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9 Attorneys for Plaintiffs ANGELICA ESMERALDA LEYVA and

10 MICHELLE DELAROSA, on behalf of themselves

11 and all others similarly situated and aggrieved

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF MERCED**

14 ANGELICA ESMERALDA LEYVA and
15 MICHELLE DELAROSA as individuals, and
16 on behalf of all others similarly situated and
17 aggrieved,

18 Plaintiffs,

19 v.

20 COMMUNITY HEALTH CENTERS OF
21 AMERICA, a California corporation; and
22 DOES 1 through 100, inclusive,

23 Defendants.

CASE NO.: 23CV-03293

[Assigned for all purposes to Hon. Stephanie
Jamieson, in Dept. 8]

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AND PROVISIONAL
CLASS CERTIFICATION FOR
SETTLEMENT PURPOSES ONLY;
DECLARATIONS OF VEDANG J.
PATEL, DAVID D. BIBIYAN,
ANGELICA ESMERALDA LEYVA,
MICHELLE DELAROSA, AND SEAN
HARTRANFT IN SUPPORT THEREOF**

HEARING INFORMATION:

DATE: October 1, 2026

TIME: 8:15 a.m.

DEPT: 8

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 1, 2026 at 8:15 a.m., or as soon thereafter as
3 they may be heard in Department 8 of the Superior Court of the State of California for the County
4 of Merced, plaintiffs Angelica Esmeralda Levya and Michelle Delarosa (collectively, “Plaintiffs”),
5 on behalf of themselves and all others similarly situated and aggrieved, will and hereby do move for
6 this Court for entry of an Order:

7 1. Preliminarily certifying the following settlement Class (“Class” or “Class Members”) for
8 the purpose of settlement only: all current and former hourly-paid or non-exempt employees of
9 Community Health Centers of America (“Defendant”) within the State of California at any time
10 during the period from September 12, 2019, through October 27, 2025 (“Class Period”).

11 2. Preliminarily approving Plaintiffs as Class Representatives.

12 3. Preliminarily approving David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group,
13 P.C.; Emil Davtyan and Alvin B. Lindsay of D. Law, Inc.; David Yeremian of David Yeremian &
14 Associates, Inc.; and Peggy Reali and Walter Haines of United Employees Law Group, PC, as Class
15 Counsel.

16 4. Preliminarily approving the settlement claims under the terms set forth in the Settlement
17 Agreement.

18 5. Preliminarily approving payment of the Gross Settlement Amount of \$450,000.00, which
19 is subject to escalation pursuant to the Settlement Agreement.

20 6. Approving the form and content of the Class Notice submitted herewith.

21 7. Appointing Apex Class Action Administration (“Apex”), to administer the Settlement,
22 including distribution of the Class Notice, as set forth in the Settlement Agreement.

23 8. Preliminarily approving the payment of not to exceed \$6,750.00 for settlement
24 administration to Apex from the Gross Settlement Amount.

25 9. Preliminarily approving service awards of up to \$10,000.00 each to plaintiffs Angelica
26 Esmeralda Levya and Michelle Delarosa, for a total of \$20,000.00 to Plaintiffs, in consideration for
27 Plaintiffs’ extensive efforts in prosecuting this case.

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10. Preliminarily approving payment of reasonable attorneys' fees to Class Counsel in the amount of one third (1/3) of the Gross Settlement Amount which, unless escalated pursuant to the Settlement Agreement, amounts to \$150,000.00 and preliminarily approving reimbursement of Class Counsel's actual litigation costs.

11. Preliminarily approving PAGA penalties in the amount of \$40,000.00, seventy-five percent (75%), or \$30,000.00, of which will be paid to the Labor and Workforce Development Agency (“LWDA”) out of the Gross Settlement Amount, and twenty-five percent (25%), or \$10,000.00, of which will be distributed to “Aggrieved Employees,” defined as all current and former hourly-paid or non-exempt employees of Defendant within the State of California at any time during the period from September 12, 2022, through October 27, 2025 (“PAGA Period”).

12. Entering an Order preliminarily approving the Settlement consistent with the terms of the Settlement Agreement.

Good cause exists for granting this Motion in that the proposed settlement is fair, reasonable and adequate.

This Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the Declarations of Vedang J. Patel, David D. Bibiyan, Angelica Esmeralda Levya, Michelle Delarosa, and Sean Hartranft, and exhibits attached thereto, arguments of counsel and upon such other materials contained in the file and pleadings of this action.

Dated: September 4, 2026

BIBIYAN LAW GROUP, P.C.

/s/ Vedang J. Patel
VEDANG J. PATEL

Attorneys for Plaintiffs ANGELICA
ESMERALDA LEVYA and MICHELLE
DELAROSA, on behalf of themselves and all
others similarly situated and aggrieved

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Angelica Esmeralda Levy and Michelle Delarosa (collectively, “Plaintiffs”), on
4 behalf of themselves and all others similarly situated and aggrieved, hereby apply for preliminary
5 approval of the Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement” or
6 “Settlement Agreement”) upon the terms and conditions set forth in the Settlement Agreement,
7 attached to the Declaration of Vedang J. Patel as Exhibit “1.”

