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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

QUINCY O’NEAL, individually and on behalf of
others similarly situated and on behalf of other
aggrieved employees,

Plaintiff,

vs.

INCLUDED HEALTH, INC., FORMERLY
KNOWN AS GRAND ROUNDS, INC., a
Delaware corporation; and DOES 1 through 25,
inclusive,

Defendants.

Case No. CGC-23-608391

Honorable Jeffrey S. Ross
Department 606

**NOTICE OF RENEWED MOTION AND
RENEWED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: June 23, 2025
Time: 10:00 a.m.
Dept.: 606

Complaint Filed: August 15, 2023
FAC Filed: January 2, 2024
Trial Date: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on **June 23, 2025** at **10:00 a.m.** in **Department 606** of the above-captioned Court located at Civic Center Courthouse, 400 McAllister Street, San Francisco, California 94102 pursuant to California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiff Quincy O’Neal (“Plaintiff”) will and hereby does move the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiff and Defendant Included Health, Inc., formerly known as Grand Rounds, Inc. (“Defendant”).

Plaintiff requests that the Court enter an Order:

1. Preliminarily approving the First Amended Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”) attached as Exhibit 4 to the Declaration of Miriam L. Schimmel in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement (“Schimmel Decl.”);

2. Certifying the Class for Settlement purposes;

3. Appointing Plaintiff Quincy O’Neal as the Class Representative for Settlement purposes;

4. Appointing Jonathan M. Genish, Miriam L. Schimmel, Joana Fang, Alexandra Rose, and Jared C. Osborne of Blackstone Law, APC as Class Counsel for Settlement purposes;

5. Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as Exhibit A to the Settlement Agreement, to be mailed to the Class;

6. Approving the opt-out and objection procedures provided in the Settlement Agreement and set forth in the Class Notice;

7. For each Class Member, directing Defendant to furnish their full name, last known mailing address, Social Security number, hire date, termination date (if applicable), and any other information as is necessary for the Settlement Administrator to calculate Workweeks and PAGA Workweeks (if applicable) to the Settlement Administrator within fourteen (14) calendar days after the date on which the Court enters the order granting preliminary approval of the Settlement;

8. Approving the proposed deadlines for the settlement administration process; and

9. Setting a Final Approval Hearing.

1 Pursuant to California Labor Code section 2699(1)(2), on May 14, 2025, a copy of the Settlement
2 was submitted to the California Labor and Workforce Development Agency (“LWDA”) via online
3 submission through the LWDA’s website. (Schimmel Decl., ¶ 76 & Exh. 5).

4 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the
5 Declaration of Miriam L. Schimmel, the Declaration of Plaintiff Quincy O’Neal, the Declaration of
6 Jeffrey D. Johnson of CAC Services Group, LLC, the pleadings and other records on file with the Court
7 in this matter, and any other further evidence or argument that the Court may properly receive at or before
8 the hearing.

9 Respectfully submitted,

10 Dated: May 21, 2025

BLACKSTONE LAW, APC

11
12 By: Miriam L. Schimmel
13 Miriam L. Schimmel
14 Attorneys for Plaintiff Quincy O’Neal
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Quincy O’Neal (“Plaintiff”) seeks preliminary approval of the First Amended Joint
4 Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”) entered into
5 between Plaintiff and Defendant Included Health, Inc., formerly known as Grand Rounds, Inc.
6 (“Defendant”) (together, with Plaintiff, the “Parties”). (Declaration of Miriam L. Schimmel in Support
7 of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement [“Schimmel
8 Decl.”], Exh. 4). The Settlement terms are outlined as follows:

- 9
- 10 • Class Size: Approximately 122 individuals.
 - 11 • Gross Settlement Amount: Four Hundred Fifteen Thousand Dollars and Zero Cents (\$415,000.00).
 - 12 • Attorneys’ Fees and Costs: Attorneys’ fees of one-third (1/3) of the Gross Settlement Amount (\$138,333.33 if the Gross Settlement Amount is \$415,000.00) plus actual litigation costs and
13 expenses not to exceed Eighteen Thousand Dollars and Zero Cents (\$18,000.00), to be paid
14 from the Gross Settlement Amount.
 - 15 • Enhancement Payment: Ten Thousand Dollars and Zero Cents (\$10,000.00), to be paid from
16 the Gross Settlement Amount.
 - 17 • Settlement Administration Costs: Not to exceed Seven Thousand Dollars and Zero Cents (\$7,000.00), to be paid from the Gross Settlement Amount.
 - 18 • PAGA Amount: Fifty Thousand Dollars and Zero Cents (\$50,000.00) from the Gross
19 Settlement Amount, 75% of which will be paid to the Labor and Workforce Development
20 Agency (“LWDA”) and the remaining 25% to be paid to the PAGA Employees.
 - 21 • Estimated Net Settlement Amount: One Hundred Ninety-One Thousand Six Hundred Sixty-
22 Six Dollars and Sixty-Six Cents (\$191,666.67) to be distributed to Settlement Class
23 Members.
 - 24

25 As set forth herein, the Settlement is the product of informed discovery and arms-length
26 negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore
27 respectfully requests that the Court grant preliminary approval of the Settlement, conditionally certify the
28 Class, approve the proposed Notice of Class Action Settlement (“Class Notice”), and set a hearing date

1 for final settlement approval, among other requested relief.

2 II. FACTUAL AND PROCEDURAL BACKGROUND

3 Defendant is a healthcare company that partners with leading organizations, health plans, and
4 employers to provide services, such as care guidance, help with billings and claims, and virtual and in-
5 person care. Plaintiff was employed by Defendant as an hourly-paid, non-exempt Bilingual-Care
6 Coordinator and then as a Senior Care Coordinator from approximately December 2020 to approximately
7 January 2023. (Declaration of Plaintiff Quincy O’Neal in Support of Renewed Motion for Preliminary
8 Approval of Class Action and PAGA Settlement [“O’Neal Decl.”], ¶ 2).

9 On August 14, 2023, Plaintiff provided written notice to the LWDA by online submission and to
10 Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified
11 provisions of the California Labor Code alleged to have been violated by Defendant (“PAGA Letter”).
12 (Schimmel Decl., ¶ 9 & Exh. 1).

13 On August 15, 2023, Plaintiff filed a Class Action Complaint for Damages in the action entitled
14 *Quincy O’Neal v. Included Health, Inc., formerly known as Grand Rounds, Inc.*, San Francisco County
15 Superior Court Case No. CGC-23-608391 (“Action”), thereby commencing a putative class action
16 against Included Health, Inc., Grand Rounds Health, and Doctor on Demand Professionals of California.
17 (*Id.*, ¶ 10).

18 On October 17, 2023, pursuant to the joint stipulation of the Parties, the Court dismissed Doctor
19 on Demand Professionals of California without prejudice. (*Id.*, ¶ 11).

20 On October 20, 2023, Plaintiff filed a Complaint for Enforcement Action Under the Private
21 Attorneys General Act, Cal. Labor Code §§ 2698 Et Seq. against Defendant in the action entitled *Quincy*
22 *O’Neal v. Included Health, Inc., formerly known as Grand Rounds, Inc.*, San Francisco County Superior
23 Court Case No. CGC-23-609901 (“PAGA Action”). (*Id.*, ¶ 12).

