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Attorneys for Plaintiffs MINDI HAMPTON and TAMMY RAUTENBERG
and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MINDI HAMPTON, an individual; TAMMY RAUTENBERG, an individual; on behalf of themselves and all others similarly situated and the general public,

Plaintiffs,

vs.

INFUSION4HEALTH, INC., a California corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 24STCV02692

[Assigned for All Purposes to:
the Hon. Carolyn B. Kuhl, Dept. SS12]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: December 4, 2025
Time: 10:30 a.m.
Dept: 12

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 4, 2025, at 10:30 a.m., or as soon thereafter as the matter may be heard in Department 12 of the above-entitled court, located at the Los Angeles Superior Court, 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Mindi Hampton and Tammy Rautenberg ("Plaintiffs") will hereby move the Court for final approval of a class action settlement, entry of a final Order and Judgment, approval of Plaintiffs' enhancement award, approval of Plaintiffs' attorneys' fees and costs, and approval of the settlement administration expenses.

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of Aaron Bartz, Walter Haines, Mindi Hampton, Tammy Rautenberg, and Jonathan Paul, all documents and records on file in this action, and on such other further oral and documentary evidence as may be given at the hearing on this Motion.

Dated: November 7, 2025 BARTZ LAW GROUP, APC

//Aaron Bartz//
Aaron A. Bartz
Attorneys for Plaintiffs MINDI HAMPTON, TAMMY RAUTENBERG and all others similarly situated

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This class action and PAGA settlement is sought on behalf of 302 current and former non-exempt employees who worked in California for Defendant Infusion4Health, Inc. ("Defendant") beginning February 1, 2020 through June 17, 2025.

Pursuant to the preliminary approval order, class notice was mailed to the class on September 19, 2025. After receiving the class notice by the settlement administrator Xpand Legal ("Xpand") and having the opportunity to opt out or object to the settlement, not one class member has opted out of the settlement or objected to the settlement. (Declaration of Jonathan Paul ("Paul Decl."), ¶¶ 7-8).

This case arises out of Plaintiffs' allegations that Defendant violated California's wage and hour laws, including failing to pay all wages owed and overtime, failing to authorize and permit meal and rest periods, failing to reimburse class members for necessary business expenses, failing to properly maintain and submit wage statements, and waiting time penalties.

There is no claim form requirement, and each member of the class is entitled to receive compensation, with no reversion to the Defendant. The gross settlement is $485,000. The net amount to be paid to class members (after payment of class counsel fees and expenses, settlement administration costs, Private Attorneys General Act ("PAGA") penalties, and Plaintiffs' enhancement awards), is approximately $246,701. Each class member's share of the settlement is based on workweeks, and each shall receive, on average, approximately $816.

II. THE SETTLEMENT

The class members entitled to the settlement fund are all of Defendant's current and former non-exempt California employees who worked at any time during the class period beginning from February 1, 2020 through June 17, 2025. There are 302 class members.

The settlement fund is all in (except for the employer's share of payroll taxes, which Defendant shall pay in addition to the $485,000 settlement), there is no claim form requirement, and no residual will revert to Defendant. No class members have opted out or objected to the settlement, so settlement checks will be distributed to all class members. In the event a class member does not negotiate (cash) his or her settlement check, the claims administrator shall distribute the unclaimed funds to the California State Controller's Unclaimed Property Fund. (Declaration of Aaron Bartz ("Bartz Decl."), ¶ 6).

The payment to the Settlement Class Members will be characterized eighty percent interest and penalties, and twenty percent wages. The administrator will issue W-2 statements for the wage portion of the settlement, and a form 1099 for all amounts paid as penalties and interest.

Based upon Class Counsel's independent analysis and investigation in this matter, the Settlement Class will be compensated based on each member's respective number of workweeks worked during the Class Period. The total number of workweeks is 11,745.

Based on the settlement terms, there will be an approximate net settlement fund of **$246,701**. In exchange for their payment, the class will release Defendant from any and all claims rights, demands, liabilities, and causes of action, whether statutory, in tort, contract, or otherwise, alleged in the Action and PAGA Notice, or that could have been alleged based on the facts pleaded in the Action and PAGA Notice, arising during the Class Period as set forth in the Settlement Agreement at Paragraph 5.3. The named Plaintiffs will, in addition to releasing claims alleged in the lawsuit, give a general release of all claims pursuant to Civil Code section 1542 as set forth in Sections 5.1 and 5.2.

The all-in settlement fund will also include all of the attorneys' fees and costs allowed by this Court. The attorneys' fees shall not exceed one-third of the $485,000 settlement fund, or $161,666. Defendant will also pay class counsel's costs, which are $18,632.68, as well as settlement administration costs of $8,000, out of the common fund.

