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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

NELIDA BARAJAS, an individual on behalf
of herself and all others similarly situated,

Plaintiff,

vs.

CANCER CENTER ONCOLOGY
MEDICAL GROUP, INC. – EAST
COUNTY, a California corporation;
CANCER CENTER ONCOLOGY
MEDICAL GROUP, a business entity of
unknown form; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 37-2023-00029649-CU-OE-CTL

CLASS ACTION

Assigned for All Purposes To:
Hon. James A. Mangione
Dept.: C-75

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF' MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS
ACTION SETTLEMENT; AND (3)
SETTING HEARING FOR FINAL
APPROVAL**

Date: September 13, 2024
Time: 9:00 AM
Dept: C-75

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Nelida Barajas (“Plaintiff” or “Class Representative”) filed a class action
4 complaint in the Superior Court of the State of California, San Diego County, Case No. 37-2023-
5 00029649-CU-OE-CTL against Defendant Cancer Center Oncology Medical Group, Inc. – East
6 County and Cancer Center Oncology Medical Group¹ (collectively “Defendant”). Plaintiff alleged
7 the following causes of action in her operative complaint (First Amended Class Action Complaint):
8 (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code §
9 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Labor
10 Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203; (7)
11 Violation of Labor Code §204; (8) Failure to Keep Required Payroll Records Under Labor Code
12 §§ 1174 and 1174.5; (9) Failure to Reimburse Necessary Business Expenses § 2802; (10) Violation
13 of Business & Professions Code § 17200 *et seq*; and (11) Penalties under Private Attorney General
14 Act (“PAGA”).

15 Pursuant to the proposed Joint Stipulation of Class and PAGA Settlement Agreement and
16 Release (“Settlement” or “Settlement Agreement”),² filed concurrently herewith, the Settlement
17 Class Members (or Settlement Class) consists of “all individuals who were or have been employed
18 by Defendant in Californian as non-exempt employees at any time” from July 14, 2019 through
19 February 2, 2024, and who have not previously released their claims against Defendant. After
20 engaging in substantial investigation and extensive negotiations with the assistance of a respected
21 third-party neutral David Phillips, Esq., the parties have agreed to settle all claims alleged in
22 Plaintiff’s First Amended Class Action Complaint on a class-wide non-reversionary basis for Four
23 Hundred Thousand Dollars and Zero Cents (\$400,000.00), inclusive of all fees and costs. There are
24 approximately 73-75 Settlement Class Members and each Settlement Class Member shall receive
25 a settlement share unless she/he opts out.

26 _____
27 ¹ Cancer Center Oncology Medical Group is the DBA of Cancer Center Oncology Medical Group, Inc. - East
28 County.

² To the extent any capitalized term is not defined in this motion, Plaintiff intends for the definition in the parties’
Settlement Agreement to be used. To the extent there are any conflict between the definitions in the parties’
Settlement Agreement and this motion, the definition in the Settlement Agreement controls.

1 The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and
2 adequate, and in the best interests of the Settlement Class. Consequently, Plaintiff, with the consent
3 of Defendant, hereby moves this Court for an order: (1) granting preliminary approval of the
4 proposed class action settlement, as embodied in the Settlement Agreement filed concurrently
5 herewith; (2) approving the Notice of Class Action Settlement to be sent to Settlement Class
6 Members, and the notification schedule as set forth in the Settlement Agreement and the Proposed
7 Order, also filed concurrently herewith; and (3) setting a hearing for final approval of the class
8 action settlement.

9 **II. STATUS OF THE LITIGATION**

10 **A. Procedural History**

11 On July 14, 2023, Plaintiff filed a class action complaint against Defendant alleging ten
12 causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under
13 Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest Break Liability
14 Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of Labor Code §
15 203; (7) Violation of Labor Code §204; (8) Failure to Keep Required Payroll Records Under Labor
16 Code §§ 1174 and 1174.5; (9) Failure to Reimburse Necessary Business Expenses § 2802; (10)
17 Violation of Business & Professions Code § 17200 *et seq.* (Declaration of Natalie Haritounian
18 (“Haritounian Decl.”), filed concurrently herewith, ¶ 10).

19 Plaintiff contends that Defendant failed to pay Settlement Class Members all wages due and
20 owing, including by requiring off the clock work, failing to incorporate non-discretionary bonuses
21 and/or commissions into the regular rate of pay used to calculate and pay for overtime pay, sick
22 pay, and meal and rest break premiums, unlawfully rounding to their detriment, failing to provide
23 meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages
24 including final wages, failing to maintain accurate records, and failing to reimburse necessary
25 business expenses.

26 On July 14, 2023, Plaintiff submitted a Private Attorneys General Act (“PAGA”) notice
27 letter (“PAGA Notice”) to the Labor Workforce Development Agency (“LWDA”) addressing the
28 same wage and hour allegations as her class action complaint and served Defendant with the PAGA

1 Notice on the same day. (Haritounian Decl., ¶ 12.) The LWDA did not express an interest in
2 investigating Plaintiff's claims within the 65-day period. (*Id.*) Therefore, on September 15, 2023,
3 Plaintiff filed a First Amended Complaint adding a cause of action for penalties under the PAGA.
4 (*Id.*) The First Amended Complaint is the operative complaint in this case. (*Id.*)

5 **B. Investigation**

6 Before filing the lawsuit, Class Counsel investigated and researched the facts and
7 circumstances underlying the pertinent issues and the law applicable thereto. (Haritounian Decl., ¶
8 13.) This required thorough discussions and interviews between Class Counsel and Plaintiff, as
9 well as preliminary research into the various legal issues involved in the case. (*Id.*) After conducting
10 their initial investigation, Class Counsel determined that Plaintiff's claims were well-suited for
11 class and representative action adjudication owing to what appeared to be a common course of
12 conduct affecting a similarly situated group of employees. (*Id.*)