24 On January 2, 2024, Plaintiff filed a First Amended Class Action Complaint for Damages and
25 Enforcement Action Under the Private Attorneys General Act, California Labor Code §§ 2698 Et Seq.
26 (“Operative Complaint”) in the Action against Defendant, which, *inter alia*, added a cause of action under
27 PAGA and all the allegations alleged in the PAGA Action. (*Id.*, ¶ 13). The Operative Complaint alleges
28 ten (10) causes of action for violations of the California Labor Code for failure to pay minimum wages,

1 failure to pay overtime wages, failure to provide compliant meal periods and premium payments in lieu
2 thereof, failure to provide compliant rest periods and premiums payments in lieu thereof, failure to timely
3 pay wages during employment, failure to provide accurate wage statements, failure to timely pay wages
4 upon termination, and failure to reimburse necessary business expenses, for violations of California
5 Business & Professions Code Section 17200, *et seq.* based on the aforementioned California Labor Code
6 violations, and for civil penalties under the Private Attorneys General Act of 2004 pursuant to California
7 Labor Code Section 2698 *et seq.* (“PAGA”) based on the aforementioned California Labor Code
8 violations. (Ibid).

9 On March 15, 2024, the Parties participated in a formal mediation conducted by Monique Ngo-
10 Bonnici, Esq. (“Mediator”), a neutral and respected mediator with extensive experience in complex wage
11 and hour matters, and with the assistance of the Mediator’s evaluations, the Parties were able to reach an
12 agreement to resolve this dispute on a class and representative basis. (*Id.*, ¶ 14). The Parties then worked
13 diligently to negotiate and memorialize the terms in a long form settlement agreement. (Ibid).

14 On April 5, 2024, pursuant to Plaintiff’s motion to dismiss, the court entered an Order, which
15 dismissed the PAGA Action without prejudice. (*Id.*, ¶ 15).

16 On October 7, 2024, the Parties executed the Joint Stipulation of Class Action and PAGA
17 Settlement. (*Id.*, ¶ 16)

18 **III. MOTION FOR PRELIMINARY APPROVAL**

19 On October 7, 2024, Plaintiff filed a Motion for Preliminary Approval of Class Action and PAGA
20 Settlement (“Motion for Preliminary Approval”) and supporting documents seeking approval of the
21 Original Agreement. (*Id.*, ¶ 17).

22 On November 8, 2024, the Court entered an Order Continuing Preliminary Approval Hearing and
23 Vacating Case Management Conference (“First Order Continuing MPA Hearing”), which raised points
24 of inquiry with regards to the Motion for Preliminary Approval and Original Agreement. (*Id.*, ¶ 18). The
25 Court did not hold a hearing on the Motion for Preliminary Approval. (Ibid).

26 On November 25, 2024, the Parties filed supplemental declarations to address the Court’s points
27 of inquiry in its First Order Continuing MPA Hearing. (*Id.*, ¶ 19).

28 ///

1 On December 23, 2024, the Court entered an Order Continuing Preliminary Approval Hearing
2 (“Second Order Continuing MPA Hearing”), which again raised points of inquiry with regards to the
3 Motion for Preliminary Approval and Original Agreement. (*Id.*, ¶ 20). The Court did not hold a hearing
4 on the Motion for Preliminary Approval. (*Ibid*).

5 On January 3, 2025, the Parties filed additional supplemental declarations to address the Court’s
6 points of inquiry in its Second Order Continuing MPA Hearing. (*Id.*, ¶ 21).

7 On January 14, 2025, the Court entered an Order Denying Plaintiff’s Motion for Preliminary
8 Approval Without Prejudice (“Order Denying MPA Without Prejudice”). (*Id.*, ¶ 22 and Exh. 3). The
9 Court did not hold a hearing on the Motion for Preliminary Approval. (*Id.*, ¶ 22).

10 On January 30, 2025, pursuant to the Court’s concerns in its Order Denying MPA Without
11 Prejudice, the Parties executed the Settlement Agreement, which removed the general release language
12 that the Court determined was overbroad. (*Id.*, ¶ 23 and Exh. 4).

13 **IV. THE SETTLEMENT TERMS**

14 **A. Class Definition**

15 For purposes of settlement only, the Parties have agreed that the Class shall be defined as “all
16 current and former non-exempt employees who worked for Defendant in the State of California at any
17 time during the Class Period” (“Class Members” or “Class”). (Schimmel Decl., ¶ 24; Settlement
18 Agreement, ¶ 9.b). The Class Period is defined as the period from August 15, 2019 through June 30,
19 2024. (Schimmel Decl., ¶ 24; Settlement Agreement, ¶ 9.f). Based on information provided by
20 Defendant, it is estimated that there are a total of one hundred and twenty-two (122) Class Members.
21 (Schimmel Decl., ¶ 24).

22 **B. Amount of Settlement**

23 The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint
24 for a non-reversionary Gross Settlement Amount of Four Hundred Fifteen Thousand Dollars and Zero
25 Cents (\$415,000.00), exclusive of employer-side payroll taxes. (Schimmel Decl., ¶ 25; Settlement
26 Agreement, ¶ 9.p).

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28 ///

1 **C. Allocation and Funding of the Gross Settlement Amount**

2 The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees,
3 and other allocations. (Schimmel Decl., ¶ 25; Settlement Agreement, ¶ 9.p). The Gross Settlement
4 Amount includes: (1) Class Counsel’s fees in the amount of one-third (1/3) of the Gross Settlement
5 Amount (i.e., \$138,333.33 if the Gross Settlement Amount is \$415,000.00); (2) Class Counsel’s actual
6 litigation costs and expenses, not to exceed Eighteen Thousand Dollars and Zero Cents (\$18,000.00); (3)
7 Settlement Administration Costs, not to exceed Seven Thousand Dollars and Zero Cents (\$7,000.00); (4)
8 Enhancement Payment in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00); and (5)
9 PAGA Amount in the amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00). (Schimmel Decl.,
10 ¶ 25; Settlement Agreement, ¶¶ 9.p, 12, 13, 14, and 15). After the above-estimated amounts are deducted
11 from the Gross Settlement Amount, the Net Settlement Amount that will be available for Class Members
12 is currently estimated to be One Hundred Ninety-One Thousand Six Hundred Sixty-Six Dollars and
13 Sixty-Six Cents (\$191,666.67). (Schimmel Decl., ¶ 25). Additionally, 25% of the PAGA Amount
14 (“PAGA Employee Amount”), which is \$12,500.00 out of \$50,000.00 will be fully distributed to all
15 current and former non-exempt employees who worked for Defendant in the State of California at any
16 time during the PAGA Period (“PAGA Employees”). (Schimmel Decl., ¶ 25; Settlement Agreement, ¶¶
17 9.p, 9.x, 9.y, and 14). The “PAGA Period” is defined as the period from August 14, 2022 through June
18 30, 2024. (Schimmel Decl., ¶ 25; Settlement Agreement, ¶ 9.z).