The PAGA allocation of the settlement is $25,000, of which $18,750 (75%) will be distributed to the Labor Workforce and Development Agency (LWDA), with the remaining portion - $6,250 (25%) - going to PAGA Members (all allegedly aggrieved persons who worked for Defendant at any time from November 22, 2022 through June 24, 2025).

The settlement also includes Plaintiffs' class representative enhancements. Based on Plaintiffs' work in connection with this case, including connecting Class Counsel with other witnesses, meeting and conferring with Class Counsel regarding legal strategies, risking their reputation in the nursing industry, giving a general release, assisting with developing the claims and theories in this case, and attending Mediation, Plaintiffs seek a total of $25,000.

In summary, the settlement fund is allocated as follows:

(1) Net settlement fund: $246,701;

(2) Attorney's fees and costs: $161,666 in attorneys' fees and $18,632.68 in costs;

(3) Settlement administrator expenses of $8,000;

(4) PAGA payment: $25,000 (18,750 to the LWDA, and $6,250 to aggrieved employees);

(5) Class representative enhancements: $25,000 for the named Plaintiffs.

(Bartz Decl., ¶ 7).

III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE IN THIS CASE

Pursuant to both state and federal rules of civil procedure, "a class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the Court directs . . .." (Cal. Civ. Code § 1781(f); *see also* Fed. R. Civ. P. 23(e).)

To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval. (*See Malibu Outrigger Bd. of Governors v. Superior Court,* 103 Cal. App. 3d 573, 578-579 (1980).) The purpose of the requirement is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties. (*See Officers for Justice v. Civil Service Comm.,* 688 F.2d 615, 625, cert. denied 459 U.S. 1217 (9th Cir. 1982).) To determine whether to grant final approval to a proposed class action under Civil Code section 382, the Court's overriding concern is whether the proposed settlement is "fair, adequate, and reasonable." (*Dunk v. Ford Motor Company,* 48 Cal. App. 4th 1794, 1801 (1996) (quoting *Officers of Justice, supra*, 688 F.2d at 623-624).)

The settlement of a class action follows in three stages: (1) preliminary approval of the proposed settlement; (2) notice to class members; and (3) final approval or fairness hearing at which evidence and argument may be heard on the fairness of the settlement. Here, this Court already preliminarily approved the settlement, notice was provided to all class members, no class members have objected, and no class members have opted out.

A. <u>The Settlement is Presumed Fair</u>

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 Dunk, supra*, 48 Cal. App. 4th at 1802.) A court may also consider relevant factors such as the strength of the 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. (*See Officers of Justice, supra*, 688 F.2d at 624.) "This list is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties." (*Dunk, supra*, 48 Cal. App. 4th at 1801.) Moreover, the trial court has broad powers to determine whether a proposed class action settlement is fair. (*See Mallick v. Superior Court,* 89 Cal. App. 3d 434 (1979).)

B. <u>The Settlement Was Reached Through Arm's Length Negotiations</u>

This settlement is the result of arms-length and hard-fought negotiations. On November 13, 2024, the parties attended a full-day Mediation before wage and hour mediator, Jill Sperber, Esq. After an all-day mediation, the parties did not settle. Instead, the mediator issued a proposal thereafter, that both sides accepted. (Bartz Decl., ¶ 11).

Defendant has denied and continues to deny all of the claims and contentions alleged in this case. Nonetheless, Defendant has agreed to settle this case in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to avoid the expense, inconvenience, and burden of further legal proceedings, and the uncertainties of trial and appeals.

Plaintiffs and Class Counsel recognize the expense of continuing to litigate and trying this case against Defendant through possible appeals which could take several years. Class Counsel are also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the case. Based upon their evaluation, Plaintiffs and Class Counsel have determined that the settlement set forth in the Settlement Agreement is in the best interest of the Class Members.

Here the litigation has been hard fought and displayed capable and experienced advocacy on both sides. "There is likewise every reason to conclude that settlement negotiations were vigorously conducted at arm's length and without any suggestion of undue influence." *In re Wash. Public Power Supply System Sec. Litig*., 720 F. Supp. 1379, 1392 (D. AZ 1989).

C. **Plaintiffs Conducted Sufficient Investigation and Discovery To Warrant Settlement**

The stage of the proceedings and the amount of discovery completed are important factors for courts to consider in determining whether a settlement is fair, adequate and reasonable. (*See In re Warner Communications Sec. Lit.,* 618 F.Supp. 735, 741 (S.D.N.Y. 1985), affd., 198 F.2d 35 (2d Cir. 1986); *Ellis v. Naval Air Rework Facility,* 87 F.R.D. 15, 18 (N.D. Cal. 1980), affd., 661 F.2d 939 (9th Cir. 1981).)

The agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. Class Counsel obtained substantial informal discovery from Defendant, including personnel, and pay data for Plaintiffs, and Excel spreadsheets and payroll records for a statistically meaningful sampling of the class. Plaintiffs also retained an expert to evaluate the damages and provide an exposure analysis.