13 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
14 claims giving rise to the action, including: (1) conducting informal discovery and meeting and
15 conferring with defense counsel about same; (2) reviewing and analyzing a sampling of time and
16 pay records as well as employment handbooks, Plaintiff's personnel files, relevant policies and
17 other documentation; (3) researching the applicable law and potential defenses; (4) constructing
18 damage models based on interpretations of California law; and (5) reviewing information provided
19 by Defendant at the mediation. (Haritounian Decl., ¶ 14.) The Class enumerated in this action is
20 ascertainable because the Class Members may be readily identified by reference to Defendant's
21 records. (*Id.*) Defendant have agreed to share the information from these records with the settlement
22 Administrator in order to identify and contact the Class Members. (*Id.*) There are approximately
23 73-75 total Class Members. (*Id.*)

24 Defendant, for its part, vigorously contests liability, the amount of claimed damages, and
25 the propriety of class certification. (Haritounian Decl., ¶ 15.) After Class Counsel analyzed the
26 relevant documents and other gathered data, Class Counsel believed that this case was appropriate
27 for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the parties
28 elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

1 **C. Settlement Efforts**

2 On January 29, 2024, the parties mediated this case with David Phillips, Esq., a respected
3 and highly experienced mediator in wage and hour class actions. (Haritounian Decl., ¶ 16.) (*Id.*)
4 During mediation, Plaintiff’s and Defendant’s counsel discussed all aspects of the case, including
5 the risks of litigation and the risks to both parties of proceeding with a motion for class certification
6 as well as the law relating to unpaid wages, meal periods, rest periods, wage statements, and final
7 pay. (*Id.*) As a result of the mediation, the parties agreed to settle the lawsuit according to the terms
8 set forth in the Settlement Agreement. (*Id.*; See Exhibit 1 attached to Haritounian Decl.,
9 “Settlement” or “Settlement Agreement”.)

10 From Class Counsel’s review of the facts, strengths, and weaknesses of the case, the risks
11 and delays posed by further litigation, and Class Counsel’s own prior litigation experience, Class
12 Counsel believes that the recovery for each Class Member is fair and reasonable taking into
13 consideration the amounts received in other wage and hour class actions, the risks inherent in
14 litigation of this genre, and the reasonable tailoring of each Class Member’s claim to the settlement
15 award he or she will receive. (*Id.*) Further, and based on the settlement negotiations, which were
16 extensive, and conducted in good faith and at arm’s length between attorneys with substantial
17 experience litigating class actions and wage and hour cases, the Settlement Agreement was the
18 product of a non-collusive settlement process in which the parties were forced to make significant
19 compromises in the interest of reaching a full and complete settlement of the lawsuit. (*Id.*)

20 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

21 Under the terms of the proposed Settlement Agreement, the Defendant has agreed to pay
22 Four Hundred Thousand Dollars and Zero Cents (\$400,000.00) (“Gross Settlement Amount”) on a
23 non-reversionary basis to settle and release all claims asserted by Plaintiff in the First Amended
24 Complaint and those in the PAGA Notice. (Haritounian Decl., ¶ 17; Exh. 1, §1.20.) The Gross
25 Settlement Amount is in exchange for Plaintiff’s and the Settlement Class Members’ release of all
26 claims, and the released PAGA claims.

27 The Settlement Agreement defines “Settlement Class Members” as “all individuals who
28 were or have been employed by Defendant in Californian as non-exempt employees at any time

1 from July 14, 2019 through February 2, 2024, and who have not previously released their claims
2 against Defendant.” (Haritounian Decl., ¶ 18; Exh. 1, §1.5.) The “Net Settlement Amount,”
3 available for distribution to Class Members, shall be the Gross Settlement Amount, less Class
4 Counsel Fees and Costs, the Class Representative Enhancement payment, Administration Costs,
5 the LWDA PAGA Payment (seventy-five percent (75%) of the PAGA Payment), and Individual
6 PAGA Payments (twenty-five percent (25%) of the PAGA Payment). (Haritounian Decl., ¶ 19;
7 Exh. 1, §1.27.) These amounts are detailed as follows:

- 8 • Class Counsel Fees and Costs: Class Counsel’s attorneys’ fees shall not exceed
9 One Hundred Thirty-Three Thousand Three Hundred Thirty Three Dollars and
10 Thirty Three Cents (\$133,333.33), and actual reasonable litigation costs in an
11 amount not to exceed Twenty Five Thousand Dollars (\$25,000) ; (Haritounian
12 Decl., ¶ 19; Exh. 1, §3.2.2.);
- 13 • Settlement Administration Costs, shall not exceed Five Thousand Dollars and Zero
14 Cents (\$5,000.00); (Haritounian Decl., ¶ 19; Exh. 1, §3.2.3.);
- 15 • Class Representative Enhancement Payment, shall not exceed Ten Thousand
16 Dollars and Zero Cents (\$10,000.00) ; and (Haritounian Decl., ¶ 19; Exh. 1,
17 §3.2.1.);
- 18 • PAGA Penalties, Twenty Thousand Dollars and Zero Cents (\$20,000.00) for civil
19 penalties under the PAGA, where 75% (\$15,000.00) will be paid to the LWDA
20 and 25% (\$5,000.00) distributed to Aggrieved Employees. (Haritounian Decl., ¶
21 19; Exh. 1, §3.2.5.)

22 The “Individual Class Payment,” is each Participating Class Member’s share of the Net
23 Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on
24 the number of workweeks a Participating Class Member worked during the Class Period as a non-
25 exempt employee in California. (Haritounian Decl., ¶ 20; Exh. 1, §1.21.)

