a small portion of the total settlement,
18 could be reasonable if the settlement of the wage and hour claims is robust and serves the deterrent
19 purpose of PAGA. *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016)
20 (“By providing fair compensation to the class members as employees and substantial monetary relief, a
21 settlement not only vindicates the rights of class members as employees, but may have a deterrent effect
22 upon the defendant employer and other employers, an objective of PAGA.”). *Moniz* provided explicit
23

24 ⁵ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA
25 penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser
26 amount than the maximum civil penalty amount specified by this part...”), and, second, courts evaluate
27 the strength of a proposed settlement without taking potential penalties or interest into consideration. *See*
28 *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).

1 confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA
2 settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with federal courts that have considered
3 how to evaluate a PAGA settlement, concluded that the class action factors are appropriately considered,
4 along with a consideration of whether the settlement furthers “PAGA’s purposes to remediate present
5 labor law violations, deter future ones, and to maximize enforcement of state labor laws.”

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

10 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
11 PAGA’s purposes include (1) remediation of present labor law violations, (2) deterrence of future
12 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
13 portion of settlement funds to Participating Class Members still advances the goal of labor law violation
14 remediation. The allocation of a major portion of settlement funds to Participating Class Members also
15 deters future violations. This is a \$2,780,000.00 settlement, a good result. Deterrence is fulfilled. Finally,
16 allocation of a major portion of settlement funds to Participating Class Members still advances the goal
17 of enforcement of state labor law. This Settlement is, by definition, a response to alleged violations of
18 labor laws, balanced against risks.

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

24 Finally, the PAGA allocation is fair. The LWDA is receiving \$150,000.00. The Class is
25 receiving, net, an estimated \$1,543,589.71 for the releases of *all* other claims. While the proportion is
26 tipped in favor of employees, the allocation satisfies California’s wage and hour policies.

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

28 The proposed method of allocating the Settlement fund to Participating Class Members also is

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

10 **5. The Proposed Service Payment to Plaintiffs Warrant Approval.**

11 The proposed service payment of \$10,000.00 each to Plaintiffs Small and Casey are intended to
12 recognize substantial initiative and significant efforts on behalf of the Class. Courts routinely approve
13 incentive awards to compensate named plaintiffs for the services they provide and the risks they incur
14 during class action litigation, often in much higher amounts than that sought here. Factors considered
15 when awarding an incentive include the actions the plaintiff has taken to protect the class, the degree to
16 which the class has benefitted, the amount of time and effort the plaintiff expended in the litigation, the
17 risk to the class representative in commencing suit (financial and otherwise), the notoriety and personal
18 difficulties encountered, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed
19 by the plaintiff as a result of the litigation. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785,
20 804 (2009). Here, Plaintiffs contributed time to the prosecution of this matter, including, answering
21 questions and providing assistance prior to the mediation with information and substantial time
22 conferring with counsel over the course of this litigation and before it was filed. (Small Decl., ¶¶ 5-19;
23 Casey Decl., ¶¶ 7-8; Leviant Decl., ¶ 32.) The service payments also recognize risks Plaintiffs took to be
24 personally liable for costs regardless of the success of the litigation, as well as the personal risk of facing
25 intrusive discovery and potential disclosure to future employers that Plaintiffs sued an employer, making
26 future employment less certain.

1
2 **6. The Proposed Award of Class Counsel Attorneys’ Fees and Costs Is Also**
3 **Fair, Adequate, and Reasonable and Merits Approval.**

4 a) *Plaintiffs’ Counsel Should be Awarded Fees Based on a Percentage of*
5 *the Fund Recovered, Consistent with the Common Fund Method*

6 The request for fees as a percentage of a settlement is supported by the “common fund theory,”
7 where “one who expends attorneys’ fees in winning a suit which creates a fund from which others derive
8 benefits, may require those passive beneficiaries to bear a fair share of the litigation costs.” *Serrano v.*
9 *Priest*, 20 Cal. 3d 25, 35 (1977). The common fund doctrine has been applied “consistently in California
10 when an action brought by one party creates a fund in which other persons are entitled to share.” *City*
11 *and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995). The lodestar may be cross-checked
12 against the percentage. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

13 The California Supreme Court removed any lingering doubt about the use of the percentage of
14 the fund method to award attorney’s fees in California Courts. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal.
15 5th 480, 503 (2016).⁶ Thus, this Court may and, as strongly encouraged by the California Supreme
16 Court, *should* award fees to Class Counsel based upon the percentage of the fund methodology.

17 “Empirical studies show that, regardless whether the percentage method or the lodestar method is
18 used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162
19 Cal. App. 4th 43, 47 n. 11 (2008). This is consistent with Class Counsels’ experience in class cases.
20 Here, Plaintiffs’ attorneys request attorneys’ fees of **\$973,000.00** (35% of the GSA), and costs of
21 **\$30,460.29** (which includes payment for mediation, filing fees, service of process fees, and other
22 standard expenses). (Leviant Decl., ¶ 32; Rowbotham Decl., ¶¶ 10-11.) Given the efforts and risks
23 involved in this case, as well as the results achieved, these amounts are within the range of
24 reasonableness and warrant *final approval*.