8 On September 12, 2023, plaintiff Angelica Esmeralda Levy filed with the California Labor
9 and Workforce Development Agency (“LWDA”) and served on defendant Community Health
10 Centers of America (“Defendant”) a notice under Labor Code section 2699.3, stating she intended
11 to serve as a proxy of the LWDA to recover civil penalties on behalf of other non-exempt employees
12 for alleged Labor Code violations (the “Leyva PAGA Notice”). A true and correct copy of the Leyva
13 PAGA Notice is attached to the Declaration of Vedang J. Patel as Exhibit “2.”

14 Also on September 12, 2023, plaintiff Angelica Esmeralda Levy commenced this Action
15 by filing a complaint alleging causes of action against Defendant for: (1) failure to pay overtime
16 wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or compensation in
17 lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to pay all
18 wages due upon separation; (6) failure to provide accurate wage statements; (7) failure to timely pay
19 wages during employment; (8) failure to indemnify for business expenses (9) failure to pay unused
20 vested vacation time; and (10) engaging in unfair competition (the “Leyva Class Action” or the
21 “Action”).

22 On November 28, 2023, after sixty-five (65) days had passed without any action by the
23 LWDA with respect to the Labor Code violations alleged in the Leyva PAGA Notice, plaintiff
24 Angelica Esmeralda Levy filed a separate representative action under PAGA against Defendant in
25 the Merced County Superior Court, captioned *Angelica Esmeralda Levy v. Community Health*
26 *Centers of America*, Case No. 23CV-04373, for the Labor Code violations set out in the Leyva
27 PAGA Notice (the “Leyva PAGA Action”).

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1 On October 4, 2023, plaintiff Michelle Delarosa filed with the LWDA and served on
2 Defendant a notice under Labor Code section 2699.3, stating she intended to serve as a proxy of the
3 LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code
4 violations (the “Delarosa PAGA Notice”). The Leyva PAGA Notice and the Delarosa PAGA Notice
5 are hereinafter collectively referred to as the “PAGA Notices”.

6 1. On October 4, 2023, plaintiff Michelle Delarosa filed a class action complaint,
7 captioned *Michelle Delarosa v. Community Health Centers of America*, in the Stanislaus County
8 Superior Court, Case No. CV-23-005767, alleging causes of action against Defendant for: (1)
9 Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510;
10 (3) Meal Period Liability Labor Code § 226.7; (4) Rest-Break Liability Labor Code § 226.7; (5)
11 Violation of Labor Code § 226; (6) Violation of Labor Code § 221; (7) Violation of Labor Code §
12 204; (8) Violation of Labor Code § 203; (9) Failure to Maintain Records Required under Labor
13 Code §§ 1174, 1174.5; (10) Failure to Produce Requested Records under §§ 226 and 1198; (11)
14 Failure to Reimburse Necessary Business Expenses under Labor Code § 2802; and (12) Violation
15 of Business & Professions Code § 17200, *et seq.* (the “Delarosa Action”). The Levya and Delarosa
16 Actions are collectively referred to as the “Actions”.

17 On January 4, 2024, plaintiff Michelle Delarosa filed a First Amended Complaint in the
18 Delarosa Action, adding PAGA claims set forth in the Delarosa PAGA Notice.

19 Thereafter, Plaintiffs and Defendant (collectively, the “Parties”) agreed to exchange informal
20 discovery and attend mediation.

21 Prior to mediation, Plaintiffs obtained, through informal discovery: (a) approximately fifty
22 percent (50%) sampling of time and payroll records of the estimated 191 putative class members
23 from September 12, 2019 through mediation; (b) data points, including the number of putative class
24 members, workweeks and shifts from September 12, 2019 through mediation, the number of
25 putative class members separated in the waiting time penalty period, the number of pay periods in
26 the wage statement penalty period, and the number of putative aggrieved employees and pay periods
27 from September 12, 2022 through mediation, and the average hourly rate of pay; (c) wage and hour
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1 policy documents of Defendant; and (d) all documents pertaining to Plaintiffs available to
2 Defendant.

3 Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in
4 *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.*
5 (2008) 168 Cal. App. 4th 116, 129-130 ("Dunk/Kullar").

6 On August 27, 2025, the Parties participated in an all-day mediation presided over by Gig
7 Kyriacou, a well-regarded mediator experienced in mediating complex labor and employment
8 matters. The mediation was successful, and the Parties agreed to globally resolve all class and PAGA
9 claims in the Actions. As part and parcel to the Agreement, the Parties agree to stipulate to plaintiff
10 Angelica Esmeralda Levy's filing a First Amended Complaint in the Leyva Class Action, adding
11 plaintiff Michelle Delarosa as a named plaintiff, and all allegations brought in the Leyva PAGA
12 Action and the Delarosa Action. After acceptance of the First Amended Complaint, the Parties
13 agreed to plaintiff Angelica Esmeralda Levy's filing a request for dismissal without prejudice of
14 the Leyva PAGA Action and to plaintiff Michelle Delarosa's filing a request for dismissal without
15 prejudice of the Delarosa Action thereby effectively consolidating the three actions for purposes of
16 Settlement. The First Amended Complaint in the Leyva Class Action is the operative complaint in
17 the Action ("Operative Complaint").

18 Class Counsel have conducted significant investigation of the law and facts relating to the
19 claims asserted in the Actions and the PAGA Notices, and have concluded that the Settlement is
20 fair, reasonable, adequate, and in the best interests of the Class, taking into account the sharply
21 contested issues involved, the expense and time necessary to litigate the Actions through trial and
22 any appeals, the risks and costs of further litigation of the Actions, the risk of an adverse outcome,
23 the uncertainties of complex litigation, the information learned through informal discovery
24 regarding Plaintiffs' allegations, and the substantial benefits to be received by Class Members.