26 Defendant shall pay its employer-side payroll tax obligations on the Wage Portion of the
27 Individual Class Payments in addition to the Gross Settlement Amount. (Haritounian Decl., ¶ 21;
28 Exh. 1, §1.20.)

1 The settlement amount was a compromise figure, factoring in the inherent risks related to
2 certification, liability and damages. (Haritounian Decl., ¶ 22.) However, taking into account all of
3 the circumstances of the action and the defenses raised by Defendant against certification, liability
4 and damages, Class Counsel believes that the settlement is fair and reasonable. (*Id.*)

5 Attached to the Settlement Agreement as Exhibit A is the Notice of Class Action Settlement
6 (“Class Notice”). Class Members shall each receive a Class Notice via first class mail (after the
7 settlement Administrator conducts a national change of address search). (Haritounian Decl., ¶ 23;
8 Exh. 1, §7.3.2.) Class Members will have an opportunity to dispute the information provided in
9 their Class Notice and they may produce evidence to support the information is inaccurate.
10 (Haritounian Decl., ¶ 24; Exh. 1, § 7.5; *see also* Class Notice, **Exhibit A** attached to the Settlement
11 Agreement.) The settlement Administrator shall decide the dispute and may ask Defendant to
12 produce the personnel and payroll files of the Class Member disputing their credited workweeks in
13 order to resolve the dispute. (Haritounian Decl., ¶ 24; Exh. 1, §7.5.) Class Members wishing to
14 opt-out from the Settlement Agreement must sign and postmark a written request for exclusion to
15 the settlement Administrator within the Notice Period (forty-five (45) calendar days from the initial
16 mailing of the Class Notice). (Haritounian Decl., ¶ 25; Exh. 1, §7.4.) Participating Class Members
17 will also have the opportunity to object to the Settlement Agreement, by serving a copy of the
18 objection to the Settlement Administrator within the Notice Period.³ (Haritounian Decl., ¶ 25; Exh.
19 1, §7.6.)

20 The parties have also agreed that Simpluris, Inc. shall handle the notice and settlement
21 administration (Exh. 1, § 7.1), and the parties respectfully request this Court to appoint Simpluris,
22 Inc. to handle those procedures. The procedures for mailing notice and processing exclusions and
23 objections as well as distribution of the Net Settlement Amount is detailed in the Settlement
24 Agreement. (Exh. 1, §§7.4; 7.6.)

25 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

26 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince*

27 ³ The Parties recognize and agree that the “60 days” response deadline stated in Section 7.6.2 of the Settlement
28 Agreement is a typographical error and that the “45-days” response deadline in Sections 1.42, 7.3.4, of the Settlement
Agreement is the correct response deadline for Class Members to object to the Settlement.

1 v. *CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981)
2 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved in favor
3 of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at 473-75.)
4 The decision to certify a class is a procedural one, and should be based on the allegations in the
5 operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v.*
6 *Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

7 To certify a settlement class, the Court must find the two primary requirements for
8 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
9 defined community of interest in the questions of law and fact involving the parties to be
10 represented. (*See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
11 *Company* (1967) 67 Cal. 2d 695, 704.) These criteria are met here for the reasons set forth below.

12 **A. There Is A Numerous and Ascertainable Class**

13 Whether a class is ascertainable is determined by examining the class definition, the size of
14 the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d at
15 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271.)
16 Class members are “ascertainable” where they may be readily identified without unreasonable
17 expense or time. *See Rose v. City of Hayward*, 126 Cal. App. 3d 926, 932 (1981) (finding that
18 “class members are ‘ascertainable’ where they may be readily identified without unreasonable
19 expense or time by reference to official records). Plaintiff contends, and Defendant do not dispute
20 for settlement purposes only, this requirement and the requirement of numerosity is met. Class
21 Members are “all individuals who were or have been employed by Defendant in Californian as non-
22 exempt employees at any time from July 14, 2019 through February 2, 2024, and who have not
23 previously released their claims against Defendant.” (Haritoonian Decl., ¶ 70(a).) Documents and
24 information exchanged between the parties reflect a class of approximately 73-75 Class Members.
25 (Haritoonian Decl., ¶ 70(a).) The Class Members have already been identified by reference to
26 Defendant’s payroll and personnel records. (Haritoonian Decl., ¶ 70(b).)

27 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

28 **B. There Is A Well-Defined Community of Interest**

1 A community of interest is established by the predominance of common issues of law and
2 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

3 [D]oes not depend upon an identical recovery, and the fact that each
4 member of the class must prove his separate claim to a portion of any
5 recovery by the class is only one factor to be considered ... The mere
6 fact that separate transactions are involved does not of itself preclude
7 a finding of the requisite community of interest so long as every
8 member of the alleged class would not be required to litigate
9 numerous and substantial questions to determine his individual right
10 to recover subsequent to the rendering of any class judgment which
11 determined in plaintiff favor whatever questions were common to
12 the class.

13 *Id.* at 809.

14 Plaintiff contends, and Defendant do not dispute for settlement purposes only, that common
15 issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is
16 united in its proof. (Haritounian Decl., ¶ 70(e).) Because Plaintiff has alleged a single scheme, “the
17 relevant proof [does] not vary among class members” and “clearly presents a common question
18 fundamental to all class members.” (See *In Re NASDAQ Market-Makers Antitrust Litigation*
19 (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*,
20 (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no hesitancy” in inferring class-wide
21 causation, class-wide injury, and class-wide damages when a common course of action has been
22 shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This inference “eliminates the need
23 for each class member to prove individually the consequences of the defendants’ actions to him or
24 her.” (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753
25 [emphasis added]).)