19 The Net Settlement Amount will be distributed and paid to all Class Members who do not submit
20 a timely and valid Request for Exclusion (“Settlement Class Members”) on a *pro rata* basis based on the
21 number of weeks each Class Member worked for Defendant as a non-exempt employee in California
22 during the Class Period (“Workweeks”). (Schimmel Decl., ¶ 26; Settlement Agreement, ¶¶ 9.ll and
23 9.mm). In order to be counted as a Workweek, the Class Member must have worked at least one day in
24 that week. (Schimmel Decl., ¶ 26; Settlement Agreement, ¶ 9.mm). The *pro rata* share of the Net
25 Settlement Amount that a Class Member may be eligible to receive under the Class Settlement
26 (“Individual Settlement Share”) will be calculated by the Settlement Administrator, in accordance with
27 the Settlement Agreement. (Schimmel Decl., ¶ 26; Settlement Agreement, ¶¶ 9.s and 17).

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1 The PAGA Employee Amount will be distributed and paid to all PAGA Employees on a *pro rata*
2 basis based on the number of weeks each PAGA Employee worked for Defendant as a non-exempt
3 employee in California during the PAGA Period (“PAGA Workweeks”). (Schimmel Decl., ¶ 27;
4 Settlement Agreement, ¶¶ 9.bb and 14). In order to be counted as a PAGA Workweek, the PAGA
5 Employee must have worked at least one day in that week. (Schimmel Decl., ¶ 27; Settlement Agreement,
6 ¶ 9.bb). The *pro rata* share of the PAGA Employee Amount that a PAGA Employee may be eligible to
7 receive under the PAGA Settlement (“Individual PAGA Payment”) will be calculated by the Settlement
8 Administrator, in accordance with the Settlement Agreement. (Schimmel Decl., ¶ 27; Settlement
9 Agreement, ¶¶ 9.q and 18).

10 Each Individual Settlement Share will be allocated as ten percent (10%) wages and ninety percent
11 (90%) penalties, interest, and non-wage damages. (Schimmel Decl., ¶ 28; Settlement Agreement, ¶ 19).
12 The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to
13 penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the
14 Settlement Administrator. (Schimmel Decl., ¶ 28; Settlement Agreement, ¶ 19). The Settlement
15 Administrator will withhold the employee’s share of taxes and withholdings with respect to the wages
16 portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their net
17 payment of their Individual Settlement Share (“Individual Settlement Payment”). (Schimmel Decl., ¶ 28;
18 Settlement Agreement, ¶¶ 9.r and 19). The employer’s share of taxes and contributions in connection
19 with the wages portion of Individual Settlement Shares will be paid by Defendant separately and in
20 addition to the Gross Settlement Amount. (Schimmel Decl., ¶ 28; Settlement Agreement, ¶¶ 9.p and 19).
21 Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be
22 reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Schimmel Decl., ¶ 28;
23 Settlement Agreement, ¶ 19).

24 The Settlement Agreement is a non-reversionary and non-claims made settlement. (Schimmel
25 Decl., ¶ 29; Settlement Agreement, ¶¶ 9.p and 37). The Net Settlement Amount will be fully distributed
26 to Settlement Class Members and the PAGA Amount will be fully distributed to the LWDA and PAGA
27 Employees, in accordance with the Settlement Agreement. (Schimmel Decl., ¶ 29; Settlement Agreement,
28 ¶¶ 17 and 18). No money will revert to Defendant. (Schimmel Decl., ¶ 29; Settlement Agreement, ¶ 9.p).

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. (Schimmel Decl., ¶ 30; Settlement Agreement, ¶ 37). Any funds associated with such canceled checks will be distributed by the Settlement Administrator to the State of California's Unclaimed Property Fund in the name of the Settlement Class Member and/or PAGA Employee. (Schimmel Decl., ¶ 30; Settlement Agreement, ¶ 37).

D. Released Claims

Upon the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims. (Settlement Agreement, ¶ 38).

Upon the full funding of the Gross Settlement Amount, Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims. (*Id.*, ¶ 39).

"Released Class Claims" means any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action which were alleged or which could have been alleged based on the factual allegations in the Operative Complaint, arising during the Class Period, under any federal, state, or local law, and shall specifically include claims for Defendant's alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide accurate wage statements, and reimburse necessary business-related expenses in violation of California Labor Code Sections 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order, claims for recovery of unpaid wages in violation of California Business and Professions Code sections 17200, *et seq.* based on the aforementioned California Labor Code violations, including for off-the-clock work and time rounding, and for failure to include all non-discretionary compensation in the regular rate of pay for all wages required to be calculated at the regular rate of pay, and all claims for attorneys' fees and costs and statutory interest in connection therewith, and any other claims, including claims for statutory

penalties, pertaining to the Class Members. (Settlement Agreement, ¶ 9.ee).

“Released PAGA Claims” means any and all claims which were alleged or which could have been alleged based on the factual allegations in the Operative Complaint and/or PAGA Letter, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq.*, including all claims for attorneys’ fees and costs related thereto, for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide complaint wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of the California Labor Code, including, without limitation, Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order. This includes, without limitation, the non-payment of wages arising from allegations of off-the-clock work, time rounding, unpaid meal break premiums, unpaid rest break premiums, and for failure to include all non-discretionary compensation in the regular rate of pay for all wages required to be calculated at the regular rate of pay. (*Id.*, ¶ 9.ff).

“Released Parties” means Defendant and all of its related entities, owners, current and former officers, directors, employees who are not Class Members, members, insurers, shareholders, parents, subsidiaries, affiliates, agents, predecessors, successors, and assigns (*Id.*, ¶ 9.gg).

V. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The settlement of a class action requires court approval. (*See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996)). “In general, questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds)).

The review and approval of a proposed class action settlement involves a two-step process. (*See* Cal. Rules of Court, Rule 3.769(c)). First, counsel submit the proposed terms of the settlement and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the range of a fair settlement to justify providing notice of the proposed settlement to class members. After

notice is provided to the class, the Court must conduct a second inquiry into whether the proposed settlement is fair, reasonable, and adequate. (Ibid).

The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.” (*Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980)). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed settlement is within the range of possible approval and, as a result, “whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing.” A presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*See In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006)).

Preliminary approval does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to object or exclude themselves from the settlement. (*See Cal. Rules of Court, Rule 3.769(g)*). In considering a potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. (*See Officers for Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982)).

VI. THE SETTLEMENT IS PRESUMED FAIR

A. The Settlement Was Reached as a Result of Arm’s-Length Bargaining

California courts recognize that “a presumption of fairness exists where . . . [a] settlement is reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). To be clear, there has been no collusive behavior between the Parties or counsel in reaching the Settlement. (Schimmel Decl., ¶ 31). Plaintiff’s counsel actively litigated, investigated, and settled this matter at all times at arm’s length from defense counsel. (Ibid). Any implication to the contrary by the Order Denying MPA Without Prejudice is unfounded. (Ibid). The Parties’ settlement negotiations were at all times made at arm’s-length and were adversarial. (*Id.*, ¶ 32). The Settlement was reached following a full day of mediation with a highly respected mediator with

substantial experience mediating wage and hour cases, and Plaintiff engaged in additional negotiations in order to finalize the long-form agreement presently before the Court. (*Ibid*). At all times, Plaintiff was willing and prepared to litigate this matter through class certification and trial if the Parties had been unable to reach a favorable resolution. (*Id.*, ¶ 73).

B. Sufficient Investigation and Discovery by Experienced Class Counsel

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation, Defendant produced all of the putative class members' pay data, a sampling of the putative class members' time data, Defendant's relevant wage and hour policies and employee handbooks, and information regarding the total number of putative class members, the number of current versus former employees, the total workweeks worked by the putative class members, and the average rate of pay for the putative class members. (Schimmel Decl., ¶ 33).