25 **II. THE SETTLEMENT**

26 Subject to Court approval pursuant to Code of Civil Procedure section 382 and California
27 Rules of Court, rule 3.679, *et seq.*, the Parties have agreed to settle the Actions by agreement upon
28 the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy

1 of which is attached to the Declaration of Vedang J. Patel as Exhibit “1” thereto. A summary of
2 the terms of the settlement are as follows:

3 Defendant will stipulate, for purpose of this settlement only, as follows:

- 4 • Certification of a class (“Class” or “Class Members”) defined as: all current and former
5 hourly-paid or non-exempt employees of Community Health Centers of America
6 (“Defendant”) within the State of California at any time during the period from
7 September 12, 2019, through October 27, 2025 (“Class Period”).
- 8 • Defendants will pay \$450,000.00 (“Gross Settlement Amount”) to resolve the matter.
- 9 • Based on its records, Defendant estimates that there are no more than 8,536 Workweeks
10 worked during the Class Period and that there are no more than 4,702 PAGA Pay Periods
11 during the PAGA Period. In the event that the number of Workweeks worked through
12 the Class Period increases by more than ten percent (10%) or more than 9,390, then at
13 Defendant’s election either the: (1) Gross Settlement Amount shall increase
14 proportionally by the Workweeks worked, in excess of 9,390 multiplied by the
15 Workweek Value¹; or (2) the Class Period shall end on the date the number of
16 Workweeks reaches, but does not exceed, 9,390. If it is determined that the number of
17 PAGA Pay Periods through the PAGA Period increases by more than ten percent (10%)
18 or more than 5,172 then, at Defendant’s election, either the: (1) Gross Settlement
19 Amount shall increase proportionally by the Pay Periods worked, in excess of 5,172
20 multiplied by the Pay Period Value²; or (2) the PAGA Pay Period shall end on the date
21 the number of Pay Periods reaches, but does not exceed, 5,172..
- 22 • Defendant will pay the employer’s share of taxes separate and apart from the Gross
23 Settlement Amount.
- 24 • This is a non-reversionary settlement.

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26
27 ¹ The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount
(\$450,000.00) by 8,536, which amounts to a Workweek Value of \$52.72.

28 ² The Pay Period Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount by 4,702,
which amounts to a Workweek Value of \$95.70.

- 1 • Class Members will be paid their *pro rata* share of the class action settlement based
2 on the total number of Workweeks³ worked during the Class Period.
- 3 • The Settlement Administration costs, estimated not to exceed \$6,750.00, will be paid
4 out of the Gross Settlement Amount.
- 5 • Class Counsel, comprised of David D. Bibiyan and Vedang J. Patel of Bibiyan Law
6 Group, P.C.; Emil Davtyan and Alvin B. Lindsay of D. Law, Inc.; David Yeremian of
7 David Yeremian & Associates, Inc.; and Peggy Reali and Walter Haines of United
8 Employees Law Group, PC, may apply for, and Defendant will not oppose, attorneys’
9 fees of *up to* one third (1/3) of the Gross Settlement Amount, which, unless escalated
10 pursuant to the Settlement Agreement, amounts to \$150,000.00, and actual litigation
11 costs, all of which will be paid out of the Gross Settlement Amount.
- 12 • Class Counsel hereby apply for, and Defendant will not oppose, service awards of up
13 to \$10,000.00 each to plaintiffs Angelica Esmeralda Levy and Michelle Delarosa, for
14 a total of \$20,000.00 to Plaintiffs, which will be paid out of the Gross Settlement
15 Amount.
- 16 • “Aggrieved Employees” is defined as all current and former hourly-paid or non-exempt
17 employees of Defendant within the State of California at any time during the period
18 from September 12, 2022, through October 27, 2025 (“PAGA Period”).
- 19 • Defendant has agreed to pay \$40,000.00 as PAGA penalties, seventy-five percent
20 (75%), or \$30,000.00, of which will be paid to the LWDA out of the Gross Settlement
21 Amount, and twenty-five percent (25%), or \$10,000.00, of which will be distributed
22 to the Aggrieved Employees.
- 23 • For any Class Member whose check is uncashed and cancelled after the void date (180
24 calendar days after the date of mailing), the Administrator shall transmit the funds
25 represented by such checks to the Alliance for Children’s Rights, a recognized *cy pres*,
26

27 _____
28 ³ “Workweek” any week during which a Class Member worked for Defendant for at least one (1) day during the Class Period.

1 in the name of the Class Member, thereby leaving no “unpaid residue” subject to the
2 requirements of Code of Civil Procedure section 384, subdivision (b).

3 **III. THE TWO-STEP APPROVAL PROCESS AND THE PRESUMPTION OF**
4 **FAIRNESS**

5 Any settlement of class litigation must be reviewed and approved by the Court. (*See* Cal.
6 Rules of Court, rule 3.769). This is done in two steps: (1) an early (preliminary) review by the
7 trial court; and (2) a final review after notice has been distributed to the class members for their
8 comment or objections. (*See id.*). Courts presume the absence of fraud or collusion in the
9 negotiation of a settlement unless evidence to the contrary is offered. In short, there is a
10 presumption that the negotiations were conducted in good faith. (Newberg on Class Actions, §
11 11.51; *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability*
12 *Litigation* (N.D. Cal. May 17, 2017) No. 16-cv-00295, 2017 WL 2214655, quoting *United States*
13 *v. Oregon* (9th Cir. 1990) 913 F.2d 576, 580.)

