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ELECTRONICALLY FILED
Superior Court of California
County of Sacramento

06/05/2024

By: A. Turner Deputy

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

LARRY NORELL GOOSBY, individually, on
behalf of all others similarly situated, and on
behalf of the State of California and other
aggrieved persons,

Plaintiff,

v.

CIMINOCARE, INC., a California Corporation,
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 34-2022-00329033

CLASS & REPRESENTATIVE ACTION

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

*[Filed with the Declaration of John G. Yslas,
Declaration of Plaintiff Larry Norrell
Goosby, Proof of Service and Proposed
Order]*

PRELIMINARY APPROVAL HEARING

Date: August 9, 2024

Time: 9:00AM

Dept.: 22

Reservation Number: **A-329033-001**

Complaint filed: October 31, 2022

Trial date: Not set

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

2 PLEASE TAKE NOTICE that on August 9, 2024 at 9:00 a.m., in Department 22 of the
3 Sacramento County Superior Court, pursuant to Code of Civil Procedure § 382 and California
4 Rules of Court 3.769 *et seq.*, Plaintiff Larry Norell Goosby (“Plaintiff”) will move the Court for
5 an Order granting preliminary approval of the proposed class action settlement between Plaintiff
6 and Defendant CiminoCare, Inc. (“Defendant”). Plaintiff further moves the Court for an Order:

- 7 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement
8 and Class Notice;
9 2. Certifying a Class for settlement purposes;
10 3. Approving the Class Notice and the plan for distribution of the Class Notice;
11 4. Appointing Plaintiff Larry Norell Goosby, as Class Representatives for settlement
12 purposes;
13 5. Appointing Plaintiff’s Counsel, John G. Yslas, Jeffrey C. Bils, Aram Boyadjian,
14 Andrew Sandoval, Stephen A. Sommers and John Brown of Wilshire Law Firm, PLC
15 as Class Counsel for settlement purposes;
16 6. Appointing ILYM Group, Inc. as the Settlement Administrator; and
17 7. Scheduling a final approval hearing.

18 The motion will be based upon this notice, the attached memorandum of points and
19 authorities, the Declarations of John G. Yslas and Plaintiff Larry Norell Goosby, filed concurrently
20 herewith, the records and files in this action, and any other further evidence or argument that the
21 Court may properly receive at or before the hearing.

22 Respectfully submitted,

23 Dated: June 5, 2024

24 WILSHIRE LAW FIRM

25 By: _____

26 John G. Yslas
27 Attorneys for Plaintiff
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Larry Norell Goosby (“Plaintiff”) seeks preliminary approval of a proposed
4 \$592,514.00 non-reversionary, wage and hour class action settlement (“Settlement”) with
5 Defendant CiminoCare, Inc. (“Defendant”). The Settlement will provide substantial monetary
6 payments to approximately 1,133 class members. And, as set forth more fully below, the proposed
7 Settlement satisfies all the criteria for settlement approval under California law.

8 The Settlement was reached after extensive investigation, discovery, and negotiations.
9 The negotiations were at arms-length and were facilitated by an experienced class action
10 mediator, Michael H. Leb, over the course of a private mediation on March 25, 2024. After
11 extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff’s
12 claims and Defendant’s defenses, the Parties reached a settlement. Accordingly, Plaintiff
13 requests that the Court preliminarily approve the proposed Settlement, certify the proposed
14 settlement class, approve the proposed notice, and set a final approval hearing.

15 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

16 **A. Plaintiff’s Claims**

17 This is a wage and hour class action and Labor Code Private Attorneys General Act of
18 2004 (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and putative
19 class members worked in California as hourly-paid or non-exempt employees for CiminoCare,
20 Inc. (“Defendant”) during the class period. Defendant conducts business in numerous counties
21 throughout the State of California, including Sacramento County. (Declaration of John G. Yslas
22 in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Yslas
23 Decl.”), ¶ 2.)

24 Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices
25 resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours
26 worked. Plaintiff further alleges that Defendant failed to provide employees with legally
27 compliant meal and rest periods, and Defendant failed to reimburse business expenses. Based
28 on these allegations, Plaintiff asserts related claims for failure to provide accurate wage

1 statements, failure to pay all final wages at termination, unfair business practices, and civil
2 penalties under PAGA. Defendant denies Plaintiff's allegations and denies liability for
3 Plaintiff's claims.