This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and weaknesses of the claims and the potential class-wide damages. (*Id.*, ¶ 34). Based on information exchanged, the Parties extensively briefed the strengths and weaknesses of issues regarding class certification and liability and provided their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective positions. (*Id.*, ¶ 35). Additionally, settlement negotiations were conducted by highly capable and experienced counsel. (*Id.*, ¶¶ 2-8). Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court must consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement."

1 (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).

2 Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal and
3 factual grounds for defending the Action. Based upon Class Counsel's experience litigating similar
4 complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification
5 and the merits of the Action absent a settlement.

6 **1. Class Counsel's Analysis of the Maximum Available Liability and Damages**

7 Class Counsel analyzed all available data and estimated Defendant's potential exposure to be
8 approximately \$2,421,682, assuming the litigation was successful at trial on all claims at issue and
9 assuming in order to reach that dollar figure that every employee suffered a violation for each claim on
10 every shift worked. (Schimmel Decl., ¶ 36). To further explain, this estimate is the sum of the estimated
11 maximum liability for all claims at issue and the total aggregate workweeks during the relevant time
12 period, less interest, and based on the analysis of the data which was extrapolated out for all class
13 members across the entire putative class period as follows: \$28,450 less meal period premiums paid;
14 \$1,077,299 for rest period violations at a 100% violation rate; \$362,614 for unpaid off-the-clock work
15 for 1 hour per workweek of off-the-clock work; \$8,679 for unpaid overtime wages at the required regular
16 rate of pay; \$6,521 for unpaid meal break premiums and sick pay at the required regular rate of pay;
17 \$84,033 for unpaid split shift premiums for 1 hour per split shift at the hourly rate; \$172,140 for
18 unreimbursed business expenses; \$498,396 for waiting time penalties; and \$183,550 for wage statement
19 penalties. (Ibid). Plaintiff further estimated that Defendant faced an additional exposure of \$187,500 in
20 potential, non-stacked (i.e., one penalty, per employee, per pay period during the PAGA statutory period)
21 PAGA penalties. (Ibid). Together with the PAGA penalties, Defendant's maximum potential exposure
22 totaled \$2,609,182 in damages. (Ibid).

23 This maximum potential analysis is certainly not the amount of damages that would have been
24 proven as it is unlikely that every employee suffered every single violation on every shift each employee
25 worked. (*Id.*, ¶ 37). Rather, it is what is referred to in wage and hour matters as a "soaking wet" damages
26 analysis. (Ibid). Many courts ask plaintiffs to provide this amount in their motions to approve the
27 settlement purely to indicate the theoretical maximum amount of damages. (Ibid). It should not be
28 viewed as an actual attainable basis for actual damages. (Ibid).

1 Based thereon, for the analysis for approval, the theoretical maximum damage amount was then
2 reduced based on the challenges facing the likelihood of obtaining class certification, prevailing at trial,
3 and other attendant risks. (*Id.*, ¶ 37).

4 **2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments**

5 While Plaintiff believes that Defendant faced significant exposure, substantial barriers to a
6 recovery existed. Defendant contended that Plaintiff's claims are not suitable for class certification
7 because individual issues and affirmative defenses would predominate should this case go to trial.
8 (Schimmel Decl., ¶ 41; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran*
9 *v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551
10 (2011)). While Plaintiff and Class Counsel disagree with Defendant's predictions, they also recognize
11 that there is a significant risk that the Court may deny class certification. (Schimmel Decl., ¶ 41).

12 For example, Plaintiff alleged Defendant failed to provide lawful meal periods. (*Id.*, ¶ 42).
13 However, meal period claims have been increasingly difficult to certify in recent years. (Schimmel Decl.,
14 ¶ 42; *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiff's theory of liability for meal period violations was
15 based on allegations that Defendant had failed to implement its policies and that its practices failed to
16 allow Class Members to take meal breaks in the manner required under California law. (Schimmel Decl.,
17 ¶ 42; *See Bradley v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129, 1150 (2012) (holding that "the lack
18 of a meal/rest break policy and uniform failure to authorize such breaks are matters of common proof.")).
19 Plaintiff's analysis of the time data revealed that only 28.1% of all shifts showed a unique meal period
20 violation. (Schimmel Decl., ¶ 42). However, the data also showed that Defendant had paid meal
21 premiums for 91.2% of the recorded meal break violations (i.e., almost all of the meal breaks appearing
22 in Defendant's records, totaling \$294,773 in meal period premiums paid), which significantly and
23 drastically reduced the potential value of the claims. (*Ibid.*). In addition, Defendant's timekeeping system
24 was and is set up to automatically pay meal period premiums when an employee's timekeeping punches
25 reveal a violation. (*Ibid.*). Defendant therefore argued that liability and damages for this claim were next
26 to nothing. (*Ibid.*). Based thereon, it was determined that the net percentage of unique meal period
27 violations in all shifts after offsetting for the meal period premiums Defendant paid was only 2.5%.
28 (*Ibid.*).

1 Defendant further contended that its policies and practices at all times during the Class Period
2 were lawful, and that the rate of purported meal period violations reflected in the data would require
3 individualized inquiry, making it extremely difficult to certify a class. (*Id.*, ¶ 43). Class Counsel therefore
4 had to consider the risk that the Court would find validity in the individualized proof defense to
5 certification of Plaintiff's meal period claim and if so, the claim would likely not have been certified to
6 proceed on a class-wide basis. (*Ibid*).

7 Accordingly, Class Counsel considered the risks of further litigating the case, including the
8 significant additional costs that will be incurred by both sides if the case does not settle, as litigating a
9 class action through class certification, trial, and/or appeals is very expensive. (*Id.*, ¶ 44). Moreover,
10 litigating meal period claims is inherently difficult as an employer's records, as is the case here, do not
11 usually indicate when a meal period is interrupted. (*Ibid*). While Class Counsel disagreed with
12 Defendant's arguments and factual contentions, Class Counsel recognized the circumstances and realities
13 of the case, applicable case law and regulations, costs and expenses of further litigation and certification,
14 and risks of records, and applied appropriate discounts for them. (*Ibid*). Accordingly, for the reasons
15 stated above, Class Counsel determined that a discount of 60% was appropriate to apply to the maximum
16 potential value of this claim in order to account for the risks associated with obtaining class certification,
17 proving the underlying violations and reducing them by the premiums Defendant was shown to have
18 paid, as well as the cost and delay in recovering the alleged potential damages. (*Ibid*). This process
19 brought the value of the violations rate for this claim closer to \$11,380, after which a discount of 50%
20 was applied to account for the risks associated with succeeding on the merits and establishing liability,
21 bringing the value of this claim closer to \$5,690. (*Ibid*).

22 Additionally, a large portion of Defendant's overall liability stemmed from Plaintiff's rest period
23 allegations. (*Id.*, ¶ 45). Plaintiff's damage analysis on this claim was based on an alleged 100% violation
24 rate for every employee, on every shift throughout the entire Class Period. (*Ibid*). As with the meal
25 period allegations, Defendant contended that it had a lawful written rest period policy, provided compliant
26 rest breaks, and relieved Class Members of all duties as required under California law. (*Ibid*). Defendant
27 further argued that the reasons why a Class Member failed to receive a compliant rest period raised
28 individual issues that could not be certified. Additionally, this claim was even more uncertain given the

difficulties associated with proving the alleged rest period violations, as Defendant was not legally required to record rest breaks. (Ibid). Given the lack of records demonstrating rest period violations, there were legitimate concerns Plaintiff would not be able to certify these claims or prove substantial damages with requisite certainty, which made the estimated value of this claim subject to much challenge. (Ibid).