14 **IV. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

15 A notice of settlement of a class action “must contain an explanation of the proposed
16 settlement and procedures for class members to follow in filing written objections to it and in
17 arranging to appear at the settlement hearing and state any objections to the proposed settlement.”
18 (Cal. Rules of Court, rule 3.769, subd. (f).)

19 Attached to the Declaration of Vedang J. Patel as Exhibit “1” thereto is the Settlement
20 Agreement between the Parties. Attached to the Settlement Agreement as internal Exhibit “A” is the
21 proposed Class Notice to be distributed to Class Members in English and Spanish. The proposed
22 Class Notice satisfies these requirements.

23 The Parties respectfully request that this Court approve the above-referenced Class Notice
24 and dissemination of the Class Notice to the Class Members, consistent with the manner and timing
25 as set forth in the Settlement Agreement. The Parties have agreed to use Apex Class Action
26 Administration (“Apex”), an experienced Settlement Administrator, to administer the settlement.

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1 **V. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON**
2 **OBJECTIVE EVIDENCE**

3 **A. The Settlement was Negotiated at Arm's-Length and is not Collusive**

4 The Settlement that has been reached, subject to this Court's approval, is a product of
5 substantial efforts by the Parties and their counsel. The Settlement was reached after extensive
6 factual and legal investigation and research; the exchange of informal discovery; substantial
7 negotiation regarding the scope of informal discovery; exchange of documents and information that
8 included review of time and pay records and analysis thereof with the aid of Plaintiffs and expert
9 consultant; analysis of shifts and Workweeks worked by Class Members in the Class Period, analysis
10 of the number of pay periods and number of Aggrieved Employees in the PAGA Period for
11 calculating PAGA penalties, number of Class Members eligible for wage statement penalties and
12 waiting time penalties; an analysis of Plaintiffs' employment records; extensive correspondence and
13 communication between counsel; a review of pleadings, evidence and rulings in similar actions
14 litigated elsewhere in the state; a review of similar cases in the same industry elsewhere in the
15 country; and preparation for and attendance at a full-day mediation, followed by further discussions
16 and coordination to finalize the terms and conditions of the general settlement parameters agreed to
17 by the Parties.

18 While Class Counsel believe in the chance of success of certifying the claims, Class Counsel
19 recognized the potential risk, expense and complexity posed by further litigation. Moreover,
20 litigating Plaintiffs claims in this litigation—claims that involve approximately 195 Class Members
21 during the Class Period—would require substantial preparation and discovery, and ultimately would
22 involve the deposition and presentation of numerous more witnesses (including Class Members and
23 expert witnesses), as well as the consideration, preparation and analysis of expert reports. Therefore,
24 should litigation have progressed any further, there would have been significant expense incurred
25 by each side (above and beyond the expense already incurred).

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1 **B. The Settlement Amount is Well Within the Range of Reasonableness**

2 The settlement amount reached in this case provides significant recovery to Class Members
3 and Aggrieved Employees, and easily falls within the range of reasonableness. Based on documents
4 and information provided by Defendants, Class Counsel understand, as of the date of the mediation,
5 there are no more than 8,536 Workweeks during the Class Period.

6 **1. Unpaid Wages for Failure to Pay Off-the-Clock Work**

7 Class Counsel theorized, based on Plaintiffs' narrative evidence, that Defendant failed to
8 pay all wages due to Class Members because Defendant required Class Members to work off-the-
9 clock or Class Members spent time off-the-clock under Defendant's control, including, without
10 limitation: (1) arriving early to put away their personal belongings in the lockers or in proper
11 places, and discussing with supervisors regarding patient care and other work-related matters
12 before clocking in; (2) waiting in line to clock in; and (3) responding to inquiries in person, by
13 phone or by email, and charting paper works even after clocking out, especially that Defendant
14 was short-staffed, all without pay.

15 One theory advanced by Class Counsel alleged, based on Plaintiffs' narrative evidence,
16 that Class Members worked off-the-clock for a conservative estimate of ten (10) minutes each
17 shift throughout the Class Period, without pay. Class Counsel understand, based on time and
18 payroll records produced by Defendant and analysis thereof by expert data consultants retained
19 by Class Counsel, that there were approximately 37,360 shifts during the Class Period,
20 approximately 58.7% of which were over eight (8) hours in length, and Class Members had an
21 average hourly rate of pay of \$21.74. Thus, one calculation performed by Class Counsel resulted
22 in **Defendant's exposure for unpaid off-the-clock work in a conservative amount of \$235,625**
23 **([37,360 shifts x 0.587 shifts over 8 hours x 0.17 hours x \$21.74 x 1.5 overtime rate] + [37,360**
24 **shifts x 0.413 shifts less than 8 hours x 0.17 hours x \$21.74 x 2 in liquidated damages]).**

25 Defendant contends that its policies specifically prohibit off-the-clock work. Defendant
26 contends that it did not require Class Members to work off-the-clock and, rather, they were paid for
27 all time suffered or permitted to work. Defendant contends that any allegations that Class Members
28 were required to be under Defendant's control off-the-clock would necessitate an individualized

1 inquiry into when and why, making this claim not subject to class treatment and any trial in this
2 litigation unmanageable. Thus, Defendant contends that no damages can be recovered here, and,
3 even if, *arguendo*, it could, an estimate of ten (10) minutes of unpaid time for *every single* shift
4 worked by all Class Members during the Class Period is a *wild* exaggeration of time spent working
5 off-the-clock if *any* such time was spent.