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and numerous issues raised on appeal and potential appeals down the road. Defendant and its counsel also agree that the settlement is fair and in the best interest of the Settlement Class Members. There can be no doubt that counsel for both parties possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation.

D. Class Counsel Is Experienced In Similar Litigation And Endorse The Settlement

The view of attorneys advocating for the class is "entitled to significant weight." (*Fisher Bros. v. Cambridge-Lee Industries, Inc.,* 630 F.Supp. 482, 488 (E.D. Pa. 1985); *see also Ellis, supra*, 87 F.R.D. at 18.) Class counsel has significant experience in class actions and employment litigation, including wage and hour class actions. (Bartz Decl, ¶¶ 13-17; Declaration of Walter Haines ("Haines Decl."), ¶ 3). As such, they are experienced and qualified to evaluate the claims and defenses in this case, and unequivocally support the settlement reached herein. The recovery for the class is fair, reasonable and adequate, and Class Counsel supports the settlement.

E. There Are No Objectors To The Settlement

Significantly, there has not been a single objection to the settlement, and no class members have asked to be excluded from the settlement. This alone is a testament to the fairness and adequacy of the settlement.

F. The Strength of Plaintiffs' Case, The Amount Offered In Settlement, and The Risk, Expense, Complexity, and Duration of Further Litigation Favors Settlement

Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon v. Chrysler Comm.,* 150 F.3d 1011, 1026 (9th Cir. 1998). Moreover, "[t]he expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement." (*In re Mega Financial Corp. Securities Litigation,* 213 F.3d 454, 458 (9th Cir. 2000).)

Plaintiffs Mindi Hampton and Tammy Rautenberg are former employees who worked with Defendant until 2023. Defendant provides infusion therapy services in California and elsewhere. The operative First Amended Complaint alleges claims for 1) Failure to Pay All Wages; 2) Waiting Time Penalties; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Proper Rest Periods; 5) Failure to Properly Maintain and Submit Itemized Wage Statements; 6) Unfair Business Practices; and 7) Violation of Labor Code § 2699 (PAGA). Plaintiffs further allege that they and the Class are entitled to damages, restitution, wages, attorneys' fees, and interest, among other remedies.

Pursuant to *Kullar v. Footlocker Retail Inc.*, 168 Cal.App.4th 116, 118 (2008) and *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794 (1996), the following describes the settlement's reasonableness. Plaintiffs recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiffs have also taken into account the uncertainty and risk of denial of motion for class certification and the uncertain outcomes resulting from further litigation, and the difficulties and delays inherent in such litigation.

Based on the foregoing, Plaintiffs have determined that the settlement is a fair, adequate and reasonable settlement and is in the best interests of the Class Members. The reasonable exposure and the reasonable settlement value for each of the alleged claims are as follows:

CLAIM	**TOTAL EXPOSURE**	**SETTLEMENT VALUE**
Failure to Pay Wages	$477,493	$238,746
Meal	$1,417,471	$141,747
Rest	$2,796,073	$279,607

Waiting time	$600,224	$60,022
Paystub	$350,900	$35,090
PAGA	$2,351,559	$235,155
TOTAL	**$7,993,720**	**$990,833**

1. Overtime/Off-the-Clock Wage Violations

Labor Code § 510 provides that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Further, "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay . . ., [and] any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of an employee."

Labor Code § 1194 states any employee receiving less than the legal minimum wage is entitled to recover the unpaid balance of the full amount of this minimum wage, including interest thereon, reasonable attorney's fees, and costs of suit.

Plaintiffs contend that Defendant failed to pay all wages due in several respects.

First, Plaintiffs assert that Defendant pays Plaintiffs and other nurses performance and other non-discretionary bonuses as part of their compensation yet Defendant has failed and refused to pay Plaintiffs and other class members the regular rate of pay when paying overtime or sick time. Plaintiffs' assert that payroll records reveal that Defendant failed to incorporate employees' bonuses earned by Plaintiffs and other class members. It is undisputed that such amounts must be added to an employees' compensation when calculating the regular rate. *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858, 869 (2021) (a bonus earned for weekend work . . . was "part of an employee's overall compensation package, and therefore ... its per-hour value must be determined so that the employee's regular rate of pay — and, derivatively, the employee's overtime pay rate — reflects all the various forms of regular compensation that the employee earned in the relevant pay period").

Second, Plaintiffs contend that Defendant also fails to pay sick time at the regular rate of pay, instead, paying that time at the base rate of pay. Sick time must be paid "in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time." Labor Code § 246, subd. (l)(1).

Last, Plaintiffs allege that Defendant failed to pay for all hours worked, based on Plainitffs' and class members' working before and after their shifts to complete their work duties.

Defendant contends that its payment policies were lawful, and that it paid for all time worked by Plaintiffs and the class members.