26 This action involves, *inter alia*, a determination about Defendant’s alleged failure to provide
27 meal period and rest periods, failure to pay wages and overtime due to allegedly common and
28 unlawful policies, failure to pay final wages when required, failure to provide accurate paystubs,
and largely derivative claims under the Business & Professions Code and PAGA. Plaintiff contends
these practices affected Class Members in the same way. Plaintiff contends these practices resulted
in a failure to compensate employees at termination, and incomplete wages displayed on wage
statements. The outcome of litigation on this matter depends upon questions that are common to

1 Class Members. (Haritounian Decl., ¶ 70(f).) While Defendant maintain otherwise, these issues will
2 not be decided on the basis of facts peculiar to each Class Member, but rather on the basis of facts
3 common to them all. It is also true that these issues of liability can be determined on a class-wide
4 basis. (*Id.*)

5 **C. The Named Plaintiff's Claims Are Typical**

6 A class representative's claims are typical when they arise from the same event, practice,
7 or course of conduct that gives rise to the claims of other putative class members, and if their claims
8 rest on the same legal theories. The class representative's claims must be "typical" but not
9 necessarily identical to the claims of other class members. It is sufficient that the representative is
10 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
11 (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
12 (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class
13 representative must have identical interests with the class members.") Thus, it is not necessary that
14 the class representative should have personally incurred all of the damages suffered by each of the
15 other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

16 Plaintiff contends, and Defendant do not dispute for settlement purposes only, that
17 Plaintiff's claims are typical of Class Members' claims because they arose from the same factual
18 basis and are based on the same legal theories. (Haritounian Decl., ¶ 70(c).) Plaintiff was employed
19 by Defendant during the Class Period, and was subject to the allegedly unlawful meal and rest
20 policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiff is a member of the
21 Class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay all wages, whether
22 Defendant failed to provide meal and rest periods, etc.), which would arise if this was an individual
23 action, applies to the other Class Members as well. The answer to these questions would determine
24 Defendant's liability to the putative class. (*Id.*) Thus, the claims of Plaintiff are typical of the claims
25 of the putative class. (*Id.*) Accordingly, the typicality requirement is satisfied.

26 **D. Adequacy of Class Counsel and Class Representative**

27 Class Counsel are experienced in class actions, have represented their clients zealously and
28 have no conflicts of interest. (Haritounian Decl., ¶¶ 3-9, 70(d).) The Class Representative's interests

1 are aligned with those of the Class Members, she has suffered the same injuries as the Class
2 Members, and have no conflicts of interest. (*Id.*) Therefore Class Counsel and the Class
3 Representative are adequate.

4 **E. Predominance and Superiority**

5 Individual issues do not predominate over those common to the class. (Haritounian Decl.,
6 ¶70(f).) The class action mechanism is superior to individualized actions because Class Members
7 have little incentive to bring claims that are small. (*Id.*)

8 **V. THE TWO-STEP APPROVAL PROCESS**

9 Any settlement of class action litigation must be reviewed and approved by the Court. This
10 is accomplished in two steps: (1) An early (preliminary) review by the trial court, and (2) a detailed
11 review after the notice has been distributed to the class members for their comments or objections.
12 In this regard, the Manual for Complex Litigation (Second) explains:

13 A two-step process is followed when considering class settlements...
14 If the proposed settlement appears to be the product of serious,
15 informed, non-collusive negotiations, has no obvious deficiencies,
16 does not improperly grant preferential treatment to class
17 representative or segments of the class, and falls within the range of
possible approval, then the court should direct that notice be given to
the class members of a formal fairness hearing, at which evidence
may be presented in support of and in opposition to the settlement.

18 (*Manual for Complex Litigation (Second)* (1985) at § 30.44.) The preliminary approval of the class
19 action settlement by the trial court is simply a conditional finding that the settlement appears to be
20 within the range of acceptable settlements. (*See, e.g., Newberg*, § 11.25; *North County Contractor's*
21 *Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.) Thus, the
22 preliminary approval of the class action settlement by the trial court is simply a conditional finding
23 that the settlement appears to be within the range of acceptable settlements.

24 Settlements to resolve PAGA claims also require court approval. (Labor Code § 2699(1)(2).)
25 There is no articulated standard for approving PAGA settlements. PAGA settlements for as little
26 as \$0 have been approved. (*See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589
27 (approving PAGA settlement and release that allocated \$0 to PAGA claim).) Courts have also
28 approved settlements for \$20,000 or less. (*See, e.g., Hicks v. Toys 'R' Us-Delaware, Inc.*, (C.D.

1 Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4 million
2 settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1
3 (approving PAGA payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson*
4 *Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in
5 \$300,000 settlement).)

6 A review of the preliminary approval criteria demonstrates a substantial basis for granting
7 the instant motion and proceeding to a full settlement hearing.

8 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

9 As a matter of public policy, courts both encourage the use of the class action device and
10 favor settlement over continued litigation. (*See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th
11 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent a
12 failure of justice in our judicial system.”); *Class Plaintiff v. City of Seattle* (1992) 955 F.2d 1268,
13 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class action
14 litigation is concerned.”).)

15 Moreover, courts presume the absence of fraud or collusion in the negotiation of a
16 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
17 negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.* (C.D.
18 Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989)
19 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents, particularly
20 when settlement has been reached by experienced counsel familiar with the litigation. (*Rodriguez*,
21 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.)

22 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
23 several factors that should be analyzed in determining if a class action settlement should be
24 approved. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,
25 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
26 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
27 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
28

1 participant; and (8) the reaction of the Class Members to the proposed settlement.