6 2. Recovery of Damages for Non-Compliant Meal Periods

7 Class Counsel theorized, based on Plaintiff's narrative evidence, that Defendant's meal
8 period practices throughout the Class Period were non-compliant because meal periods were late,
9 short or missed due to the requirements that employees must: (1) respond to questions from
10 supervisors or co-employees regarding patients even during meal periods; (2) attend to patient care
11 needs even during meal periods, especially that Defendant was short-staffed; and (3) be at their
12 workstations ready to resume work exactly at the end of their meal periods, forcing them to leave
13 meal periods early to put away their personal belongings back in the lockers or in proper places,
14 wait in line to clock in, and be back at their workstations on time.

15 Class Counsel theorized, based on documents produced by Defendant and analysis thereof
16 by expert data consultants retained by Class Counsel, that 7.7% of 35,303 meal-eligible shifts had
17 unique meal break violations (late, short or missed meal periods) and Defendant made 331 meal
18 period premium payments throughout the Class Period. Thus, one calculation advanced at mediation
19 by Class Counsel resulted in **Defendant's exposure for non-compliant meal periods in an**
20 **approximate amount of \$51,901** ($[0.077 \times 35,303 \text{ unique meal break violations}] - 331 \text{ meal period}$
21 $\text{premium payments} \times \$21.74 / \text{hour}$).

22 Class Counsel understand that Defendant makes the following defenses in connection with
23 this claim: Defendant argues that it had compliant meal period policies and practices. Defendant
24 argues that Class Members took timely and full meal periods. Defendant contends that its policy
25 requires its employees to take timely and full meal periods. Defendant further contends that any
26 instance of a Class Member failing to take a compliant meal period was voluntary, in violation of
27 its meal period policy, would necessitate an individualized inquiry and would not lend itself to a
28 manageable trial. Thus, Defendant contends that *no* monies are owed for this account but, even if

any amounts were due, the amount calculated by Class Counsel is excessive.

3. Recovery of Damages for Non-Compliant Rest Periods

Class Counsel theorized at mediation, based on Plaintiffs' narrative evidence, that Defendant's rest period practices throughout the Class Period were non-compliant because rest periods were late, short or missed due to: (1) Defendant's short-staffing, such that rest periods were scheduled by office managers with coverage for continued patient care; and (2) employees having to walk to the locker room or suitable break area, and be back at their workstations on time. Defendant made approximately twenty (20) rest period premiums issued throughout the Class Period.

Thus, one calculation performed by Class Counsel resulted in, assuming a forty percent (40%) violation rate for the 36,692 rest-eligible shifts, **Defendant's exposure for failure to provide compliant rest periods in a conservative amount of \$319,074** (36,692 shifts x 0.40 violation rate x \$21.74/hour).

Class Counsel understand that Defendant makes the following defenses in connection with this claim: Defendant argues that it had compliant rest period policies and practices. Defendant argues that Class Members took timely and full rest periods. Defendant contends that its policy requires its employees to take timely and full rest periods. Defendant further contends that any instance of a Class Member failing to take a compliant rest period was voluntary, in violation of its rest period policy, would necessitate an individualized inquiry and would not lend itself to a manageable trial. Defendant contends that a forty percent (40%) violation rate is a wild exaggeration of non-compliant rest periods, if there were any. Thus, Defendant contends that *no* monies are owed for this account but, even if any amounts were due, the amount calculated by Class Counsel is excessive.

4. Failure to Indemnify for Business Expenses

Class Counsel theorized, based on Plaintiff's narrative evidence, that Defendant failed to indemnify Class Members for necessary business expenses because Defendant required Class Members to use their personal cellphones for work-related purposes, such as for clocking in and out before the installation of timeclocks and for attending Zoom conference calls. Class Counsel

1 theorized, based on documents produced by Defendant, including employee handbook, that
2 employees were entitled to a \$25.00 reimbursement for cellphone costs per month (\$12.50 per
3 biweekly Pay Period).

4 Class Counsel theorized, based on documents produced by Defendant and analysis thereof
5 by expert data consultants retained by Class Counsel, that there were approximately 4,487 Pay
6 Periods throughout the Class Period. Thus, one calculation performed by Class Counsel resulted in
7 **Defendant's exposure for failure to indemnify for business expenses of \$56,088** (4,487 pay
8 periods x \$12.50).

9 Class Counsel understand from the mediator and the mediation process that Defendant
10 argued the following: Defendant argued that it reimbursed employees for all expenses incurred in
11 furtherance of work. Defendant also argued that Class Members were using their cellphones, for
12 personal use and Defendant has no obligation to reimburse Class Members for such use. Thus,
13 Defendant contends that it owes no monies to Class Members under this theory, either.