4 Plaintiff sent a notice to Defendant and the California Labor & Workforce Development
5 Agency ("LWDA") alleging similar wage and hour violations pursuant to the PAGA (Labor Code
6 §§ 2699, *et seq.*) on July 6, 2023. (Yslas Decl., ¶ 4.) On October 31, 2022, Plaintiff filed a putative
7 wage-and-hour class action complaint against Defendant for: (1) failure to pay minimum and
8 straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime
9 wages (Labor Code §§ 1194, and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7
10 and 512); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7); (5) failure to pay
11 final wages at termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage
12 statements (Labor Code § 226); (7) failure to indemnify employees for expenditures (Cal. Lab.
13 Code § 2802); and (8) unfair business practices (Business and Professions Code § 17200 *et seq.*).
14 On August 25, 2023, Plaintiff filed a First Amended Complaint against Defendant adding a claim
15 for civil penalties under Private Attorneys General Act "PAGA" (Labor Code § 2698 *et seq.*).

16 **B. Discovery and Investigation**

17 Following the filing of the Complaint, the Parties exchanged documents and information
18 before mediating this action. Prior to mediation, Plaintiff obtained, through informal discovery,
19 through informal discovery, time data and payroll records, a redacted class list of employees, wage
20 and hour policy documents, and all documents concerning Plaintiff available to defendant.
21 Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v.*
22 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008)
23 168 Cal.App.4th 116, 129-130 ("Dunk/Kullar"). (Yslas Decl., ¶ 5.)

24 After reviewing documents regarding Defendant's wage and hour policies and practices,
25 and analyzing Defendant's timekeeping and payroll records, Class Counsel was able to evaluate
26 the probability of class certification, success on the merits, and Defendant's maximum monetary
27 exposure for all claims. (*Id.* at ¶ 6.) Class Counsel also investigated the applicable law
28 regarding the claims and defenses asserted in the litigation. (*Id.*) Class Counsel reviewed these

1 records and prepared a damage analysis prior to mediation. (*Id.*)

2 **C. Settlement Negotiations**

3 On March 25, 2024, the parties participated in private mediation with experienced class
4 action mediator Michael H. Leb. (*Id.* at ¶ 7.) The settlement negotiations were at arm's length
5 and, although conducted in a professional manner, were adversarial. The parties went into the
6 mediation willing to explore the potential for a settlement of the dispute, but each side was also
7 prepared to litigate their position through trial and appeal if a settlement had not been reached.
8 (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of
9 Plaintiff's claims and Defendant's defenses, the Parties reached a settlement, the material terms
10 of which are encompassed within the Settlement. (*Id.* at ¶ 8, Ex. 1 (Class Action and PAGA
11 Settlement Agreement and Class Notice).)

12 Class Counsel has conducted a thorough investigation into the facts of this case. Based
13 on the foregoing discovery and their own independent investigation and evaluation, Class
14 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
15 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
16 of significant delay, the defenses that could be asserted by Defendant both to certification and
17 on the merits, trial risk, and appellate risk. (*Id.* at ¶ 16.)

18 **1. Settlement Consideration**

19 Plaintiff and Defendant have agreed to settle the Lawsuit in exchange for the Gross
20 Settlement Amount of \$592,514.00. The Gross Settlement Amount includes: (1) attorneys' fees
21 in the amount of \$197,504.67 and reimbursement of reasonable litigation costs and expenses in
22 the amount of up to \$22,500.00 to Class Counsel; (2) Class Representative Service Payment to
23 Plaintiff in the amount of up to \$15,000.00; (3) fees and expenses of administration of the
24 Settlement to the Settlement Administrator in an amount not to exceed \$15,000.00; (4)
25 \$30,000.00 to PAGA with twenty-five percent (25%) share of the PAGA Penalties to be a part
26 of the Net Settlement Sum that will be distributed to Class Members in the PAGA Group in the
27 amount of \$7,500.00; and (5) the seventy-five percent (75%) share of PAGA penalties ("LWDA
28 Payment") in the amount of \$22,500.00 to the LWDA. (See Settlement Agreement generally).