Plaintiffs and their expert analyzed payroll and time records for the class members and calculated that the total verdict value for this claim is approximately $477,493. Plaintiffs and their expert assumed 30 minutes per shift of unpaid hours, and further calculated the total damages attributable to failing to include all compensation into the regular rate. Plaintiffs' expert reviewed payroll records for the class, including pay period counts per year, and a weighted average rate of pay. Plaintiffs believe their unpaid wages and regular rate claim is their strongest claim, and therefore placed a reasonable settlement value of the overtime/minimum wage claim at fifty percent of the total verdict value, or **$238,746**. This valuation takes into consideration Class Counsel's analysis of the law, and evidence produced by the Defendant. (Bartz Decl., ¶ 12.a).

2. Meal and Rest Period Claims

a. <u>Meal period liability and damages</u>

Plaintiffs contend that Defendant failed to provide Plaintiffs and class members with a duty-free 30-minute meal period for every five hours of work as is required by Labor Code § 512 and the applicable IWC Wage Order(s) and in violation of *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). Failure to provide a meal in accordance with the applicable Wage Order(s) results in payment by the employer of one additional hour of pay at the employee's regular rate of pay for each workday that the rest or meal period is not provided. (Labor Code §

226.7.) Defendant also cannot create "incentives to forego, or otherwise encourage[] the skipping of legally protected breaks." *Brinker*, *supra*, 53 Cal.4th at 1040. Moreover, when time records show short, missed, and late meal periods, there is a presumption that an employer violated California's meal period requirements. *See Donohue v. AMN Services, LLC*, 11 Cal.5th 58, 78 (2021) ("If time records show noncompliant meal periods, then a rebuttable presumption of liability arises.")

Plaintiffs contend that Defendant's meal period practices are unlawful under California law. ***First***, Plaintiffs assert that Defendant severely understaffed its infusion centers, such that Defendant would require Plaintiffs and other class members to clock out for meal periods and to continue working. Moreover, Plaintiffs contend that there was no dedicated breaker or coverage nurse, such that Plaintiffs and other nurses could not take their meal periods without interruption. (Bartz Decl., ¶ 12.b.i).

Second, Plaintiffs contend that Defendant's time records show short, missed and late meal periods, which under *Donahue*, create a presumption that Defendant was not in compliance with the law. Moreover, Defendant's failure to automatically pay meal period premiums and requiring managers to approve meal premiums undercuts Defendant's defenses of compliance with California's meal period laws. *See Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 525 (2018) (finding that employer's policies and practices of failing to automatically pay meal period premiums and making managers the ultimate decision-makers regarding payment of meal period premiums. (Bartz Decl., ¶ 12.b.i).

Defendant contends that Plaintiffs and class members had the ability and in fact did take meal periods, and that if they did not, it was their own choice, and therefore not actionable. Defendant further contends that it has compliant meal period policies and contends that it has time records showing that the vast majority of them show that Plaintiffs and other class members were afforded compliant meal breaks. Defendant also contends that testimony from current and former employees would prove that the employees were provided with ample time to take meal breaks (Bartz Decl., ¶ 12.b.i).

Class Counsel and their expert calculated the maximum verdict value of the meal break claim to be approximately $1,417,471. This calculation is based on Plaintiffs' expert's review of the meal period data showing short, missed, and late meal periods, which equals approximately 11%, as well as an assumed 50% violation rate for those meal periods that were exactly 30 minutes in length, multiplied by an average rate of pay based on the payroll data for the class. After factoring in Defendant's defenses, and the relatively low observed meal period violation rate, Plaintiffs believe they had a ten percent probability of recovering all of these damages. Accordingly, Plaintiffs contend the reasonable exposure of the meal break claim is approximately **$141,747**. (Bartz Decl., ¶ 12.b.i).

b. Rest period liability and damages

Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

Section 12(B) of the IWC Wage Order(s) states: "If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided." Moreover, during rest periods, "employees must not only be relieved of work duties, but also be freed from employer control over how they spend their time." *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257, 270 (2016). Further, when an employer adopts common policies that prevent employees from taking their rest breaks, it presents a common factual issue by which liability may follow. *See Jaimez v. Daiohs USA, Inc.*, 181 Cal.App.4th 1286, 1304 (2010). Indeed, "[t]he wage orders and governing statute do not countenance an employer's exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks." *Brinker, supra*, 53 Cal.4th at 1040.

Plaintiffs contend that Defendant did not authorize or permit Plaintiffs or the class members duty-free rest periods for several reasons. ***First***, Plaintiffs contend that because Defendant's rest period policy provides that employees are restricted in the movements, this implies that Plaintiffs and the class members are not relieved of all duties. (Bartz Decl., ¶ 12.b.ii).