2 The settlement here satisfies each of these factors. Class Counsel conducted extensive
3 informal discovery before entering into meaningful settlement negotiations in this matter, including
4 a detailed analysis of Defendant's policies and a considerable sample of Defendant's time and pay
5 records. (Haritounian Decl., ¶¶ 13-14.) This discovery permitted Class Counsel to fairly evaluate
6 the strengths of the case and the risks associated with ongoing litigation. Class Counsel is very
7 experienced in the handling of wage and hour class actions and supports this Settlement.
8 (Haritounian Decl., ¶¶ 3-8.)

9 **A. The Strength of Plaintiff's Case.**

10 Plaintiff alleges that Defendant failed to pay minimum wages and overtime by failing to
11 incorporate non-discretionary bonuses into the regular rate of pay, had an unlawful rounding policy,
12 and that putative class members were asked to perform pre and post-shift off the clock work.
13 Plaintiff further alleges that Defendant failed to provide proper meal or rest breaks or provide
14 premium pay in lieu thereof, failed to provide accurate wage statements, failed to keep required
15 payroll records, failed to timely pay wages on time, failed to timely pay all wages upon termination,
16 and failed to reimburse necessary business expenses in violation of California law. (Haritounian
17 Decl., ¶ 27.)

18 Class Counsel felt confident that the claims in this case would be certified given that
19 Defendant's policies were applicable to all Class Members and unlawful on their face. (Haritounian
20 Decl., ¶¶ 30-61.) Defendant contends, however, that its policies complied with California law and
21 denies Plaintiff's allegations.

22 **B. The Risks Associated with the Merits.**

23 As with all litigation, there are risks that a party will not prevail on the merits. In this case,
24 Plaintiff contends that they and other Class Members were not properly provided meal periods.
25 (Haritounian Decl., ¶¶ 33-36.) Defendant contends that Class Members were given a reasonable
26 opportunity to take their meal periods, and in fact received their meal periods most of the time (*Id.*)
27 If Defendant's contentions are proven true and prevail in trial, the likely outcome of this claim
28 would be no recovery for the Class Members. Plaintiff also contends that Defendant did not provide

1 Class Members with paid 10-minute rest breaks for every four hours or major fraction thereof.
2 (Haritounian Decl., ¶¶ 37-39.) Class Members consistently worked in excess of consecutive four-
3 hour shifts and were entitled to paid rest breaks of not less than ten minutes for each consecutive
4 four-hour shift which they were denied. Class Members were required to work through their rest
5 breaks, and through their entire shifts. Defendant maintains that it did provide the reasonable
6 opportunity for Class Members to take duty-free rest breaks. (Haritounian Decl., ¶ 39.) Defendant
7 also pointed out that, unlike meal periods, rest breaks need not be recorded and Defendant disputes
8 all allegations that breaks were not received. As these considerations would likely depress the
9 damages *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts
10 to the rest-break claim.

11 Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members minimum wages
12 for all hours worked, in violation of minimum wage laws. (Haritounian Decl., ¶ 30.) Plaintiff
13 contends that Class Members were not paid all wages they were owed including for all work
14 performed and for all overtime hours worked. (*Id.*) Specifically, Plaintiff alleges Defendant
15 unlawfully rounded down the hours Class Members worked. (*Id.*) Plaintiff contends the time
16 punches Class Members were required to input were rounded and reduced to reflect the scheduled
17 work time rather than the actual hours worked. (*Id.*) Additionally, Plaintiff contends Class Members
18 had to undergo COVID-19 screenings and temperature checks before being allowed to clock in
19 resulting in off the clock work. (*Id.*) Moreover, Plaintiff alleges Class Members were required to
20 perform pre-shift and post-shift off the clock work. (*Id.*) Additionally, Plaintiff contends Defendant
21 failed to incorporate non-discretionary, performance-based bonuses and/or commissions into the
22 regular rate of pay. (*Id.*)

23 Defendants contends that it paid for all reported hours worked, that Class Members were
24 trained to record all hours worked, and that they paid proper minimum wages. (*Id.* at 32.) Defendant
25 also maintains that the allegations regarding failure to pay wages for hours worked in excess of
26 eight hours in a day did not constitute a basis for violation of Labor Code § 510. Defendant argues
27 that given their written policies and practices, any unrecorded hours were likely subject to
28 individualized inquiry and unlikely to be certified. Given the difficulty in certifying this claim,

1 Class Counsel had to apply a significant discount to damages based on this theory.

2 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties.**

3 In order to establish liability for these penalties, Plaintiff would first have to establish
4 liability for the underlying claims. Plaintiff would then have to establish that Defendant's conduct
5 was willful and knowing. (Labor Code §§ 203, 226(e).)

6 With waiting time penalties, there is always the risk that the trier of fact would not have
7 held that Defendant's actions were done "willfully." A good faith belief in a legal defense can
8 preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36,
9 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleges that Defendant failed to pay for all
10 hours worked and premiums for non-compliant meal breaks. Plaintiff contends the Class Members
11 are entitled to these wages and premiums, which they allege were not paid at the time of their
12 termination or resignation. If Plaintiff is successful on his claims, the penalties pursuant to Labor
13 Code § 203 shall attach. Defendant, however, contends it provided employees with the reasonable
14 opportunity to take meal breaks, asked Class Members to confirm the accuracy of their time records,
15 and therefore had good-faith defenses under *Brinker* and its progeny. Defendant likewise contends
16 that it properly paid all hours worked by its employees. Based upon Defendant's potential success
17 in establishing both that a good faith dispute existed with regard to unpaid wages, and Defendant
18 endeavored in good faith to supply accurate wage statements, Defendant argues the claims for
19 paystub violations and waiting time penalties have little or no value. *See Maldonado v. Epsilon*
20 *Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage statements that accurately report
21 wages paid to employees do not violate Labor Code § 226, even if it is later determined that
22 employer did not properly pay all wages due). As such, there was risk associated with wage
23 statement and waiting time penalties that Class Counsel had to consider. (Haritounian Decl., ¶¶ 40-
24 46.)