1 Indeed, the \$592,514.00 Settlement represents 50% of the realistic maximum recovery
2 of \$1,193,229.05. (*Id.* at ¶ 24.) Although Class Counsel estimated that Defendant’s maximum
3 potential liability for all claims was approximately \$9,773,933.92, when the risk of prevailing
4 at certification and trial are factored into the equation, Class Counsel believes that Defendant’s
5 realistic exposure was \$1,193,229.05, meaning the Settlement achieves a significant recovery.
6 (*Id.* at ¶¶ 15-28.) Considering the risk and uncertainty of prevailing at class certification and at
7 trial, this is an excellent result for the Class. (*Id.* at ¶ 24.) Indeed, because of the proposed
8 Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an
9 unfavorable judgment.

10 **D. Key Terms of the Proposed Settlement**

11 The Parties used the Los Angeles Superior Court’s Form Class Action and PAGA
12 Settlement Agreement and Class Notice. The Settlement’s key terms include:

13 1. Class: For settlement purposes only, the Parties agree to the certification of a class
14 pursuant to California Code of Civil Procedure § 382 defined as: “all persons employed by
15 Defendant as hourly-paid or non-exempt employees in the State of California from October 31,
16 2018, to the date of preliminary approval of the Settlement or July 31, 2024, whichever is earlier
17 (the “Class Period”). It shall be an opt-out class. Expressly excluded from the Class are settlement
18 class members and aggrieved employees in *Dawnetta Wilson v. Solar Senior Living LLC*,
19 Sacramento County Superior Court, Case No. 34-2020-00281971 (the “*Wilson Action*”).”
20 (Settlement, § 1.5.)

21 2. Class Period: This is defined as “the period from October 31, 2018, to the date of
22 preliminary approval of the Settlement or July 31, 2024, whichever is earlier.” (Settlement, §
23 1.12.)

24 3. Participating Class Members: This is defined as “a Class Member who does not
25 submit a valid and timely Request for Exclusion from the Settlement.” (Settlement, § 1.35.)

26 4. PAGA Group Member or Aggrieved Employee: This is defined as “all persons
27 employed by Defendant as hourly-paid or non-exempt employees in the State of California from
28 August 25, 2022, until the date of preliminary approval of the Settlement or July 31, 2024,

1 whichever is earlier (the “PAGA Period”).” (Settlement, §§ 1.4, 1.31.)

2 5. Gross Settlement Amount: This means \$592,514.00 which is the total amount
3 Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross
4 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,
5 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
6 Service Payment and the Administrator’s Expenses. (Settlement, § 1.22.)

7 6. Uncashed Checks: This is defined as any check for any Class Member whose
8 Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled
9 after the void date, the Administrator shall transmit the funds represented by such checks to a Court
10 approved nonprofit organization or foundation consistent with Code of Civil Procedure section
11 384, subdivision (b) (“Cy Pres Recipient”). The Parties, Class Counsel and Defense Counsel
12 represent that they have no interest or relationship, financial or otherwise, with the intended Cy
13 Pres Recipient. (Settlement, § 4.4.3.) Through this Motion, the Parties propose as the Cy Pres
14 Legal Services of Northern California, a nonprofit organization that provides civil legal services
15 to the indigent.

16 7. Release:

17 (a) Plaintiff and his, her, or their respective former and present spouses,
18 representatives, agents, attorneys, heirs, administrators, successors and
19 assigns generally, release and discharge Released Parties from all claims,
20 transactions or occurrences that occurred during the Class Period, including,
21 but not limited to: (a) all claims that were, or reasonably could have been,
22 alleged, based on the facts contained, in the Operative Complaint and (b) all
23 PAGA claims that were, or reasonably could have been, alleged based on
24 facts contained in the Operative Complaint, Plaintiff’s PAGA Notice, or
25 ascertained during the Action and released under 5.2, below. (“Plaintiff’s
26 Release.”) Plaintiff’s Release does not extend to any claims or actions to
27 enforce this Agreement, or to any claims for vested benefits, unemployment
28 benefits, disability benefits, social security benefits, workers’ compensation

benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. (Settlement, § 5.1.)

(b) All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint. Except as set forth in Section 5.3 and 5.4 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation or claims based on facts occurring outside the Class Period. (Settlement, § 5.2.)

(c) All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint. (Settlement, § 5.3.)