14 **5. Wage Statement Violations**

15 Class Counsel theorized that Class Members are entitled to recover penalties for
16 Defendant's alleged failure to issue compliant wage statements under Labor Code section 226,
17 subdivision (e), for the derivative impact of the failure to pay all wages owed on providing
18 accurate information on wage statements. Specifically, Class Counsel theorized that penalties are
19 owed under Labor Code section 226 due to, at minimum, Defendant's failure to pay premium
20 wages. A non-exempt employee suffering injury as a result of a knowing and intentional failure
21 by an employer to comply with Labor Code section 226, subdivision (a), is entitled to recover the
22 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
23 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period.
24 Class Counsel understand from the data provided by Defendant that there were 2,227 pay periods
25 during the relevant statutory time period for Class Members. If, in fact, Class Members worked
26 every off-the-clock every shift as set forth above, and no rest premiums were paid, every wage
27 statement would thus, Class Counsel theorized, violate Labor Code section 226. Thus, one
28 calculation performed by Class Counsel, resulted in **Defendant's maximum exposure for wage**

1 **statement violations in the amount of \$222,700** (2,227 pay periods x \$100/pay period).

2 Class Counsel understand that Defendant makes the following defenses in connection with
3 this claim: Defendant contends that the wage statements issued to the employees fully complied
4 with Labor Code section 226. Defendant contends that because it believes no wages are unpaid
5 that, thus, there can be no derivative penalties. However, Class Counsel also understand the risks
6 inherent in this claim if the above claims were not certified. Class Counsel also had to factor in,
7 and did factor in, the risk that the Court would find there was no injury to Class Members even if
8 the wage statements were inaccurate or that Defendant's conduct was not intentional, both of
9 which are requirements of Labor Code section 226 before penalties can issue. Class Counsel also
10 note that the calculation used does not take into account the first pay period violation only being
11 \$50 and the fact that all Class Members did not work all pay periods and, therefore, do not qualify
12 for the maximum penalty of \$4,000 as calculated in Plaintiff's exposure model used at mediation.

13 **6. Waiting Time Penalties**

14 Pursuant to Labor Code sections 201, 202, and 203, each employee in the relevant statutory
15 period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of
16 wages as waiting time penalty for not being paid all wages due upon separation from employment.
17 Class Counsel theorized, based on relevant documents provided by Defendant, that, under Labor
18 Code section 203, Defendant is liable to pay each Class Member, who was terminated during the
19 relevant statutory period, a full 30-day worth of wages as waiting time penalty for failure to pay
20 compensation in lieu of compliant meal and rest periods, and failure to timely pay all wages due at
21 the time of termination or resignation. Based on relevant documents provided by Defendant, there
22 were approximately 136 Class Members who were terminated or resigned during the relevant
23 statutory period. Thus, one calculation performed by Class Counsel resulted in **Defendant's**
24 **exposure for waiting time penalties to be approximately \$709,594** (136 separated Class Members
25 x \$21.74/hour x 8 hours x 30 days).

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1 Class Counsel understand that Defendant contends that there is no credence to Plaintiff's
2 off-the-clock theory and that, thus, no waiting time penalties are owed based on that theory.
3 Finally, Defendant contends that its actions were not "willful" and that, thus, waiting time
4 penalties cannot be awarded. Thus, Defendant argued that no waiting time penalties are owed.

5 7. PAGA Penalties

6 Class Counsel understand, as of the date of mediation, from the time and payroll data
7 provided by Defendant that Aggrieved Employees collectively worked 4,702 Pay Periods in the
8 PAGA Period. Plaintiffs' claims in the Action under PAGA are substantially similar to those
9 described herein. PAGA penalties include penalties for initial violations and subsequent
10 violations. Defendant contends that only initial violation rates may be used instead of the
11 subsequent violation rates initially used by Class Counsel. With this in mind and because Class
12 Counsel through investigation and discovery did not come to the conclusion that Defendants at
13 any time were notified by any governmental entity that it violated any Labor Code sections
14 presented in the PAGA Notice and PAGA claims, Class Counsel adjusted the exposure model for
15 Defendant to include only initial violation rates.

16 While Class Counsel are informed and believe that reasonable minds differ with regard to
17 calculation of PAGA penalties, Class Counsel believe it is reasonable to calculate Defendant's
18 maximum exposure in PAGA penalties as follows:

19 a. Overtime Violations: Labor Code section 558 prescribes penalties of \$50 for an
20 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all
21 violations, and a violation every single pay period for every single non-exempt employee in the
22 PAGA Period, this amounts to a maximum exposure of \$235,100 (4,702 pay periods x \$50).

23 b. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of
24 \$100 for an initial violation and \$250 for each subsequent violation. Using the initial pay period
25 rate for all violations and a violation every single pay period for every single Aggrieved Employee
26 in the PAGA Period, this amounts to a maximum exposure of \$470,200 (4,702 pay periods x
27 \$100).

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1 c. Meal Period Violations: Labor Code section 558 prescribes penalties of \$50 for an
2 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all
3 violations and a violation every single pay period for every single non-exempt employee in the
4 PAGA Period, this amounts to a maximum exposure of \$235,100 (4,702 pay periods x \$50).

5 d. Rest Period Violations: Labor Code section 558 prescribes penalties of \$50 for an
6 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all
7 violations and a violation every single pay period for every single non-exempt employee in the
8 PAGA Period, this amounts to a maximum exposure of \$235,100 (4,702 pay periods x \$50).

9 e. Failure to Reimburse Work Expenses: Labor Code section 2699 would be the
10 appropriate penalty for failure to reimburse work expenses, which prescribes penalties of \$100 for
11 an initial violation and \$200 for each subsequent violation. Using the initial pay period rate for all
12 violations, and a violation every single pay period for every single Aggrieved Employee in the
13 PAGA Period, this amounts to a maximum exposure of \$470,200 (4,702 pay periods x \$100).