25 **D. The Risks Associated with the PAGA Penalties.**

26 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
27 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
28 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and

1 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
2 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount
3 by the Labor Code section relating to the underlying alleged Labor Code violation, that amount
4 shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
5 maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil penalty
6 amount specified by this part if, based on the facts and circumstances of the particular case, to do
7 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”]); *See*,
8 *e.g.*, *Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev. denied* (2018),
9 (recognizing court’s ability to reduce PAGA penalties). Courts have held that situations similar to
10 the current one (e.g. injuryless violations, technical errors, and substantial compliance) should lead
11 to reductions in penalties. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th
12 1112, 1134-1135 (2012) (holding that reduction was justified when employer “attempted to comply
13 with the law”); *Fleming v. Covdien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS
14 154590 at *8-9 (C.D. Cal. August 12, 2011) (reducing PAGA penalties more than 80% – from \$2.8
15 million to \$500,000 – when “employees suffered no injury” employers were “not aware” of the
16 violation and “took prompt steps to correct all violations once notified”).

17 Plaintiff discounted potential penalties under this claim given this authority, and for other
18 reasons. The PAGA claims are premised on the same underlying unpaid wages, meal and rest break,
19 wage statement, and waiting time claims, and thus subject to the same disputes and defenses. There
20 is also a dispute as to whether violations in later pay periods trigger the \$200 penalty under PAGA
21 as a “subsequent violation.” (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1203 (2008).)
22 As such, there is a fair amount of risk associated with PAGA claims. (Haritonian Decl., ¶¶ 47-50.)
23 The parties also considered that the purpose of PAGA is to “achieve maximum compliance with
24 state labor laws,” and that through the proposed settlement, Defendant have agreed to ensure
25 policies comply with California law. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.
26 4th 348, 379.) This makes the settlement’s contemplated PAGA payment of \$20,000 appropriate.

27 Based on this analysis, Class Counsel believes that this settlement is fair and reasonable and
28 in the best interest of the Class. (Haritonian Decl., *passim*.)

1 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

2 Given the risks outlined above, the issues in this case were complex and the risk for Plaintiff
3 and the Class Members associated with this litigation was high. (Haritounian Decl., ¶¶ 54-57.) A
4 class trial would have required the retention of expensive expert witnesses, the accrual of extensive
5 litigation costs, and the parties would have had to spend a substantial amount of time. (Haritounian
6 Decl., ¶¶ 12, 57.)

7 Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome
8 at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay
9 for the Class Members who have already waited years for resolution in this matter.

10 **F. The Risk of Maintaining Class Action Status Through Trial.**

11 In class actions, decertification is always a possibility. There is always a risk that a trial of
12 this magnitude can become unmanageable. (*Id.*) Given cases like *Duran v. U.S. Bank Nat. Assn.*,
13 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples in class actions,
14 decertification is a real risk that Class Counsel must take into account.

15 **G. The Amount Offered in Settlement.**

16 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-
17 collusive, and arms-length negotiations between the parties with an experienced mediator. In order
18 to determine the approximate potential damages which would be owed to each of the Class
19 Members, Class Counsel analyzed the time records for Plaintiff and Defendant provided Class
20 Counsel with records for a sampling of the class members. By analyzing this information, Class
21 Counsel was able to estimate the full value of the case if Plaintiff was to prevail at trial.

22 There are approximately 73-75 total Class Members. Based on the data provided, Class
23 Counsel estimated the following maximum exposures: unpaid wage claim at \$332,263, meal period
24 claim at \$489,137, rest period claim at \$489,137, wage statement claim at \$109,650, waiting time
25 penalties at \$334,646, and on PAGA, Plaintiff estimated the maximum exposure at \$112,700. (*Id.*)

26 However, taking into account the difficulties of proof, the Defendant's defenses, and other
27 attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or other
28 relief that the class could reasonably expect to be awarded at trial is significantly less than the

1 maximum exposure. (Haritoonian Decl., ¶ 29.)

2 Once Class Counsel was able to determine the maximum potential damages, it was able to
3 determine a fair and reasonable settlement for the Class. (*Id.* at ¶¶ 55-58) Class Counsel analyzed
4 the likelihood of success on the merits. (*Id.*) It believes that the Class had a reasonable likelihood
5 of success on the core claims. (*Id.*) However, Defendant dispute this contention, denies all
6 wrongdoing in this matter and are confident it has strong legal and factual defenses to Plaintiff's
7 claims. Moreover, Class Counsel determined that the likelihood of success on the claims for unpaid
8 wages and waiting time penalties were not as strong, because various defenses including issues not
9 suitable for class treatment, no detriment to the class members over time, and *de minimis* defenses.
10 Defendant may have the opportunity to establish that it had a good faith belief that it was complying
11 with law. (*Id.*) After taking into account the likelihood of success on each claim and the challenges
12 faced with certifying these claims, Class Counsel determined that the settlement amount of
13 \$400,000.00 was fair and reasonable.

14 Each of the approximately 73-75 Class Members will receive on average, assuming they
15 worked throughout the class period, \$2,831 after expenses. (*Id.* at ¶ 53.) Plaintiff feels that this
16 Settlement is fair, reasonable, and advantageous to the class. (*Id.*)

17 To summarize, the Settlement here is fair because it provides a substantial payment to each
18 Class Member for releasing his or her claims; extinguishes the risk of litigation; and provides a fair
19 and adequate distribution of the settlement proceeds whereby the funds are allocated to Class
20 Members proportionally based on their payout ratio.