Accordingly, Class Counsel considered the risk of further litigating the case, as well as significant additional costs that will be incurred by both sides if the case does not settle, as litigating a class action through class certification, trial, and/or appeals is very expensive. (*Id.*, ¶ 46). Moreover, litigating rest period claims is inherently difficult as an employer's records, as is the case here, do not usually indicate when a rest period is short, late, interrupted or missed entirely. (Ibid). While Class Counsel disagreed with Defendant's arguments and factual contentions, Class Counsel recognized the circumstances and realities of the case, applicable case law and regulations, the costs and expenses associated with further litigation and certification, and risks to recovery, and applied appropriate discounts for them. (Ibid). Accordingly, for the reasons stated above, Class Counsel determined that a discount of 60% was appropriate to apply to account for the risks associated with obtaining class certification, thereafter proving the underlying violations, and the cost and delay in recovering the alleged potential damages, bringing the value of this claim closer to \$430,919. (Ibid). Thereafter, a discount of 50% was applied to account for the risks associated with succeeding on the merits and establishing liability, bringing the value of this claim closer to \$215,460. (Ibid).

Plaintiff also faced challenges certifying and proving liability for his minimum wage and overtime claims. (*Id.*, ¶ 47). These claims were largely based on Defendant's unrecorded, off-the-clock work performed by the Class Members during purported meal and rest periods. (Ibid). For example, during specific times, including when Defendant signed a new client, Plaintiff and the other Class Members were swamped with calls in the queue which caused them to work off-the-clock during their purported meal periods to attend to the calls. (Ibid). However, this claim faced serious challenges. (Ibid). First, the individualized nature of why this work was performed and the individualized nature of damages presented substantial concerns regarding the manageability of the case and the risk the Court could find these issues prevented certification, and the estimated damages for this claim were based on an assumption that all

1 Class Members worked off the clock for at least one hour per week. (Ibid). In addition, investigations
2 showed that Plaintiff and the Class Members were paid overtime, which was evidenced by records
3 obtained from Defendant. (Ibid).

4 The estimated exposure for this claim was based on a class having been certified and Plaintiff
5 having proven all elements of the overtime and minimum wage claims, despite risks associated with
6 obtaining and maintaining certification, risks to establishing liability, and significant additional costs that
7 would have to be incurred in order to certify a class and establish liability. (*Id.*, ¶ 48). Had the Parties
8 not settled, Plaintiff also faced the risk of the Court finding that individualized issues predominate, such
9 that class treatment is not suitable. (Ibid). While Class Counsel disagreed with Defendant's arguments
10 and factual contentions, Class Counsel recognized the circumstances and realities of the case, applicable
11 case law and regulations, the costs and expenses of further litigation and certification, and risks to
12 recovery, and applied appropriate discounts for them. (Ibid). Accordingly, for the reasons stated above,
13 Class Counsel determined that a discount of 60% was appropriate to apply to account for the risks
14 associated with obtaining class certification, thereafter proving the underlying violations, and the cost
15 and delay in recovering the alleged potential damages, bringing the value of this claim closer to \$145,045,
16 after which Class Counsel determined that a second discount of 50% was appropriate to apply in order to
17 account for the risks associated with succeeding on the merits and establishing liability, bringing the
18 value of this claim closer to \$72,523. (Ibid).

19 Plaintiff's unpaid wage claim was based on Defendant having failed to factor all forms of non-
20 discretionary compensation into the regular rate of pay for the purpose of paying overtime compensation,
21 meal period premiums, and sick pay. (*Id.*, ¶ 49). Defendant contended that it correctly factored in all
22 forms of non-discretionary compensation into the regular rate of pay for the purpose of paying overtime
23 compensation. (Ibid). More importantly, Plaintiff determined that Defendant's alleged failure to include
24 all forms of non-discretionary compensation into the regular rate of pay only affected 31 Class Members,
25 which totaled \$414. (Ibid).

26 The estimated exposure for this claim was based on a class having been certified and Plaintiff
27 having proven all elements of the unpaid wage claim, despite risks associated with obtaining and
28 maintaining certification, risks to establishing liability, and significant additional costs that would have

1 to be incurred in order to certify a class and establish liability. (*Id.*, ¶ 50). Had the Parties not settled,
2 Plaintiff also faced the risk of the Court finding that individualized issues predominate, such that class
3 treatment is not suitable. (*Ibid*). While Class Counsel disagreed with Defendant’s arguments and factual
4 contentions, Class Counsel recognized the circumstances and realities of the case, applicable case law
5 and regulations, the costs and expenses of further litigation and certification, and risks to recovery, and
6 applied appropriate discounts for them. (*Ibid*). Accordingly, for the reasons stated above, Class Counsel
7 determined that a discount of 60% was appropriate to apply to account for the risks associated with
8 obtaining class certification, thereafter proving the underlying violations, and the cost and delay in
9 recovering the alleged potential damages, bringing the value of this claim closer to \$6,080, and Class
10 Counsel determined that a discount of 50% was appropriate to apply to account for the risks associated
11 with succeeding on the merits and establishing liability, bringing the value of this claim closer to \$3,040.
12 (*Ibid*).

13 Plaintiff’s unpaid split shift premiums claims were based on Defendant having failed to pay
14 premiums for the split shifts that the Class Members worked during the putative class period. (*Id.*, ¶ 51).
15 The estimated damages for this claim were calculated based on 1 hour per split shift at the hourly rate.
16 (*Ibid*). However, it was determined Plaintiff’s analysis of the data revealed that split shifts were rare and
17 only occurred in 7.3% of all the shifts analyzed. (*Ibid*).

18 The estimated exposure for this claim was based on a class having been certified and Plaintiff
19 having proven all elements of the unpaid split shift premiums claim, despite risks associated with
20 obtaining and maintaining certification, risks to establishing liability, and significant additional costs that
21 would have to be incurred in order to certify a class and establish liability. (*Id.*, ¶ 52). Had the Parties
22 not settled, Plaintiff also faced the risk of the Court finding that individualized issues predominate, such
23 that class treatment is not suitable. (*Ibid*). While Class Counsel disagreed with Defendant’s arguments
24 and factual contentions, Class Counsel recognized the circumstances and realities of the case, applicable
25 case law and regulations, the costs and expenses of further litigation and certification, and risks to
26 recovery, and applied appropriate discounts for them. (*Ibid*). Accordingly, for the reasons stated above,
27 Class Counsel determined that a discount of 60% was appropriate to apply to account for the risks
28 associated with obtaining class certification, thereafter proving the underlying violations, and the cost

1 and delay in recovering the alleged potential damages, bringing the value of this claim closer to \$33,613,
2 and Class Counsel determined that a discount of 50% was applied to account for the risks associated with
3 succeeding on the merits and establishing liability, bringing the value of this claim closer to \$16,806.
4 (Ibid).