14 f. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021)
15 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty
16 for wage statement violations that are inaccurate, which prescribes penalties of \$100 for an initial
17 violation and \$200 for each subsequent violation (*Id.* at 247-248). Using the initial pay period rate
18 for all violations and a violation every single pay period for every single Aggrieved Employee in
19 the PAGA Period, this amounts to a maximum exposure of \$470,200 (4,702 pay periods x \$100).

20 g. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of \$100 for
21 an initial violation and \$200 for each subsequent violation. Because this violation is merited only
22 at separation of employment, a one hundred percent (100%) violation rate would likely include
23 just one violation per employee. The data produced by Defendant indicate that there were 108
24 Aggrieved Employees whose employment was separated during the PAGA Period. This amounts
25 to a maximum exposure of \$10,800 (108 Aggrieved Employees x \$100).

26 h. Conclusion: In sum, Class Counsel calculated Defendant's total maximum
27 exposure for PAGA violations if the Court were to find a one hundred percent (100%) violation
28 rate for every Aggrieved Employee every pay period and not exercise its discretion to reduce any

1 of those penalties to be \$2,126,700. Class Counsel understand that Defendant argued the following
2 in connection with this claim: Defendant contends that no PAGA penalties are likely to be awarded
3 and, even if they were, the maximum exposure calculated by Class Counsel is vastly overstated.
4 First, Defendant defends that PAGA penalties cannot and should not be stacked. Second,
5 Defendant asserts that individualized issues predominate the PAGA claims, making the claims
6 unmanageable for trial. Third, Defendant denies that a violation for each pay period can be
7 established. Fourth, Defendant contends that a Court is unlikely to exercise its discretion to award
8 civil penalties under PAGA where, as here, there is no conduct shown by Plaintiffs that would
9 show any Labor Code violation by Defendant is knowing and intentional. Defendant insists that
10 this is especially true in the Action where class action damages are available to Class Members,
11 rendering an award of PAGA penalties in addition to class action damages to be double recovery.

12 Class Counsel maintain that it is possible to recover the subsequent violation rate for
13 penalties, that stacking is permissible, and that there is no manageability requirement under PAGA
14 (citing *Estrada v. Royalty Carpet Mills, Inc.*). As such, Class Counsel believe a ninety percent (90%)
15 discount of this claim to be reasonable, resulting in **\$212,670** as a reasonable estimate of the
16 likelihood of what Plaintiffs may recover at trial for PAGA penalties ($\$2,126,700 \times 0.10$).

17 **8. Conclusion**

18 When including derivative penalties, such as waiting time penalties, wage statement
19 violations, and discretionary PAGA penalties, Class Counsel theorized Defendant's maximum
20 exposure to be approximately **\$1,807,477**. In all, Class Counsel obtained a Gross Settlement
21 Amount of **\$450,000.00**. Particularly in light of the risks involving obstacles to class certification,
22 all issues and risks related to liability, the issues with manageability at trial, the discretionary
23 nature of PAGA penalties, and considering the case law regarding fair, reasonable and adequate
24 settlements, Class Counsel strongly believe that the settlement reached is fair, reasonable and
25 adequate, and in the best interest of Class Members.

26 Moreover, \$40,000.00 of the Gross Settlement Amount was attributed to PAGA penalties.
27 This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the
28 fact that damages are available for the failure to pay wage claims while only penalties are available

1 for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack
2 PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount
3 of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA
4 penalties at all in light of the fact that damages are available for Class Members and it may find
5 any further liability against Defendant unnecessarily punitive.

6 **VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

7 Class Counsel seek an attorneys' fees award of *up to* one third (1/3) of the Gross Settlement
8 Amount, which, unless escalated pursuant to this Agreement, would amount to \$150,000.00. Class
9 Counsel also seek reimbursement of actual litigation costs. The requested fees fall well within the
10 historical range of attorney's fees awards under the common fund theory, which is generally from
11 25% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive and
12 time-consuming litigation on a contingent fee basis. Thus, the Court should preliminarily approve
13 the requested attorneys' fees and costs, which are justified by the results achieved, the complexity of
14 the issues, the difficulty of the case and the great risks undertaken by Class Counsel. The requested
15 attorneys' fees will not be opposed by Defendant and are well within established guidelines.

16 **VIII. THE REQUESTED ENHANCEMENT AWARDS TO THE NAMED**
17 **PLAINTIFFS AND CLASS REPRESENTATIVES ARE REASONABLE**

18 Plaintiffs are entitled to an enhancement award for their service as class representatives, for
19 answering extensive questions by Class Counsel, for being available and answering questions during
20 mediation, for the risks in being the named plaintiffs and for providing Defendant with a more
21 expansive release of claims, including a waiver based upon California Civil Code section 1542, in
22 exchange for the enhancement award. Defendant does not oppose the requested enhancement to
23 Plaintiffs. Plaintiffs risked intrusive discovery and the payment of employer costs. In the experience
24 of Class Counsel, the typical enhancement award in wage and hour class actions ranges from
25 approximately \$10,000.00 to \$25,000.00, although some awards are higher. In contrast, Class
26 Counsel seek an extremely limited enhancement of up to \$10,000.00 each to plaintiffs Angelica
27 Esmeralda Levy and Michelle Delarosa, for a total of \$20,000.00 to Plaintiffs.