21 As detailed at length in the accompanying Declaration of Natalie Haritoonian, the
22 settlement is the result of extensive settlement negotiations between the parties, conducted at arm's
23 length, and informed by substantial factual and legal investigations. (Haritoonian Decl., *passim*.)
24 Throughout this case, Class Members have been represented by experienced counsel with many
25 years of experience in employment class action litigation. (Haritoonian Decl., ¶¶ 3-8.)

26 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
27 including but not limited to, interviewing Plaintiff on repeated occasions; drafting pleadings;
28 conducting considerable discovery, and meeting and conferring with defense counsel about the

1 same; reviewing and analyzing time records and various handbooks and policies, Plaintiff
2 personnel file, and other documentation; researching California law; interviewing numerous class
3 members regarding their experiences; preparing for and attending mediation; and negotiating and
4 finalizing the Settlement Agreement and related documents. (Haritounian Decl., ¶¶ 11-14.)

5 Among those matters considered during the course of settlement negotiations were the
6 strength of Plaintiff's case versus the amounts offered in settlement; the risks, expenses, and length
7 of further litigation, including class certification and the appeals process; the present state of the
8 law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present value
9 of a settlement versus the long wait necessitated by any potential judgment in class members' favor;
10 the burdens of proof necessary to establish liability against Defendant; and Defendant's defenses
11 to the action. (Haritounian Decl., *passim*.)

12 These factors each indicated that the interests of Class Members are best served by a
13 settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.
14 The Settlement Agreement confers a substantial benefit on the class of up to \$400,000.00.
15 Moreover, the settlement awards for each Class Member will be tailored to their workweeks during
16 the class period. (*Id.* at ¶ 19) In addition Class Counsel secured prospective relief for the class in
17 that Defendant will ensure its policies comply with California law.

18 Class Counsel believes that the settlement is fair and reasonable and serves the best interests
19 of the Class Members. Although the recommendations of counsel proposing the class settlement
20 are not conclusive, the Court can properly take the recommendations into account, particularly if
21 counsel has been involved in litigation for some period of time, appear to be competent, and have
22 experience with this type of litigation, and significant discovery has been completed. *See Newberg*,
23 §11.47.

24 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT IS FAIR AND** 25 **REASONABLE**

26 It is appropriate to provide a relatively modest additional incentive payment to the class
27 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901
28 F.Supp. 294.

1 Plaintiff is entitled to reasonable service payments for her efforts and initiative in bringing
2 and helping to prosecute this class action. Plaintiff spent significant time better apprising herself of
3 her rights, deciding whether remedial action should be taken, how it should be taken, searching for
4 attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing their case
5 and the law. (Haritounian Decl., ¶¶ 65-69.) In the end, Plaintiff decided to vindicate not only her
6 own rights but also those of her co-workers by filing a class action lawsuit.

7 The courage it took to do this should not be underestimated. By suing Defendant, Plaintiff
8 contends she increased her risk of retaliation by prospective employers. (*Id.*) Plaintiff's lawsuit has
9 now cost Defendant considerable resources, and Plaintiff contends such conduct will not be lost on
10 a prospective employer who has to choose between an applicant who has never sued a prior
11 employer and one who has. (*Id.*) Plaintiff contends this risk is particularly real in the information
12 age, where employers can, more easily than ever, perform background checks of prospective
13 employees, sometimes with the stroke of a key. (*Id.*)

14 But Plaintiff did not allow her fear of the potential repercussions of being a class
15 representative deter her from acting for the benefit of Class Members. (*Id.*) To the contrary, Plaintiff
16 has been intimately involved in this case since its inception. (*Id.*) She has devoted a substantial
17 amount of time to helping Class Counsel effectively develop and prosecute this action at every
18 stage of the litigation. (*Id.*) Both before and after the filing of this lawsuit, Plaintiff conferred with
19 Class Counsel to discuss every aspect of this case; Plaintiff has provided Class Counsel with
20 information about Defendant and about the industry generally, reviewed documents, identified
21 witnesses, consulted Class Counsel throughout the litigation, participated in the mediation process,
22 monitored the progress of the litigation with Class Counsel, and reviewed and signed the settlement
23 agreement. (*Id.*)

24 Plaintiff has spent a significant amount of time with Class Counsel detailing her knowledge
25 of Defendant's practices. (*Id.*) She has diligently, adequately, and fairly represented Class
26 Members, and has not placed her interests above any member of the putative class. (*Id.*) This sort
27 of payment to a class representative has been a common feature of settlements negotiated by Class
28 Counsel and has been routinely approved by trial courts. (*Id.*)

1 In light of the foregoing, Class Counsel believes that the incentive award in the amount of
2 \$10,000.00 to the Class Representative is fair and reasonable. (*Id.*)

3 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE**
4 **CLASS MEMBERS.**

5 Constitutional due process requires that class members be provided with notice sufficient
6 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
7 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
8 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*
9 at 314.) The notice must apprise the class members of the pendency of the action; reasonably
10 convey information regarding the settlement and the class members' rights, entitlements, and
11 obligations; and afford class members the opportunity to present their objections. (*Id.*)

12 The Class Notice meets constitutional standards because it provides all the information a
13 reasonable person would need to make a fully informed decision about the settlement. It will notify
14 all class members of the terms of the settlement, of its effect on their rights, of their options as class
15 members (i.e., participate, object, opt out, do nothing), and of the consequences of exercising those
16 options. (Haritounian Decl., ¶¶ 58-60.) Moreover, the Class Notice will specifically direct any class
17 members who have questions or concerns to contact the Settlement Administrator, Simpluris, Inc.,
18 or Class Counsel. (*Id.*)

19 The standard for determining the adequacy of notice is whether the notice has "a reasonable
20 chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975)
21 50 Cal.App.3d 960, 974.) The Judicial Council of California's Deskbook on the Management of
22 Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual notice by mail is
23 preferred when possible and dissemination of combined certification/settlement notice is a common
24 and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.)