Second, Plaintiffs assert that Defendant's record sampling reflected that no premium payments were attributed to any rest period violations. (Bartz Decl., ¶ 12.b.ii). A complete lack of premium pay "would require perfection or, more likely, a 'deep, system-wide error' in failing to pay such premiums." *In re Tea Station Inv*., 2021 Bankr. LEXIS 2985, at *22 (C.D. Cal. Oct. 26, 2021). In *Safeway v. Superior Court,* 238 Cal. App. 4th 1138, 1153 (2015), the Court counseled against arguments that are based on human perfection.

Third, Plaintiffs contend that, because of the severe short staffing of the infusion centers, the rest periods were interrupted with work inquiries and other duties, which is "irreconcilable with employees' retention of freedom to use rest periods for their own purposes. *See Augustus, supra,* 2 Cal.5th at 270.

Class Counsel and their expert assumed a 100% violation rate for all shifts by class members of 3.5 hours or more. Based on that assumption, Class Counsel calculated total violations across the class, multiplied by an average rate of pay for the class members. As such, Class Counsel calculated the maximum verdict value of the rest period claims to be approximately $2,796,073. Based on the defenses raised, the difficulty of proving rest period violations on a class wide basis, and the lack of objective evidence proving such violations, Plaintiffs believe they had a ten percent chance of recovering all of the rest period damages. As such, Plaintiffs believe the reasonable exposure of the rest break claim is approximately **$279,607**. (Bartz Decl., ¶ 12.b.ii).

3. Waiting Time Penalty

The waiting time penalty claim is purely derivative. Class Counsel analyzed the data to find that there are approximately 46 former employees included in the putative class that would be eligible for the Labor Code §203 penalties. Class Counsel calculated the total verdict value at approximately $600,224. This amount was calculated by multiplying the average daily rate of pay during the statutory period by 30, which is the maximum number of days allowable as waiting time penalties under section 203, and then multiplying that by the total number of former employees. Plaintiffs further discounted the waiting time penalty claim based on risk and the fact that waiting time penalties are not awarded if a good faith dispute exists as to whether the wages were owing. Further, the class would have the burden of proving a “willful” withholding of wages. Plaintiffs considered that under Labor Code §203 there is only a penalty if "an employer willfully fails to pay" all wages due to an employee upon separation. Willfulness does not exist if there is a "good faith dispute," in fact or law that wages were due, even if the employer's reasoning ultimately proves incorrect. *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1204 (2008); 8 Cal. Code Regs. § 13520 ("A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recover on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.")

Once Plaintiffs determined the maximum reasonable exposure of the claim, Plaintiffs placed a settlement value of **$60,022** or approximately ten percent of the reasonable exposure value, based upon the above discounts applied to the reasonable value of the claim. (Bartz Decl., ¶ 12.c).

4. Paystub

As to the paystub penalty, which is derivative of the other claims identified above, Class Counsel arrived at a maximum reasonable exposure of this claim of approximately $350,900. This figure was arrived at by assuming that each wage statement that was provided to the class members violated Labor Code §226, and multiplying the number of pay periods during the statutory period by $50 for initial violations, and $100 for subsequent violations.

Defendant argues that, even assuming there are any violations, which they deny, the fact that derivative violations were minor and the Defendant had presented evidence of a good faith dispute as to any violation. *Hurst v. Buczek Enters., LLC,* 870 F.Supp.2d 810, 829 (N.D. Cal. 2012) (no section 226 violation where the employer "makes a good faith claim" in its defense); *Harris v. Vector Mktg. Corp.*, 656 F.Supp.2d 1128, 1146 (N.D. Cal. 2009) (the "employer did not knowingly and intentionally fail to provide itemized wage statements" where there was a "good faith dispute").

Based on the raised defenses, as well as the risk of certification and related risks of proving all violations, Plaintiffs have placed a reasonable settlement value of **$35,090** or ten percent of the reasonable exposure of the pay stub claim. (Bartz Decl., ¶ 12.d).

5. PAGA

Plaintiffs contend that PAGA penalties are owed based on the numerous alleged Labor Code violations identified above. Once a PAGA violation is found, a court must award civil penalties. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1211-1213 (2008). Nevertheless, a court has discretion to reduce the award of civil penalties if it finds that "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code § 2699(e)(2).

Significantly, moreover, because it is an open question regarding the Defendant's liability, there is a very real possibility that a court would substantially reduce the penalties, even if they are proven. *See, e.g., Fleming v. Covidien, Inc.*, 2011 WL 7563047, *3-4 (C.D. Cal. 2011) (reducing penalties from $2.8 million to $500,000 based on wage statement violations because to assess full penalties would be unjust and arbitrary); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1134 (2012) (reduction of PAGA penalties by 30% affirmed on appeal).

Class Counsel and their expert calculated the reasonable PAGA penalties to be valued at $2,351,559, which includes the stacking of penalties for numerous violations, as set forth above.