5 Plaintiff also alleged that Defendant failed to reimburse necessary business expenses, including
6 for the usage of home internet for work-related purposes and the purchase of home office equipment.
7 (*Id.*, ¶ 53). Plaintiff used a reasonable estimate of \$30 per month to estimate unreimbursed business
8 expenses. (Ibid). However, Defendant asserted that it had policies and practices that in fact did reimburse
9 employees for necessary business expenses. (Ibid). For example, Defendant contended that it provides
10 internet for Class Members who do not live in the same geographic area as Defendant. (Ibid). Defendant
11 further contended that it provides a monthly allowance of \$150-\$180 to Class Members, depending on
12 their full time or part time status, which can be used for home office, work-related needs. (Ibid).

13 Class Counsel also took into consideration that, not only would it have to be established that
14 expenses were incurred, but also that the nature of the expenses were such that Defendant was required
15 to reimburse them. (*Id.*, ¶ 54). While Class Counsel disagreed with Defendant's arguments and factual
16 contentions, Class Counsel considered Defendant's arguments, applicable case law and regulations, the
17 costs and expenses associated with further litigation and certification, the circumstances and realities of
18 the case, and risks to recovery, and applied appropriate discounts for them. (Ibid). Accordingly, for the
19 reasons stated above, Class Counsel determined that a discount of 60% was appropriate to apply to
20 account for the risks associated with obtaining class certification, thereafter proving the underlying
21 violations, and the cost and delay in recovering the alleged potential damages. (Ibid). This further
22 analysis reduced the value of this claim closer to \$68,856, after which Class Counsel determined that a
23 discount of 50% was appropriate to apply to account for the risks associated with succeeding on the merits
24 and establishing liability, bringing the value of this claim closer to \$34,428. (Ibid).

25 There were also substantial risks associated with Plaintiff's waiting time penalties and wage
26 statement claims. (*Id.*, ¶ 55). First, these claims were derivative of Plaintiff's claims for unpaid meal
27 period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages,
28 and if certification was denied on those underlying claims, these derivative claims for penalties would

1 also likely fail. (Ibid). Further, even if Plaintiff prevailed on his underlying claims, he would still be
2 required to demonstrate that Defendant's violations of California Labor Code section 203 were *willful*
3 violations. (Schimmel Decl., ¶ 55; *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013)
4 (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding
5 of willfulness")). Wage statement claims have also the amount of wages due to each Class Member
6 would seen varying treatment at the appellate level because such claims have an element of discretion
7 attached to them rather than a pure calculation of damages after liability is proven. (Schimmel Decl. ¶
8 55; *Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) with *Price v. Starbucks Corp.*, 192
9 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which comprised a substantial portion
10 of Defendant's estimated liability, were therefore uncertain. (Schimmel Decl., ¶ 55).

11 Class Counsel took into consideration the chances of prevailing on each of the underlying causes
12 of action, the derivative nature of these claims, as well as the additional hurdles of prevailing on the claim
13 for waiting-time penalties, including the inherent difficulty in proving the "willful" prong of section 203,
14 applicable case law, costs and expenses associated with further litigation and certification, the
15 circumstances and realities of the case, and risks to recovery, and applied appropriate discounts for them.
16 (*Id.*, ¶ 56). Accordingly, for the reasons stated above, Class Counsel determined that a discount of 60%
17 was appropriate to apply to account for the risks associated with obtaining class certification, thereafter
18 proving the underlying violations, and the cost and delay in recovering the alleged potential damages,
19 bringing the value of this claim closer to \$272,778, and then Class Counsel determined that a discount of
20 50% was appropriate to apply to account for the risks associated with succeeding on the merits and
21 establishing liability, bringing the value of this claim closer to \$136,389. (Ibid).

22 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving would
23 be an expensive, time-consuming, and uncertain proposition. (*Id.*, ¶ 57). In order to prove liability and
24 damages, Class Counsel will need to request and analyze thousands of pages of documents, obtain the
25 Class Members' contact information, contact them, and obtain their declarations at great expense. (Ibid).
26 Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid
27 prosecution of a lawsuit against a current employer. (Ibid). On the other hand, Defendant would likely
28 be able to obtain the cooperation of their employees. (Ibid). Moreover, even if Plaintiff prevailed at class

1 certification and trial, possible appeals would substantially delay any recovery by the Class. (Ibid).

2 Class Counsel also contemplated the risks of proceeding with the PAGA claims and potential
3 liability Defendant could face from these claims as part of the global resolution. (*Id.*, ¶ 58). Existing
4 case law makes PAGA claims subject to the same defenses and risks as Plaintiff's underlying wage
5 claims. (Schimml Decl., ¶ 58; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82
6 (C.D. Cal. 2008) ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because
7 all of Plaintiff's other claims fail as a matter of law, so does her PAGA claim")). Class Counsel also
8 anticipated that even if successful on the merits at trial, the imposition of cumulative civil penalties based
9 on the alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or
10 confiscatory. (Schimmel Decl., ¶ 58).¹ Class Counsel also anticipated Defendant would argue that it
11 made a good faith attempt to comply with its legal obligations and that the violations per pay period were
12 low, warranting an additional reduction in civil penalties. (Ibid). Finally, Class Counsel was also mindful
13 of the fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended
14 to facilitate enforcement of California's labor laws by financing state activities and educating and
15 deterring non-compliance. (Ibid).

16 However, Class Counsel recognized the realities of Defendant's arguments, evidence and
17 information obtained through investigations as well as from Plaintiff, Defendant, and other sources, the
18 circumstances and realities of the case, the costs of continued litigation, and the risks to recovery, and
19 applied appropriate discounts for them. (*Id.*, ¶ 59). Accordingly, for the reasons stated above, Class
20 Counsel determined that a 60% discount was appropriate to apply to account for the risks associated with
21 proving the underlying violations and the cost and delay in recovering the alleged potential penalties,
22 bringing the value of this claim closer to \$75,000. (Ibid). Class Counsel then determined that a second
23

24 ¹ See, e.g., *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory
25 and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis*
26 *Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) ("duplicative effect" of penalties is a factor in favor of "reducing ...the
27 PAGA penalty"); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to
28 stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez*
v. McDonalds Restaurants of California, Inc., 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties
arising out of the same conduct); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing
PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is
warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018)
(approving reduction in penalties from \$50 per pay period to \$5 per pay period based on good faith attempts to comply with
obligations and minimal violations).

discount of 50% was appropriate to apply to account for the risks associated with succeeding on the merits and establishing liability, bringing the value of this claim closer to \$37,500. (Ibid).

The foregoing discussion confirms that the amount of the Settlement is adequate in light of Plaintiff's allegations and causes of action, the evidence at issue with respect to those allegations and causes of action, and legal and factual arguments and circumstances which pose challenges to certification, manageability, merits, and monetary recovery. (*Id.*, ¶ 60). The conclusion to be drawn from the foregoing analysis is that neither class certification, manageability, liability, nor the ability to adjudicate and/or recover monetary relief on a class-wide or representative basis is clear-cut, which is why the Parties elected to settle this matter. (Ibid). Class Counsel also recognized the present value of obtaining a settlement now as opposed to monetary recovery, if any, that may be obtained in the future after further litigation. (Ibid). Class Counsel recognized the circumstances and realities of the case, applicable case law and regulations, and risks to recovery and applied appropriate discounts. (Ibid).