(d) Expressly excluded from these Releases are any and all claims asserted by the class members in the Wilson Action. The Parties agree that nothing in this Release will in any way affect any potential settlement in the Wilson Action, and Defendant warrants and represents that no settlement in the Wilson Action will in any way affect this Settlement. (Settlement, § 5.4.)

1 8. No Reversion: “None of the Gross Settlement Amount will revert to Defendant.”
2 (Settlement, § 3.1.)

3 9. PAGA Allocation: The settlement includes \$30,000.00 allocated to Plaintiff’s
4 claims under PAGA, with 75% (\$22,500.00) being paid to the LWDA and 25% (\$7,500.00) being
5 paid to the Aggrieved Employees. (Settlement, § 3.2.5.) Class Counsel submitted the proposed
6 settlement to the LWDA before filing this Motion for Preliminary Approval. (Yslas Decl., ¶ 9.)

7 10. Net Settlement Amount: means the Gross Settlement Amount, less the following
8 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
9 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
10 Litigation Expenses Payment, and the Administration Expenses Payment. (Settlement, § 1.28.)

11 11. Distribution Formula: “An Individual Class Payment calculated by (a) dividing the
12 Net Settlement Amount by the total number of Workweeks worked by all Participating Class
13 Members during the Class Period and (b) multiplying the result by each Participating Class
14 Member’s Workweeks.” (Settlement, § 3.2.4.) As to PAGA: “The Administrator will calculate
15 each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25%
16 share of PAGA Penalties (\$7,500.00) by the total number of PAGA Period Pay Periods worked by
17 all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each
18 Aggrieved Employee’s PAGA Period Pay Periods.” (Settlement, § 3.2.5.1.)

19 12. Tax Allocation: Any settlement money paid to Settlement Class Members will be
20 allocated as 20% wages, 80% to penalties and interest. (Settlement, § 3.2.4.1.)

21 13. Class Representative Service Payment: Subject to Court approval, Plaintiff shall be
22 paid an enhancement award not to exceed \$15,000.00. (Settlement, § 3.2.1.) This amount is for
23 Plaintiff’s time and effort in bringing and presenting the Action, and in exchange for a general
24 release of all claims. (Settlement, § 5.1.) If the Court approves a lesser enhancement, then the
25 unapproved portion or portions shall revert into the Net Settlement Amount to be distributed
26 between the Participating Class Members on a pro-rata basis. (Settlement, § 3.2.1.)

27 14. Attorneys’ Fees and Costs: The Settlement provides that Defendant will not oppose
28 a fee application of up to 33 1/3% of the Gross Settlement Amount (i.e., \$197,504.67), plus

1 Litigation Expenses Payment not to exceed \$22,500.00. (Settlement, § 3.2.2.)

2 Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a
3 statement of the case, the terms of the Settlement Agreement, the approximate amount of
4 attorneys’ fees, costs, and service awards being sought, and an explanation of how the settlement
5 allocations are calculated. (Settlement, Ex. A, Class Notice.) Class Members will be notified
6 by first-class mail of the Settlement. (Settlement, § 7.4.2.) ILYM Group, Inc., the proposed
7 Settlement Administrator, will undertake its best efforts to ensure that the Notice is provided to
8 the current addresses of Class Members, including conducting a national change of address
9 search and re-mailing the notice to updated addresses. (*Id.*; Yslas Decl., ¶ 11, Ex. 2 (Settlement
10 Administrator Bid).)

11 **III. DISCUSSION**

12 To prevent fraud, collusion, or unfairness to the class, the settlement of a class action
13 requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This
14 Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super.*
15 *Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached
16 through arm’s-length bargaining; (2) investigation is sufficient to allow counsel and the court to
17 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
18 is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

19 In considering whether a settlement is reasonable, the trial court should consider relevant
20 factors, which may include the strength of plaintiff’s case, the risk, expense, complexity and likely
21 duration of further litigation, the risk of maintaining class action status through trial, the amount
22 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
23 experience and views of counsel, the presence of a governmental participant, and the reaction of
24 the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168
25 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself
26 that the class settlement is within the “ballpark” of reasonableness. (*Id.* at p. 133.) The record
27 need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-*
28 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not

1 require “an explicit statement of the maximum amount the plaintiff class could recover if it
2 prevailed on all its claims”, but instead, only an “understanding of the amount that is in controversy
3 and the realistic range of outcomes of the litigation.”].)