Based on the uncertainty of recovery on Plaintiffs' claims, Plaintiffs believe the PAGA claim's reasonable value is ten percent of the total value, or approximately **$235,155**. (Bartz Decl., ¶ 12.e).

6. <u>Total Damage Exposure</u>[1]

Plaintiffs believe that the $485,000 settlement achieved in this case is very good for the class members. Based upon a reasonable exposure value of $990,833, the settlement represents approximately 49% of that total value. Given the many defenses raised, the uncertainty of the certifiability of any class, and the risks of going to trial, Class Counsel believe this settlement is a good result for all of the class members. (Bartz Decl., ¶ 12.f).

G. <u>All Class Members Have Received Proper Notice of the Settlement</u>

Pursuant to the Court's Preliminary Approval Order dated June 24, 2025, the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, was sent out to all 302 Class Members via first-class mail by Claims Administrator Xpand on September 19, 2025. Prior to this date, the name, last known address, and social security number of each Class Member were provided by Defendant through a review of its personnel files. Upon its receipt of the Class Member contact information, Xpand accessed the National Change of Address ("NCOA") database and updated the addresses provided by Defendant. (Paul Decl., ¶ 4). As of the date of the filing of this motion, not a single Class Member has objected to the settlement and no Class Members have requested exclusion from the settlement.

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[1] The Unfair Competition claim is subsumed into the *Kullar* analysis above. The Unfair Competition claim is based upon the wage and hour violations, and adds an extra year of damages, and is included within the above analysis.

IV. **PLAINTIFFS' REQUESTED ATTORNEYS' FEES ARE APPROPRIATE AND JUSTIFIED**

A. **Fees Can Be Awarded As A Percentage of the Common Fund**

When a common fund is created, attorneys who secured the fund are entitled to a percentage of the fund. (*See Laffitte v. Robert Half Int'l, Inc.,* 1 Cal.5th 480, 503 (2016) ["the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created]; *Lealao v. Beneficial Cal., Inc.,* 82 Cal.App.4th 19, 26 (2000) ["percentage fees have traditionally been allowed in . . . common fund cases"]). Plaintiffs' request for one-third of the common fund is reasonable, falls within the Ninth Circuit's historical benchmark for attorneys fees of 25% to 50% of a common fund, and is fair compensation for undertaking complex litigation on a contingent basis. (*See, e.g.*, Conte & Newberg, Newberg on Class Actions § 14:6, p. 551 (4th ed. 2002) [surveying cases, and finding that 30-50% of fees awarded in cases in which the common fund is relatively small]; see also *In re Ampicillin Antitrust Litigation*, 526 F.Supp. 494 (D.D.C. 1981) [court approved attorney fee award equal to 45% of the settlement fund].)

Under the common fund doctrine, "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *(Boeing Co. v. Van Gemert,* 444 U.S. 472, 478 (1980) [100 S.Ct. 745, 750, 62 L.Ed.2d 676].) The Supreme Court explained:

> The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense. Jurisdiction over the fund involved in litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit. (Citations omitted.)

(*Id.*; *see also Laffitte, supra,* 1 Cal.5th at 503 ["the percentage method is a valuable tool that should not be denied our trial courts"]; *Serrano v. Priest,* 20 Cal.3d 25, 34 (1977) ["one who expends attorneys' fees in winning a suit which creates a fund from which other derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs"].)

Class counsel seeks an award of attorneys' fees of $161,666, or one-third of the settlement. Class counsel's fee is eminently reasonable here. Class counsel achieved a very good result for all class members, who will all be entitled to receive their share of the settlement according to their workweeks during the class period.

B. <u>Plaintiffs' Attorneys' Fees Are Also Recoverable Under The Lodestar Approach</u>

Class Counsel's fee request is also reasonable when calculated using the lodestar method. The lodestar is produced by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate. *See Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 164 (2006). The court then engages in a multiplier analysis and determines whether the lodestar figure should be augmented. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001). Under the lodestar method, "there is 'no mathematical rule requiring proportionality between compensatory damages and attorneys' fees award." *Harman v. City and County of San Francisco*, 158 Cal. App. 4th 407, 421 (2007). While "the attorney who takes [a fee-shifting] case can anticipate receiving full compensation or every hour spent litigating a claim[,]" *Weeks v. Baker & McKenzie*, 63 Cal. App. 4th 1128, 1175 (1998), courts should not be "enmeshed in a meticulous analysis of every detailed facet of the professional representation." *Serrano v. Unruh*, 32 Cal. 3d 621, 642 (1982); s*ee also*, *Fox v. Vice*, 563 U.S. 826, 838 (2001) (The essential goal in shifting fees … is to do rough justice, not to achieve auditing perfection").