Therefore, Class Counsel estimated that the potential value to be recovered if Plaintiff was successful at trial on all of the claims, prior to applying any adjustments for the risks Plaintiff faced in certifying his claims and then succeeding on those claims post-certification, is \$2,609,182. (*Id.*, ¶ 61). The total value that could reasonably be expected to be awarded at trial, after taking into account the risks faced in prevailing on certification and substantively thereafter is \$521,836. (Ibid). Seen in this light, the Gross Settlement Amount of \$415,000 represents 15.91% of the potential undiscounted maximum value and 79.53% of the risk-adjusted value of the claims. (Ibid).

Class Counsel feels that it has adequately provided evidence to the Court to establish that a thorough investigation was conducted into all of the claims that are encompassed by the releases in the Settlement Agreement. (*Id.*, ¶ 62). Class Counsel would also like to point out that the Court preliminarily approved (with no ordered supplemental briefing), and ultimately finally approved, the settlement in the case entitled *Sitara Nayabkhil v. San Francisco SPCA, dba, SFSPCA*, San Francisco County Superior Court Case No. CGC-23-609950, in which the gross settlement amount of \$1,950,000 represented approximately 18.17% of the potential undiscounted maximum value and approximately 82.61% of the risk-adjusted value of the claims. (Ibid). Based on a comparison of this case and the *Nayabkhil* case, Class Counsel struggles with understanding why the Court has denied the Motion for Preliminary

1 Approval and what more Class Counsel should provide especially with being denied a hearing on the
2 Motion for Preliminary Approval three times. (Ibid). Accordingly, should the Court determine that Class
3 Counsel still has not provided sufficient information, Class Counsel respectfully requests that the Court
4 hold a hearing so that Class Counsel can better understand and address the Court's inquiries. (Ibid).

5 **VII. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

6 Code of Civil Procedure Section 382 provides that three basic requirements must be met in order
7 to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined
8 community of interest in the question of law or fact affecting the parties to be represented; and (3)
9 certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class action
10 is superior to other methods. (*See Dunk*, 48 Cal.App.4th at 1806). Plaintiff contends that the Action,
11 which is based upon Defendant's wage and hour policies and practices, satisfies the class certification
12 requirements under California Code of Civil Procedure section 382. Defendant denies Plaintiff's
13 allegations, but for purposes of the Settlement only, Defendant has stipulated to certification of the Class.

14 **A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is** 15 **Impracticable**

16 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
17 the class, and (3) the means of identifying the class members. (*See Miller v. Woods*, 148 Cal.App.3d 862,
18 873 (1983)). In this case, all three considerations strongly favor class certification. Here, the Class is
19 defined as "all current and former non-exempt employees who worked for Defendant in the State of
20 California at any time during the Class Period." (Schimmel Decl., ¶ 24; Settlement Agreement, ¶ 9.b).
21 This provides a clear and definite scope for the proposed class.

22 Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity
23 requirement. Courts have certified classes with as few as ten or twenty-eight class members. (*Rose v.*
24 *City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995);
25 *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972)). Here, the estimated Class size of one hundred
26 and twenty-two (122) meets the numerosity requirement.

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1 Finally, the question of whether class members are easily identifiable turns on whether a plaintiff
2 can establish “the existence of an ascertainable class.” (*Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706
3 (1967)). The existence of an ascertainable class in this case can be established through Defendant’s
4 payroll records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and
5 the Court to determine the parameters of the Class. (*See Clothesrigger, Inc. v. GTE Corp.*, 191
6 Cal.App.3d 605, 617 (1987)).

7 **B. The Class Shares a Well-Defined Community of Interest**

8 The community of interest requirement embodies three factors: (1) predominant questions of law
9 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
10 who can adequately represent the class. (*Dunk*, 48 Cal.App.4th at 1806). Here, all three requirements
11 are easily satisfied.

12 The commonality criterion requires the existence of common question of law or fact and is
13 generally established with the issues of predominance and typicality. (*See Daar*, 67 Cal.2d 695, 706).
14 What is required is that a common question of fact or law exists which predominates over issues unique
15 to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising
16 from employment—is not a bar to class certification as long as they do not render class litigation
17 unmanageable or predominate over the common issues. (*See B.W.I. Custom Kitchen v. Owens-Illinois,*
18 *Inc.*, 191 Cal.App.3d 1341, 1354 (1987)).

19 Here, Plaintiff’s claims present common issues of law and fact that predominate and warrant class
20 certification. Plaintiff alleges that Defendant denied compliant meal and rest periods to employees,
21 required employees to perform work off-the-clock, failed to fully compensate employees for all time
22 actually worked, and failed to reimburse employees for business-related expenses. These policies and
23 practices meant that Defendant allegedly failed to pay minimum and overtime wages, and other related
24 claims. Plaintiff alleges that Defendant’s policies and practices were uniform as to all Class Members.
25 Thus, class treatment is appropriate.

26 To satisfy the typicality requirement, California law does not require that plaintiffs’ claims be
27 identical to the other class members. Rather, the test of typicality for a class representative is whether
28 other members have the same or similar injury, whether the action is based on conduct which is not

1 unique to the named plaintiff, and whether other class members have been injured by the same course of
2 conduct. (*See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007)). The typicality requirement
3 for a class representative refers to the nature of the claim or defense of the representative, and not to the
4 specific facts from which it arose or the relief sought. (*See Ibid*).

5 Here, Plaintiff alleges that his claims are similar to that of the other Class Members and that
6 Plaintiff's claims arise out of the same alleged course of conduct giving rise to the claims of the other
7 Class Members. (O'Neal Decl., ¶¶ 6-7). Because Plaintiff's claims are based upon the same alleged
8 conduct and business practices as those of Class Members, the typicality requirement has been satisfied.

9 Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney
10 qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of
11 the class." (*McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976)). Here, these considerations are
12 satisfied. Class Counsel is well-regarded and is qualified and experienced in employment-related, class-
13 action litigation. (Schimmel Decl., ¶¶ 2-8). Plaintiff will vigorously, adequately, and fairly represent the
14 interests of the Class. Plaintiff has, at all times, throughout the course of the litigation considered the
15 interests of the Class and understood that he must take steps to adequately represent the Class and their
16 interests. (O'Neal Decl., ¶ 12). Because Plaintiff's claims are typical of other Class Members and are
17 not based on unique circumstances, there is no antagonism between the interests of Plaintiff and the Class.

18 **C. A Class Action is Superior to a Multiplicity of Litigation**

19 Under the circumstances, proceeding as a class action is a superior means of resolving this dispute,
20 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
21 the only means to deter and redress the alleged violations. (*See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429,
22 434 (2000) (relevant considerations include the probability that each class member will come forward to
23 prove his or her separate claim and whether the class approach would actually serve to deter and redress
24 the alleged wrongdoing)). Further, individual actions arising out of the same operative facts would
25 unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are
26 superior to individual litigation.

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1 **VIII. THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE**

2 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation
3 “for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz*
4 *v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010)). Courts routinely grant approval of
5 class action settlement agreements containing enhancements for the class representative, which are
6 necessary to provide incentive to represent the class and are appropriate given the benefit the class
7 representatives help to bring about for the class. (*See In re Online DVD Rental*, 779 F.3d 934, 947-948
8 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive
9 award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL
10 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and
11 reasonable”)).