4 As discussed below, Class Counsel has provided information exceeding the threshold
5 required to provide this Court with materials and information necessary to determine that the
6 proposed settlement is fair, adequate, and reasonable.

7 **A. The Settlement Is Fair, Reasonable, Adequate, and the Product of**
8 **Investigation, Litigation, and Negotiation**

9 **1. The Settlement Is the Product of Discovery, Investigation, and**
10 **Informed and Non-Collusive Arm’s-Length Negotiations**

11 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
12 evidence to the contrary is offered; thus, there is a presumption here that the negotiations were
13 conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.)
14 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super.*
15 *Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The
16 fact that a plaintiff might have received more if the case had been fully litigated is no reason not
17 to approve the settlement.”].)

18 The Settlement was reached following extensive negotiations following a of mediation with
19 experienced employment mediator, Michael H. Leb. (Yslas Decl. ¶ 7.) The settlement negotiations
20 were at arm’s length and, although conducted in a professional manner, were adversarial. (*Id.*)
21 The parties went into the mediation willing to explore the potential for a settlement of the dispute,
22 but each side was also prepared to litigate their or its position through trial and appeal if a
23 settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the
24 strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties reached an
25 agreement. (Yslas Decl. ¶ 8.)

26 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
27 the claims set forth in the Litigation, and obtained time data and payroll records, a redacted class
28 list of employees, wage and hour policy documents, and all documents concerning Plaintiff

1 available to defendant . (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation,
2 Class Counsel investigated the applicable law regarding the claims and defenses asserted in the
3 litigation. (*Id.*) Thus, Plaintiff and his counsel were able to act intelligently and effectively in
4 negotiating the proposed Settlement. (*Id.*)

5 Class Counsel also has considerable experience and has demonstrated competence with
6 litigating wage and hour class actions. (*Id.* at ¶¶ 39-50.) Again, this supports the position that the
7 terms of the Settlement are premised on objective evidence that has been considered and weighed
8 in light of the risks, expenses, and time consumption to both sides of continued litigation of this
9 action.

10 **2. The Settlement Is Fair and Reasonable in Light of the Parties’**

11 **Respective Legal Positions**

12 A settlement is not judged against what plaintiff might recover had he prevailed at trial, nor
13 does the settlement have to provide 100% of the damages sought to be fair and reasonable.
14 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent
15 and necessary in the settlement process ... even if the relief afforded by the proposed settlement is
16 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar
17 to a class settlement because the public interest may indeed be served by a voluntary settlement in
18 which each side gives ground in the interest of avoiding litigation.”].)

19 The PAGA portion of this Settlement also is “fair, reasonable, and adequate in view of
20 PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize
21 enforcement of state labor laws” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77), in
22 light of the discretionary nature of penalties, and the risks and uncertainty of prevailing at trial.
23 (Yslas Decl., ¶ 24.) Plaintiff submits that this Settlement, in its entirety, serves to remediate labor
24 law violations and deter future ones through its significant recovery for the proposed Class. (*Id.*,
25 ¶ 16.)

26 Further, this Settlement avoids the risks and the accompanying expense of further litigation.
27 (*Id.*, ¶ 26.) While Plaintiff is confident in the merits of his claims, a legitimate controversy exists
28 as to each cause of action. (*Id.* at ¶ 25.) Plaintiff also recognizes that proving the amount of wages

1 due to each Class Member would be an expensive, time-consuming, and uncertain proposition.
2 (*Id.*)

3 The proposed Settlement of \$592,514.00 therefore represents a substantial recovery when
4 compared to Plaintiff's reasonably forecasted recovery. (*Id.* at ¶¶ 15-28.) Because of the proposed
5 Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an
6 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
7 achieving class certification, the burdens of proof necessary to establish liability, the probability
8 of appeal of a favorable judgment, it is clear that the Settlement amount of \$592,514.00 is within
9 the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed,***
10 ***each Participating Class Member is eligible to receive an average net benefit of approximately***
11 ***\$276.84 without factoring in payroll taxes.*** (*Id.* at ¶ 27.)