The starting point in determining the appropriate hourly fee is to discern the prevailing rate for similar work in the pertinent geographic area. *PLCM Group v. Perez*, 22 Cal. 4th 1084, 1096-1097 (2000) (using prevailing hourly rate in community for comparable legal services even though party used in-house counsel). Class Counsel's hourly rates are comparable to, or less than, those charged by other class action plaintiffs' counsel and are commensurate with the rates awarded to Class Counsel in similar actions. (*See* Bartz Decl., ¶ 22; Haines Decl., ¶ 7).

Furthermore, the total attorney hours expended on this action are reasonable. Class Counsel reasonably estimates a total of 135 hours expended by Bartz Law Group, APC and 19 hours expended by the United Employees Law Group, PC. (*See* Bartz Decl. at ¶ 22, Ex. 6 thereto (detailed breakdown of attorney time); Haines Decl. at ¶ 8). Multiplying the total hours billed by Class Counsel by their reasonable hourly rates yields a lodestar of approximately $121,000.

Based on Class Counsel's lodestar, a one-third fee results in a 1.33 multiplier to date. A multiplier is appropriate when "(1) attorneys take a case with the expectation they will receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there is evidence the case was risky." *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016). Here, Class Counsel took this case on a full contingency basis, their rates are commensurate with market rates of hourly defense counsel, and do not reflect the risk associated with this being a contingency case. (Bartz Decl., ¶ 22).

California law also embraces the application of fee multipliers. *See Wershba v. Apple Computer,* 91 Cal.App.4th 224, 255 (2001) (under California law, "[m]ultipliers can range from 2 to 4 or even higher."). The multiplier requested here is also in line with those granted in other complex class actions involving a common fund. *See Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230 (N.D. Cal. Dec. 8, 2021) (multiplier of **5.49** granted after lodestar cross-check in wage and hour class action); *Steiner v. Am. Broadcasting Co.*, 248 Fed. App'x 780, 783 (9th Cir. 2007) (awarding cross-check multiplier of **6.85**); *Gutierrez v. Wells Fargo Bank, N.A.*, 2015 WL 2438274, at *7 (N.D. Cal., May 21, 2015) (applying **5.5** lodestar multiplier in UCL class action).

The multiplier also does not reflect additional work that will need to be performed in this case. Class Counsel estimate that they will spend at least 15 hours preparing for and attending the final approval hearing, conferring with the settlement administrator, responding to inquiries from class members, and assisting in administering the settlement. (Bartz Decl., ¶ 22). Accounting for such future incurred fees is permissible when performing a lodestar cross-check. *See In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litig.*, 746 Fed.Appx. 655, 659 (9th Cir. 2018); *Reyes v. Bakery and Confectionary Union and Ind. Int'l*

Pension Fund, 281 F.Supp.3d 833, 856 (N.D. Cal. 2017) (finding that 125 anticipated future hours included in lodestar to manage "class members' claims" appropriate and reasonable). When such future hours are included in the lodestar, the multiplier is reduced to 1.19.

1. The Requested Award of Attorneys' Fees is Supported by Class Counsel's Prosecution of this Case on a Contingency Basis

Recognizing that attorneys who represent clients under contingency-fee agreements shoulder considerable risk of the possibility of minimal or low recovery, courts recognize that contingent-fee attorneys should obtain a larger fee than the market-value of their services in order to help assure skilled representation of class interests. *See Graham v. DaimlerChrysler Corp*., 34 Cal.4th 553, 580 (2004) ("[A] lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions."); *Ketchum*, *supra*, 24 Cal.4th at 1132 ("[A] contingent fee contract, since it involves a gamble on the result, may properly provide for larger compensation than would otherwise be recoverable.').

The risks faced by attorneys working on contingency are substantial. This is particularly true in the context of class action litigation where there can be numerous hotly contested procedural and substantive issues, considerable outlay of costs without guarantee of recovery, and the possibility that intervening factors, such as the financial condition of the defendant, may limit the scope of potential recovery. California courts thus recognize that "the experience of the marketplace indicates that lawyers generally will not provide legal representation on a contingent basis unless they receive a premium for taking that risk." *Ketchum*, 24 Cal.4th at 1136. "Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions … [attorneys] must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior." *Lealao*, 82 Cal. App. 4th at 47. These policies support Plaintiffs' fee request, as Class Counsel undertook substantial risk in prosecuting this case.

2. The Requested Award of Attorneys' Fees is Supported by the Results Achieved on Behalf of the Class

Courts assess the reasonableness of a request for attorneys' fees by examining the results achieved on behalf of the Class. *See Serrano*, 20 Cal.3d at 49. This settlement represents a substantial recovery for the Settlement Class in light of the compelling defenses to liability.