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1 **IX. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES**

2 **A. The Class should be Preliminarily Certified**

3 In California, there are two certification prerequisites: (1) the existence of an “ascertainable
4 class;” and (2) “a well-defined community of interest in the questions of law and fact involved
5 affecting the parties to be represented.” (*Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th
6 639, 647.) To certify a class, the party advocating class treatment must demonstrate: (1) a numerous
7 class; (2) predominant common questions of law or fact; (3) class representatives with claims or
8 defenses typical of the class; and (4) class representatives who can adequately represent the class.”
9 (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.*
10 (2012) 53 Cal.4th 1004, 1021.) Each of the criteria for class certification is satisfied in this instance:

11 **1. Ascertainability** – “Ascertainability” is a due process requirement that
12 ensures it is possible to decide who will be bound by the judgment (*res judica* effect). The
13 determination is made by examining the class definition and the size of the class. Here, the Class
14 Members definition (*i.e.*, all current and former hourly-paid or non-exempt employees of Defendant
15 within the State of California at any time during the Class Period) is derived from the Operative
16 Complaint, which complains of alleged violations of Labor Code sections that are chiefly and, in
17 some instances, solely applicable to non-exempt or hourly paid employees. There is no difficulty
18 ascertaining who is a current or former hourly-paid or non-exempt employees of Defendant within
19 the State of California at any time during the Class Period based solely from Defendant’s payroll
20 records, which amounts to approximately 195 persons.

21 **2. Numerosity** – According to the California Supreme Court, a putative class is
22 sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable and
23 thus substantial benefits accrue both to litigants and the courts if the action proceeds as a class action.
24 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) Numerosity is presumed satisfied if
25 there are forty (40) putative class members. (*Miri v. Dillon* (E.D. MI 2013) 292 F.R.D. 454, 461.)
26 However, as few as 10 class members has been found sufficient. (*See, e.g., Bowles v. Sup. Ct.* (1955)
27 44 Cal.2d 574.) Class Counsel understand from documents provided that Defendant identified at
28 least 195 Class Members. That is sufficiently numerous to establish the numerosity requirement.

1 **3. Commonality** – California law also requires that “questions of law or fact
2 common to the class [be] substantially similar and predominate over the questions affecting the
3 individual members.” (*In re Steroid Hormone Product Cases* (2010) 181 Cal.App.4th 145, 153.)

4 This litigation is brought to resolve common issues that include whether Defendant failed to
5 pay for all hours worked; whether Defendant provided full, timely and un-interrupted meal and rest
6 periods; whether Class Members are entitled to premium pay for incomplete, untimely or interrupted
7 meal or rest periods, among other claims as set forth above.

8 **4. Typicality** – Typicality requires only that the named plaintiff’s interests in
9 the action be significantly similar to those of other class members. (*Williams v. Sup. Ct.* (2013)
10 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)
11 Plaintiffs contend that their claims are typical of those of other Class Members as Plaintiffs: (1)
12 are non-exempt, hourly paid employees like other Class Members; (2) complain of not being paid
13 for all time under Defendant’s control or suffered and/or permitted to work for Defendant; (3) did
14 not fully receive premium pay for meal periods that were not compliant with the Labor Code; (4)
15 did not receive premium pay for rest periods that were not provided, among others as set forth
16 above. Thus, Plaintiffs claims are typical of other Class Members.

17 **5. Adequacy of Representation** - To maintain a class action, the representative
18 plaintiff must adequately protect the interests of the class. (*Williams v. Sup. Ct.* (2013) 221
19 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)
20 Adequacy of representation consists of two components. First, there must be no disabling conflicts
21 of interest between the class representatives and the class. Second, the class representative must be
22 represented by counsel who are competent and experienced in the kind of litigation to be undertaken.
23 (*See McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450; *accord In re Juniper Networks, Inc.*
24 *Securities Litigation* (N.D. Cal. 2009) 264 F.R.D. 584, 590.) Plaintiffs contend, and Defendant does
25 not dispute for Settlement only, both criteria are met in this instance:

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1 (i) **No Disabling Conflict of Interest Exists Between the Class**
2 **Representatives and the Class**

3 No conflicts, disabling or otherwise, exists between Plaintiffs and Class Members because
4 Plaintiffs allege to have been damaged by the same alleged conduct of Defendant (*i.e.*, Plaintiffs are
5 classified as non-exempt employees, not paid premium pay, etc.) and thus have the incentive to fairly
6 represent all Class Members' claims to achieve the maximum possible recovery.

7 (ii) **Class Counsel are Experienced Class Action Attorneys**

8 As set forth in the Declarations of Class Counsel, Class Counsel in this matter consist of
9 experienced class action attorneys, have been appointed as class counsel in other class actions and
10 have a successful "track record" in litigating class actions.

11 **6. Superiority of Class Action** - Also relevant to the Court's certification
12 decision is whether a class action is the superior method of adjudication. (*Brinker Restaurant Corp.*
13 *v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)

14 It deals with common issues that are most efficiently adjudicated together, as indicated
15 above. Moreover, Plaintiffs assert that, with at least 195 Class Members, presentation of all of them
16 before this Court may be problematic, impractical, and burdensome. On the contrary, a class action
17 allows claims of many individuals to be resolved at the same time, eliminates the possibility of
18 repetitious litigation and affords small claimants with a method of obtaining redress for claims
19 which otherwise would be too insufficient to warrant individual litigation.

20 **7. Conclusion** – Thus, because this class action meets all criteria for
21 certification and a lesser standard of scrutiny applies when evaluating these criteria for settlement
22 purposes, it should be certified for purposes of effectuating this settlement.

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