12 3. Class Counsel Has Extensive Experience in Class Action Litigation

13 The settlement negotiations were conducted by highly skilled and experienced counsel.
14 Class Counsel have a strong record of vigorous and effective advocacy for their clients and have
15 extensive experience in handling complex wage and hour class action litigation. (Yslas Decl., ¶¶
16 39-50.) Although Plaintiff and his counsel were prepared to litigate the claims alleged in the matter,
17 counsel supports this proposed Settlement as being in the best interests of the class.

18 B. The Proposed Class Notice of Settlement Should Be Approved

19 The proposed Notice, in the form attached to the Settlement Agreement, should be approved
20 for dissemination to the Class. The Notice informs the Class of the Settlement terms and of their
21 rights to be excluded from the Settlement. Additionally, if there are Class Members who wish to
22 object to this proposed class action Settlement, they will have the opportunity to file their
23 objections and be heard at the Final Approval Hearing. Accordingly, the proposed Notice meets
24 all the requirements of Rule 3.769(f) of the California Rules of Court.

25 C. The Proposed Attorneys' Fees and Costs Are Reasonable

26 Under the Settlement, subject to the Court's approval, Defendant agrees to pay Class
27 Counsel reasonable attorneys' fees in amount of \$197,504.67 which is 33 1/3% of the Gross
28 Settlement Amount, and up to \$22,500.00 in Litigation Expenses Payment. These amounts are

disclosed to all class members in the proposed Notice and are reasonable.

1. Class Counsel Requests an Award of Fees Based on the “Common Fund” Method

California courts have long awarded attorneys’ fees as a percentage of the benefit created by counsel in creating a common fund. The California Supreme Court held that “when a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys’ fees out of the fund.” (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34, quoting *D’Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

Class Counsel seek an award of attorneys’ fees on the “percentage of recovery/ common fund” theory. The purpose of this approach is to “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent, supra*, 557 F.2d at p. 769.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California Supreme Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons are entitled to share.” (*Id.* at p. 110.)

The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480 that, “when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.”

(*Id.* [internal citations omitted].)

2. The Requested Fee Award Is in Line with Typical Cases

According to a leading treatise on class actions, “No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.” (*See* Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 14.03.) Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; see also *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F.Supp. 294 [stating that most cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million].)

Here, Plaintiff requests attorneys’ fees equal to 33 1/3% of the Settlement Amount, which is in line with the prevailing guidelines established in California case law and academic literature, and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)

3. This Matter Involves a “Fee-Shifting” Provision of the Labor Code

Labor Code § 1194(a) provides for the recovery of “minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this section, Plaintiff would be permitted to recover their actual attorneys’ fees, even if those fees were larger than the total class recovery at the conclusion of this case. This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Class Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Class Counsel. (Yslas Decl., ¶¶ 37-38.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class

1 ahead of all other concerns.

2 **4. The Experience, Reputation and Ability of Class Counsel Support the**
3 **Requested Fee Award**

4 As demonstrated by their past experience in pursuing class actions on behalf of consumers
5 and employees, Class Counsel possess considerable expertise in litigating class actions. (Yslas
6 Decl., ¶¶ 39-50.) Class Counsel and the firm have been involved as lead counsel or co-counsel in
7 several class actions that resulted in millions of dollars in recovery. (*Id.*) Because it is reasonable
8 to compensate Class Counsel commensurate with their skill, reputation and experience, Class
9 Counsel’s requested fee award is supported here.

10 Class Counsel’s experience in wage and hour class actions was integral in evaluating the
11 strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement.
12 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
13 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
14 action litigation. Based on these and other factors, Class Counsel’s firm has frequently received
15 fee awards of this percentage from the gross recovery for the class. Therefore, the requested fee
16 award is reasonable and fair.

17 **D. The Service Award to Named Plaintiff Is Reasonable**

18 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
19 compensate them for the expense or risk they have incurred in conferring a benefit on other
20 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
21 of class action settlement agreements containing enhancements for the class representatives, which
22 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
23 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir.
24 2009) 563 F.3d 948, 958-59.)