25 Here, the Class Notice will be sent via first-class mail to each class member. (Haritounian
26 Decl., ¶ 58.) If any Class Notices are returned undeliverable without a forwarding address, the
27 Settlement Administrator will use the national change of address database and perform a skip trace
28 to locate the class member and mail a new Class Notice to him or her at the correct address. (*Id.*)

1 Thus, most, if not all, class members will likely receive the Class Notice.

2 Pursuant to controlling authority, the proposed Class Notice and method of distribution fully
3 comport with due process requirements. Therefore, the Court should approve the Class Notice and
4 direct that it be distributed as proposed herein.

5 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

6 Non-settling parties and third parties periodically may attempt to object to proposed class
7 action settlements, but the right of non-settling parties to object at the final settlement approval
8 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
9 members have standing to object to a proposed settlement. “Beginning from the unassailable
10 premise that settlements are to be encouraged, it follows that to routinely allow non-class members
11 to inject their concerns via objection at the settlement stage would tend to frustrate this goal.”
12 (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.)

13 **X. THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS**
14 **REASONABLE AND SHOULD BE APPROVED.**

15 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will seek
16 an award of fees of no more than One Hundred Thirty-Three Thousand Three Hundred Thirty Three
17 Dollars and Thirty Three Cents (\$133,333.33), approximately one-third of the Gross Settlement
18 Amount, and actual reasonable litigation costs in an amount not to exceed Twenty Five Thousand
19 Dollars and Zero Cents (\$25,000.00). The requested fees are fair compensation for a law firm
20 involved in undertaking complex, risky, expensive, and time-consuming litigation solely on a
21 contingent basis. (Haritounian Decl. ¶¶ 62-64.) Defendant will not oppose Class Counsel’s above
22 fees and cost request.

23 California courts routinely look to the federal courts on class action approvals. The Ninth
24 Circuit has recognized that an appropriate method for awarding attorneys’ fees in class actions is
25 to award a percentage of the “common fund” created as a result of the settlement. (*Vincent v.*
26 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common
27 fund/percentage approach is to “spread litigation costs proportionally among all the beneficiaries
28 so that the active beneficiary does not bear the entire burden alone.” (*Id.*) Accordingly, courts have

1 discretion to choose either the percentage-of-the-fund method or the lodestar method. (*In re Wash.*
2 *Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.)

3 Several courts have, however, expressed frustration with the “lodestar” approach for
4 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
5 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns the
6 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
7 litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
8 demands on judicial resources. (*In re Activision Securities Litigation*, (N.D. Cal. 1989) 723 F.Supp.
9 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach to
10 determine the award of attorneys’ fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir.
11 1994) 47 F.3d 373, 378-79 (approving attorneys’ fee of 33 1/3% of settlement fund).)

12 Class Counsel’s application for attorneys’ fees in light of the facts and circumstances
13 surrounding this case is well within the range of reasonableness. Historically, courts have awarded
14 percentage fees in the range of 20% to 50% of the common fund, depending on the circumstances
15 of the case. (*Newberg*, at §14.03; *see also In re Activision Securities Litigation*, 723 F. Supp. at
16 1378.) *Newberg* further notes: “[A]chievement of a substantial recovery with modest hours
17 expended should not be penalized but should be rewarded for considerations of time saved by
18 superior services performed.” (*Id.* at §§ 14-10:14-11.)

19 The attorneys’ fees request provided for in the Settlement Agreement is commensurate with
20 judicial precedent. Both state and federal courts regularly approve fee awards equal to or greater
21 than the percentage requested in this case. (*See, e.g., In re Pacific Enterprises Securities Litigation*
22 (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re*
23 *Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding plaintiff
24 counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin Antitrust*
25 *Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement fund); *Parker*
26 *v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to counsel of one-
27 third (1/3) of recovery achieved).)

28 In wage and hour class actions in particular, California trial courts have customarily

1 approved attorney's fees consistent with or greater than the percentage of the common fund
2 requested in this case. (*See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC
3 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at least
4 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
5 Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
6 Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*
7 *Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon.
8 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County Super.Ct.
9 Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper Restaurants*,
10 Orange County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).)

11 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive any
12 compensation until recovery is obtained. (*See Haritounian Decl.*, ¶¶ 62-64.) The Court should also
13 consider the benefit obtained by Class Counsel on behalf of class members. Thus, the requested
14 award for Class Counsel is reasonable.

15 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
16 **APPROVAL**

17 The parties respectfully request this Court, as part of the preliminary approval process, to
18 grant the following relief and make the following orders:

- 19 1. Review and approve the Settlement Agreement;
- 20 2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit
21 A;
- 22 3. Consider and determine that the proposed class action settlement as set forth in the
23 Settlement Agreement preliminarily appears fair, reasonable, and adequate;
- 24 4. Enter an order conditionally certifying the action as a class action for settlement purposes
25 only and preliminarily approving the proposed class action settlement and the Settlement
26 Agreement;
- 27 5. Set a date for the Final Approval Hearing.

28 Dated: August 21, 2024

Respectfully submitted,

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D.LAW, INC.

By  _____
Natalie Hamtoon
Attorneys for Plaintiff NELIDA BARAJAS on
behalf of herself and others similarly situated