25
26
27 ⁶ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
28 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.

1
2 b) *A Lodestar Cross Check Confirms that Class Counsel’s Requested*
3 *Attorneys’ Fees Are Reasonable*

4 Plaintiffs’ fee application is also reasonable based on lodestar. Under the lodestar method, the
5 court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to
6 evaluate the reasonableness of the fee. *Ramos v. Countrywide Home Loans, Inc.*, 82 Cal. App. 4th 615,
7 622 (2000). The moving party meets its burden by submitting “declarations evidencing the reasonable
8 hourly rate for their services and establishing the number of hours spent working on the case” as
9 “California case law permits fee awards in the absence of detailed time sheets.” *Wershba*, 91 Cal. App.
10 4th at 254-55; *Dunk*, 48 Cal. App. 4th at 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App.
11 4th 99, 103 (1994). The hours spent and the reasonable hourly compensation are used to arrive at a
12 “lodestar” figure which may then be augmented or diminished taking into account various “multiplier”
13 factors. *See Ramos*, 82 Cal. App. 4th at 622 (*citing Serrano*, 20 Cal. 3d at 48-49).

14 Here, Class Counsel’s *total* lodestar is **\$371,992.00** (including about 10 hours of past and future
15 time not billed by Mr. Leviant). (Leviant Decl., ¶ 32; Rowbotham Decl., ¶ 12.) The billed lodestar to
16 date is \$362,240. (Leviant Decl., ¶ 32; Rowbotham Decl., ¶ 11.) Plaintiffs contend the request for
17 **\$973,000.00** in attorneys’ fees, which is **2.61** times the estimated total lodestar, is reasonable under the
18 lodestar method, given the substantial recovery obtained for the Class.

19 **(1) Class Counsel’s Hours Are Reasonable**

20 In determining whether the number of hours was reasonable, the court must determine that “the
21 time spent was reasonably necessary and that [] counsel made ‘a good faith effort to exclude from the fee
22 request hours that are excessive, redundant, or otherwise unnecessary.” *Jordan v. Multnomah County*,
23 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The court should defer to the lawyer’s judgment as to how
24 much time he was required to spend on the case. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112
25 (9th Cir. 2008) (“[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope
26 of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.”).
27 Here, Counsel expended a prudent amount of time to achieve the excellent result. (Leviant Decl., ¶ 32;
28 Rowbotham Decl., ¶ 11.)

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

(2) Class Counsel's Hourly Rates Are Reasonable

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). “[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’ reputation and status.” *MBNA American Bank, N.A. v. Gorman*, 147 Cal. App. 4th 1, 3 (2006). The trial court may also “find hourly rates reasonable based on evidence of other courts approving similar rates.” *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

Class Counsel are experienced litigators who specialize in employment law, with a substantial wage and hour practice. (Leviant Decl., ¶¶ 21-27.) Courts throughout California, including the Kern County Superior Court, have approved Class Counsel’s hourly rates. (Leviant Decl., ¶ 21.) Given the skill and experience of Class Counsel, and the excellent result achieved, Plaintiffs contend Class Counsel’s hourly rates are reasonable.

c) Class Counsel's Costs Are Reasonable

The Settlement Agreement provides for reimbursement of costs not to exceed \$40,000.00. Moon Law Group, PC seeks costs in the amount of \$28,367.11; and Haines Law Group, APC seeks costs in the amount of \$2,093.18, for a total cost request of \$30,460.29. (Leviant Decl., ¶ 32, Exh. 2; Rowbotham Decl., ¶ 10.) These costs were reasonably incurred in prosecuting the Action on behalf of the Class Members and should be approved by the Court. Accordingly, Class Counsel respectfully requests the Court approve total costs in the amount of **\$30,460.29**. (*Ibid.*)

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

ILYM, which has been selected due to its competitive bid, states that administration can be performed for a flat rate of **\$12,950.00**. In counsel’s experience, based on similar wage-and-hour actions, a cost of **\$12,950.00** is a fair and reasonable amount for administration fees and should be approved. (Leviant Decl., ¶ 34; Castro Decl., ¶ 14.) ILYM has previously confirmed its capabilities and security protocols. (*See*, Mullins Decl., filed in support of Motion for Preliminary Approval.)

VII. CONCLUSION

For all the foregoing reasons, because the Class meets the requirements for certification for

1 settlement purposes, only, because the Settlement bears all requisite indicia of fairness, reasonableness,
2 and adequacy, and because the notice procedure and forms complied with Rule 3.766 and Due Process,
3 this Court should grant this Motion for Final Approval, adopt the [Proposed] Order Granting Final
4 Approval of Class Action Settlement submitted herewith, and enter the [Proposed] Judgment.

5
6 Dated: June 4, 2025

Respectfully submitted,


MOON LAW GROUP, PC

7
8 By: _____

Kane Moon
H. Scott Leviant
Jaeyoung Lee

9
10 Attorneys for Plaintiff Small

11 **HAINES LAW GROUP, APC**

12 Paul K. Haines
13 Fletcher W. Schmidt
14 Andrew J. Rowbotham
15 Susan J. Perez

16 Attorneys for Plaintiff Casey
17
18
19
20
21
22
23
24
25
26
27
28