25 Service awards are particularly important to plaintiffs in wage and hour cases because they
26 promote the important public policies underlying the wage and hour laws. This strong policy is
27 codified in California Labor Code section 90.5, which provides, “it is the policy of this state to
28 vigorously enforce minimum labor standards in order to ensure employees are not required or

1 permitted to work under substandard unlawful conditions....”). Nonetheless, the California
2 Supreme Court has noted that “retaliation against employees for asserting statutory rights under
3 the Labor Code is widespread,” despite anti-retaliation statutes designed to protect employees.
4 (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should
5 be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v.*
6 *Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

7 Under the Settlement Agreement, subject to the Court’s approval, Defendant agreed to pay
8 a Service Award in the amount of \$15,000 to Plaintiff. This amount is also in exchange for
9 Plaintiff’s general release of all claims against Defendant. Plaintiff devoted a great deal of time
10 and work assisting counsel in the case, communicated with counsel very frequently for litigation
11 and to prepare for mediation, and was frequently in contact with Class Counsel during the
12 mediation. (Yslas Decl., ¶¶ 29-33.) This amount is reasonable particularly in light of the
13 substantial benefits Plaintiff generated for all class members. (*Id.*)

14 When compared with the amounts awarded in typical class action cases, the amount
15 requested here is particularly reasonable. Indeed, a 2006 study examining the average incentive
16 award given to class action plaintiffs from 1993 to 2002 found that the “average award per class
17 representative was \$15,992 and the median award per class representative was \$4,357.”
18 (Theodore Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An
19 Empirical Study,” 53 UCLA L. Rev. 1303, 1308 (2006.) That same study found that named
20 plaintiffs in employment discrimination class actions received an average award of \$69,850 and
21 a median award of \$31,081, while named plaintiffs in other employment class actions received
22 an average award of \$12,121 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of
23 the study found that higher awards in employment cases reflected the “courts’ wish to make
24 representative plaintiffs whole by compensating them for the high costs of their service to the
25 class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

1 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

2 **A. Legal Standard**

3 The proposed Settlement Class is well suited for class certification. All of the claims derive
4 from a core set of alleged violations of California’s wage and hour laws and regulations. For the
5 reasons set forth more fully below, for purposes of settlement only, the Class satisfies the
6 prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: “when
7 the question is one of a common or general interest, of many persons, or when the parties are
8 numerous, and it is impracticable to bring them all before the court, one or more may sue or defend
9 for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to section 382: “(1)
10 There must be an ascertainable class; and (2) there must be a well-defined community of interest
11 in the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow*
12 *Cab Co.* (1967) 67 Cal. 2d 695, 704 (citations omitted).) To clarify these requirements, the
13 California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the
14 community-of-interest requirement itself embodies three factors: “(1) predominant questions of
15 law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
16 representatives who can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29
17 Cal. 3d 462, 470.)

18 California law and policy favor the fullest and most flexible use of the class action device.
19 (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a
20 means to prevent a failure of justice in our judicial system” particularly where the rights of
21 consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to
22 the appropriateness of class treatment should be resolved in favor of certification. (*Richmond,*
23 *supra*, 29 Cal.3d at pp. 473-75.)

24 **B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for**
25 **Settlement Purposes.**

26 **1. The Class Is Ascertainable and Numerous**

27 The proposed Class that Plaintiff seeks to represent is easily ascertainable, and includes
28 approximately 1,133 employees of Defendant.

1 Plaintiff maintains that there is an easily ascertainable Class, defined by objective and
2 precise criteria. Because Class Members are identified using specific criteria in the regular
3 business records of Defendant, i.e., job position, the Class is ascertainable. (*Wilner v. Sunset Life*
4 *Ins. Co.* (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product
5 that is the subject of the lawsuit is sufficient to make the class ascertainable].)

6 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
7 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
8 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action
9 may be maintained as a class action even where the parties are numerous and it is in fact practicable
10 to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a
11 class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries
12 of a trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d
13 574; see also, *Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) Therefore,
14 Plaintiff contend that numerosity is plainly satisfied.

15 **2. Many Common Issues of Law and Fact Predominate**

16 The Court should grant conditional class certification for settlement purposes here on the
17 grounds that questions of law and fact common to all Class Members predominate over any
18 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
19 warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
20 Cal.App.3d 605.)

21 Here, the employment practices at issue are: whether Defendant had legally compliant
22 policies and practices to provide employees with meal periods; whether Defendant had legally
23 compliant policies and practices authorizing and permitting its employees to take rest periods;
24 whether Defendant had legally compliant policies and practices to pay for all hours worked,
25 including overtime wages; whether Defendant reimbursed employees for business expenses;
26 whether final payment of wages was untimely and excluded unpaid wages, including meal period
27 premium wages, and rest period premium wages; and whether the wage statements were
28 consequently non-compliant. Plaintiff contends that the factual and legal issues are the same for

1 all of the identified Class Members, including Plaintiff. Further, all Class Members suffered from,
2 and seek redress for, the same alleged injuries.