12 Plaintiff initiated this litigation on behalf of his former co-workers who will now be entitled to
13 receive payment from the Settlement. Plaintiff invested substantial time and effort into litigation,
14 including his own research, reviewing documents, and extensive discussions with Class Counsel.
15 (O’Neal Decl., ¶¶ 3-5). Further, the requested amount for Plaintiff is also reasonable given the average
16 award and the benefit gained by other Class Members. For these reasons, Plaintiff requests that an
17 Enhancement Payment of Ten Dollars and Zero Cents (\$10,000.00) to Plaintiff be preliminarily approved
18 by the Court. (Schimmel Decl., ¶ 63; O’Neal Decl., ¶ 14).

19 **IX. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE**

20 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will
21 “not be disturbed on appeal absent a manifest abuse of discretion.” (*Lealao v. Beneficial Cal, Inc.*, 82
22 Cal.App.4th 19, 41 (2000)). California law provides that attorney fee awards should be equivalent to fees
23 paid in the legal marketplace to compensate for the result achieved and risk incurred. (*Id.* at 47). In cases
24 where class members present claims against a common fund and the defendant agrees to a percentage of
25 the fund as part of the settlement, use of the percentage method is appropriate. (*Id.* at 32).

26 Here, the requested attorneys’ fees of one-third (1/3) the Gross Settlement Amount (i.e.,
27 \$138,333.33 if the Gross Settlement Amount is \$415,000.00) is disclosed to Class Members in the
28 proposed Class Notice. (Settlement Agreement, Exh. A). The requested fee was freely negotiated, is

common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel's request for the reimbursement of litigation costs and expenses not to exceed Eighteen Thousand Dollars and Zero Cents (\$18,000.00). (Schimmel Decl., ¶¶ 69 and 73). The Attorneys' Fees and Costs that are not ultimately approved by the Court shall instead be included in the Net Settlement Amount to be distributed to Settlement Class Members. (Settlement Agreement, ¶ 12).

**X. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS
MEETS DUE PROCESS REQUIREMENTS**

The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members. (*Id.*, Exh. A). The Class Notice will include information regarding the nature of the Action, a summary of the terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the Class Settlement and to dispute Workweeks and/or PAGA Workweeks, and the date of the Final Approval Hearing. (*Ibid.*). The Class Notice will list each Class Member's total Workweeks and their estimated Individual Settlement Share and each PAGA Employee's total PAGA Workweeks and their estimated Individual PAGA Payment. (*Ibid.*).

Within fourteen (14) calendar days after entry of the preliminary approval order, Defendant will provide a list in a formatted readable Microsoft Office Excel spreadsheet to the Settlement Administrator containing the following information for each Class Member: full name; last known mailing address; Social Security number; hire date; termination date (if applicable); and any other information as is necessary for the Settlement Administrator to calculate Workweeks and PAGA Workweeks (if applicable) (collectively referred to as the "Class List"). (*Id.*, ¶¶ 9.d and 26). Within seven (7) calendar days after receiving the Class List from Defendant, the Settlement Administrator will perform a search based on the National Change of Address Database or other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice in English to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator. (Settlement Agreement, ¶ 27.a). The Parties have agreed to use CAC Services Group, LLC. as the Settlement Administrator. (Schimmel Decl., ¶ 74; Settlement Agreement, ¶ 9.jj).

1 In determining whether to approve a settlement of a class action, a trial court has virtually
2 complete discretion as to the manner of giving notice to class members, and review on appeal is governed
3 by the abuse of discretion standard. (*See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380
4 (2010)). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which
5 would result in a higher likelihood of actual notice. (Schimmel Decl., ¶ 75). The original source of the
6 mailing addresses is from Class Members, who provided the information to Defendant. (Ibid).

7 Class Members will have forty-five (45) calendar days from the initial mailing of the Class Notice
8 by the Settlement Administrator to submit a Request for Exclusion, Notice of Objection, and/or
9 Workweeks Dispute (“Response Deadline”). (Settlement Agreement, ¶ 9.ii).

10 Any Class Notice returned to the Settlement Administrator as undeliverable on or before the
11 Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed
12 thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.
13 (*Id.*, ¶ 24.b). If no forwarding address is provided, the Settlement Administrator will promptly attempt
14 to determine a correct address using a skip-trace or other search, using the name, address, and/or Social
15 Security number of the Class Member, and perform a single re-mailing within five (5) calendar days.
16 (Ibid). In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that
17 Class Member shall be extended fifteen (15) calendar days from the original Response Deadline. (*Id.*, ¶
18 9.ii).

19 Class Members will have an opportunity to dispute the number of Workweeks and/or PAGA
20 Workweeks to which they have been credited, as reflected in their respective Class Notices, by submitting
21 a timely and valid letter (“Workweeks Dispute”) to the Settlement Administrator, by mail, postmarked
22 on or before the Response Deadline. (*Id.*, ¶¶ 9.nn and 28). A Workweeks Dispute must: (a) contain the
23 case name and number of the Action; (b) contain the Class Member’s full name, signature, address, and
24 telephone number; (c) clearly state that the Class Member disputes the number of Workweeks and/or
25 PAGA Workweeks credited to that Class Member and what the Class Member contends is the correct
26 number; and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked
27 on or before the Response Deadline. (Settlement Agreement, ¶ 9.nn).

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1 Any Class Member wishing to be excluded from the Class Settlement must submit a timely and
2 valid letter (“Request for Exclusion”) to the Settlement Administrator, by mail, postmarked on or before
3 the Response Deadline. (*Id.*, ¶¶ 9.hh & 29). A Request for Exclusion must: (a) contain the case name
4 and number of the Action; (b) contain the Class Member’s full name, signature, address, and telephone
5 number; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and
6 (3) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before
7 the Response Deadline. (*Id.*, ¶ 9.hh). Any Class Member who submits a timely and valid Request for
8 Exclusion will not be bound by the Class Settlement and will not be issued an Individual Settlement
9 Payment. (*Id.*, ¶ 29). Notwithstanding the above, all PAGA Employees will be bound by the PAGA
10 Settlement and will be issued their Individual PAGA Payment, irrespective of whether they submit a
11 Request for Exclusion. (*Ibid.*).

12 To object to the Class Settlement, Settlement Class Members must submit a timely and complete
13 written objection (“Notice of Objection”) to the Settlement Administrator, by mail, postmarked on or
14 before the Response Deadline. (*Id.*, ¶¶ 9.v and 30). A Notice of Objection must: (a) contain the case
15 name and number of the Action; (b) contain the objector’s full name, signature, address, and telephone
16 number; (c) contain a written statement of all grounds for the objection accompanied by any legal support
17 for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection
18 is based; and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked
19 on or before the Response Deadline. (*Id.*, ¶ 9.v). Settlement Class Members, individually or through
20 counsel, may also present their objection orally at the Final Approval Hearing, regardless of whether they
21 have submitted a Notice of Objection and without any prior notice. (*Id.*, ¶ 30). If the Settlement
22 Administrator receives both a Request for Exclusion and a Notice of Objection, the Settlement
23 Administrator will honor the submission that is received first and disregard the other. (*Ibid.*).

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	Respectfully submitted,
Dated: May 21, 2025	BLACKSTONE LAW, APC

BLACKSTONE LAW, APC

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