As set forth above and in the supporting Declaration of Aaron A. Bartz, Class Counsel undertook a thorough analysis of the claims in this action including spending over one hundred fifty hours of legal research and data analysis to develop the novel core theories of liability in this case. Using this data, Class Counsel was able to determine that the maximum settlement amount of $485,000 was well within the range of the "Risk Adjusted" valuation of the potential recovery. Class Counsel also expended substantial efforts and resources communicating with Plaintiffs and other settlement class members, in order to maximize the total amount claimed by class members under the settlement. The result is that participating Class Members will receive over $246,701 in total settlement payments at an average recovery of $816. Accordingly, the cumulative benefits achieved by the Settlement favor approval of the requested fees.

3. The Requested Award of Attorneys' Fees is Supported by Class Counsel's Experience, Reputation, and Skill

The "skill and experience of the attorneys and nature of work performed" are also evaluated under California law in connection with a fee motion. *Northwest Energetic Services, LLC v. Cal. Franchise Tax Bd*., 159 Cal. App. 4th 841, 880 (2008). Class Counsel regularly litigate wage and hour claims and have considerable experience settling wage and hour class actions. (*See* Bartz Decl. at ¶¶13-17; Haines Decl. at ¶ 3).

V. <u>PLAINTIFFS' REQUESTED COSTS ARE REASONABLE AND SHOULD BE APPROVED</u>

Class Counsel has incurred a total of **$18,632.68** in costs and expenses that would normally be billed to a fee-paying client. Defendant has agreed to pay out these costs out of the settlement amount. The majority of costs incurred in this action relate to filing fees, expert fees, and mediator fees, which are costs that are reasonable and necessary to the litigation of this case. (*See* Bartz Decl. at ¶ 24, Ex. 7 thereto; Haines Decl. at ¶ 12).

In accordance with the Settlement Agreement, Class Counsel requests an award of $18,632.68, which is the amount of costs Preliminarily Approved by the Court in this Action. Accordingly, the requested costs should also be awarded.

VI. **<u>THE REQUESTED PAYMENT TO THE CLAIMS ADMINISTRATOR IS REASONABLE AND SHOULD BE APPROVED</u>**

Plaintiffs request final approval of claims administration costs in the amount of $8,000.00 to be paid to Xpand, which, per the Declaration of Jonathan Paul, has attested to the fact that it has properly distributed the Class Notice to all Class Members and has otherwise completed all of its duties thus far in administering and facilitating the settlement terms in this action.

VII. **<u>THE ENHANCEMENT AWARDS FOR THE CLASS REPRESENTATIVES ARE FAIR AND REASONABLE</u>**

The proposed enhancement awards for the class representatives are intended to recognize their initiative, risks, and efforts on behalf of the Settlement Class. Courts routinely approve class representative service payments, also known as incentive awards, to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1393 (2010); *see also Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for efforts in bringing the case); Manual for Complex Litigation (Second), § 21.62, fn. 971 (1985) (noting that such awards "may sometimes be warranted for time spent meeting with Class Members, monitoring cases, or responding to discovery"). "An incentive award may be appropriate to induce someone to serve as a class representative. In determining whether to make an incentive award, the court may consider (1) the risk, both financial and otherwise, the class representative faced in bringing the suit; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative;

(4) the duration of the litigation; and (5) the personal benefit received by the class representative as a result of the litigation." *Golba v. Dick's Sporting Goods, Inc.*, 238 Cal.App.4th 1251, 1272 (2015).

In this litigation, class representatives Mindi Hampton and Tammy Rautenberg testify to their risks, time and effort incurred, the adverse consequences suffered, and the benefits received in this case. (*See generally*, the Declarations of Mindi Hampton and Tammy Rautenberg). Significantly, both class representatives are nurses, and have dealt with substantial reputational risks in the industry. A simple Google search reveals this lawsuit. (See Ex. 5 to Bartz Decl.). In fact, at Ms. Hampton's last job, her co-workers mentioned the lawsuit, and thereafter co-workers and superiors began retaliating against her because of her lawsuit. (Hampton Decl., ¶ 13).

In addition, class representatives are required to execute a general release of all claims against Defendant, which includes a waiver of unknown claims and their rights under California Civil Code § 1542. This is significant because both Ms. Hampton and Ms. Rautenberg complained about the very issues in this case, and may have pursued far more lucrative individual retaliation cases against Defendant. (Hampton Decl., ¶ 16; Rautenberg Decl., ¶ 13). For all of these reasons, the requested service payments of $15,000 for Ms. Hampton, and $10,000 for Ms. Rautenberg, are appropriate and justified.

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VIII. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court issue an Order and Judgment approving the Settlement, and grant Plaintiffs' attorneys' fees and costs, Xpand's administrative expenses, and Plaintiffs' enhancement awards.

Dated: November 7, 2025

BARTZ LAW GROUP, APC

//Aaron Bartz//

Aaron A. Bartz
Attorneys for Plaintiffs MINDI HAMPTON, TAMMY RAUTENBERG and all others similarly situated