3 **3. Plaintiff's Claims Are Typical of the Claims of the Class**

4 The typicality requirement does not focus on the individual characteristics or circumstances
5 of the representative plaintiff compared to those of the remainder of the class, but rather upon the
6 typicality of the proposed representative's claims as they relate to the defendant's conduct and
7 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that
8 common questions of law and fact predominate and that the class representative be similarly
9 situated" vis-à-vis the class.].) A representative plaintiff's claims are typical of the class if they
10 arise from the same event, practice or course of conduct, and if the claims rest on the same legal
11 theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant; as
12 such, he alleges that he was subject to the same policies and practices as other similarly situated
13 employees.

14 **4. Plaintiff and His Counsel Meet the Adequacy Requirement**

15 The adequacy of representation requirements is met by fulfilling two conditions: first, a
16 named plaintiff must be represented by counsel qualified to conduct the pending litigation; second,
17 a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of*
18 *America* (1976) 60 Cal.App.3d 442, 451.)

19 All of these requirements are met here for settlement purposes. Plaintiff retained counsel
20 with extensive experience in prosecuting complex class actions, including similar class actions that
21 previously settled. (Yslas Decl., ¶¶ 39-50.) Class Counsel unquestionably is "qualified,
22 experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148
23 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel,
24 litigated this case and diligently reviewed the settlement terms, showing his dedication. Plaintiff's
25 willingness to serve as a representative demonstrates his serious commitment to bringing about the
26 best results possible for the Class. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

27 **5. A Class Action Is Superior to a Multiplicity of Litigation**

28 Finally, in making its class certification decision, the Court must determine that a class

1 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
2 By consolidating many potential individual actions into a single proceeding, this Court’s use of the
3 class action device enables it to manage this litigation in a manner that serves the economics of
4 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly
5 situated employees with small but nevertheless meritorious claims for damages would, as a
6 practical matter, have no means of redress because of the time, effort and expense required to
7 prosecute individual actions. (*Gentry v. Super. Ct.* (2007) 42 Cal. 4th 443, 457-62; *Leyva v.*
8 *Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the
9 superiority concerns are essentially non-existent.

10 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

11 **A. The Proposed Notice Plan Satisfies Due Process**

12 Notice requirements are set forth in the California Rules of Court. Cal. Rules of Court,
13 Rule 3.766 (e) and (f). California law vests the Court with broad discretion in fashioning an
14 appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no
15 statutory or due process requirement that all class members receive actual notice, but in this matter,
16 the Class Members will receive direct mailed notice. As the Court of Appeals has explained, “[t]he
17 notice given should have a reasonable chance of reaching a substantial percentage of the Class
18 Members....” (*Id.* at p. 974.) In this case, notice of the proposed Settlement will be provided by
19 direct mailing, the best possible form of notice.

20 **B. The Notice Is Accurate and Informative**

21 The proposed Notice should be approved. It will be disseminated through direct U.S. first
22 class mail to the last known address for each Class Member. It informs the Class Members of the
23 terms of the Settlement and their right to be excluded from the Settlement. And if there are Class
24 Members who wish to object to this proposed class action Settlement, they will have the
25 opportunity to file their objections and be heard at the Final Approval Hearing.

26 The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg,
27 Newberg on Class Actions (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the
28 terms and conditions of the Settlement Agreement, in an informative and coherent manner. It

1 makes clear that the Settlement Agreement does not constitute an admission of liability by the
2 Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits
3 of the Action. It also states that the final settlement approval decision has yet to be made. The
4 Notice thus complies with the standards of fairness, completeness, and neutrality required of a
5 combined settlement-certification class notice.

6 **VI. CONCLUSION**

7 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
8 approval of the proposed Settlement and set a Final Approval Hearing on August 9, 2024 at
9 9:00AM per Reservation Number: **A-329033-001**.

10
11 Dated: June 5, 2024

Respectfully submitted,

WILSHIRE LAW FIRM

12
13 By: _____

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