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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LATOYA HONEY WALKER, individually
and on behalf of all others similarly situated;

Plaintiff,

vs.

NURSEFINDERS, LLC; AMN SERVICES,
LLC; and DOES 1–100, inclusive.

Defendants.

Case No. 3:22-CV-04084-AGT

Assigned to the Honorable Alex G. Tse

**PLAINTIFF’S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT AND MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

Date: March 8, 2024

Time: 10:00 a.m.

Courtroom: A, 15th Floor

Complaint Filed: July 12, 2022

Trial Date: None Set

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

NOTICE IS HEREBY GIVEN that on March 8, 2024, at 10:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom A, before the Honorable Alex G. Tse of the United States District Court for the Northern District of California, Plaintiff LaToya Honey Walker, on behalf of herself and all others similarly situated (“Plaintiff”), will and hereby does move the Court for preliminary approval of the Class Action and PAGA¹ Settlement Agreement and Release (“Settlement Agreement” or “Settlement,” attached as **Exhibit 1** to the accompanying Declaration of Carolyn H. Cottrell). The Settlement resolves all of the claims in this action on a class basis. In particular, Plaintiff moves for an order:

- (1) Granting preliminary approval of the Settlement Agreement as to the Settlement Class and approving the Settlement Agreement as to the alleged Aggrieved Employees;
- (2) Conditionally certifying the proposed Settlement Class for settlement purposes;
- (3) Preliminarily appointing and approving Schneider Wallace Cottrell Konecky LLP as Class Counsel for the Settlement Class;
- (4) Preliminarily approving Class Counsel’s request for attorneys’ fees and costs;
- (5) Preliminarily appointing and approving Plaintiff LaToya Honey Walker as Class Representative for the Settlement Class;
- (6) Preliminarily appointing and approving Phoenix Class Action Administration Solutions as the Settlement Administrator for the Settlement Class and alleged Aggrieved Employees;
- (7) Approving the Settlement Notice (attached as **Exhibit A** to the Settlement Agreement);
- (8) Authorizing the Settlement Administrator to mail the approved Settlement Notice to the Settlement Class Members and alleged Aggrieved Employees as set forth in the Settlement Agreement;
- (9) Approving the proposed schedule and procedure for completing the final approval process for the Settlement:

¹ “PAGA” means the Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698 *et seq.*

Event	Deadline
Date of preliminary approval	TBD
Deadline for Defendant to provide Administrator with Class List (Settlement, ¶ 19(d)).	Within fifteen (15) business days after the Court's preliminary approval of the Settlement.
Deadline for Administrator to mail Settlement Notice to Class Members (Settlement, ¶ 19(f)).	Within ten (10) business days after receiving the Class List.
Notice Deadline (Settlement, ¶ 2(x)).	Sixty (60) days after the Settlement Notice is initially mailed to the Class Members and Aggrieved Employees.
Deadline to opt out of or object to Settlement or dispute workweeks (Settlement, ¶¶ 2(x), 20–22).	Forty-six (46) days after the Settlement Notice is initially mailed to the Class.
Deadline for Administrator to provide counsel a report showing: (i) the number of Class Members who have timely requested exclusion; (ii) the number of Class Members who have submitted invalid exclusion requests; (iii) copies of all exclusion requests (whether valid or invalid); (iv) the estimated average and median recovery per Class Member who has not submitted a valid letter requesting exclusion; (v) the estimated average and median recovery per Aggrieved Employee; and (vi) the largest and smallest estimated amounts to be paid to Class Members who have not submitted valid letters requesting exclusion. (Settlement, ¶ 19(i)).	Within ten (10) business days after the Notice Deadline.
Deadline for filing and uploading onto settlement website Motion for Attorneys' Fees and Costs, and for Service Award	No later than fifteen (15) days before the Notice Deadline
Deadline for filing of Final Approval Motion	_____
Final Approval Hearing (Settlement, ¶ 24).	No earlier than thirty (30) days after the Notice Deadline.
Effective Date (Settlement, ¶ 2(l)).	(i) If there is an objection to the settlement that is not subsequently withdrawn, then the date upon the expiration of time for appeal of the Court's Final Approval Order; or (ii) if there is a timely objection and appeal, then after such appeal is dismissed or the Court's Final Approval Order is affirmed on appeal; or (iii) if there are no timely objections to the settlement,

	or if any objections which were filed are withdrawn before the date of final approval, then the first business day after the Court's order granting Final Approval of the Settlement.
Deadline for Defendant to deposit Gross Settlement Amount (Settlement, ¶ 26).	Within ten (10) days of Effective Date.
Deadline for Administrator to make all payments due under the Settlement (Settlement, ¶¶ 27, 37).	Within thirty (30) days after the Effective Date or as soon as reasonably practicable.
Deadline for Administrator to provide Defendants' Counsel and Class Counsel, respectively, a report regarding the total amount of any funds that remain from checks that are returned as undeliverable or are not negotiated (Settlement, ¶¶ 19(1), 25).	Within ten (10) business days after conclusion of the 180-day check-cashing period.
Deadline for Administrator to provide written certification of completion of settlement administration (Settlement, ¶ 19(1)).	Upon completion of administration of the Settlement.

(10) Setting a final approval and fairness hearing.

Plaintiff brings this Motion pursuant to Fed. R. Civ. P. 23(e) and Cal. Lab. Code Section 2699(1)(2). The Motion is based on this notice and the following Memorandum of Points and Authorities, the accompanying Declaration of Carolyn Hunt Cottrell, all other records, pleadings, and papers on file in this action, and such other evidence or argument as may be presented to the Court at the hearing on this Motion. Plaintiff also submits a Proposed Order Granting Preliminary Approval of Class Action and PAGA Settlement with her moving papers.

Date: January 26, 2024

Respectfully Submitted,

/s/ Carolyn H. Cottrell

Carolyn Hunt Cottrell

Ori Edelstein

Michelle S. Lim

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

Attorneys for Plaintiff and the Putative Class

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3. Litigating the Action not only would delay recovery, but would be
expensive, time consuming, and involve substantial risk.15

4. The Settlement is the product of informed, non-collusive, and
arm’s length negotiations between experienced counsel.17

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff LaToya Honey Walker, on behalf of herself and all others similarly situated (“Plaintiff”), seeks preliminary approval of the class-wide settlement reached with Defendant Nursefinders, LLC (“Defendant”). After a year-and-a-half of litigation, including discovery, amendments to the complaints, extensive litigation, a full-day mediation, and extensive arm’s length negotiations between counsel, the Parties have reached a global settlement of this action, memorialized in the proposed Class Action and PAGA Settlement Agreement and Release.²

This class and PAGA³ representative action alleges violations of California wage and hour laws, resulting in the alleged underpayment of wages and the alleged failure to provide compliant meal and rest periods to hundreds of non-exempt workers employed by Defendant in California between July 12, 2018 and the date of Preliminary Approval⁴ of the Settlement.

The Settlement resolves approximately 2,919 Settlement Class Members’ claims for a total non-reversionary settlement of \$5,000,000.00. The Settlement provides significant average individual recoveries of approximately \$1,105.37 per Participating Class Member. With this Settlement, the Parties are resolving numerous wage-and-hour claims unlikely to have been prosecuted as individual actions. The Settlement is fair, reasonable, and adequate in all respects, and Plaintiff respectfully requests that the Court preliminarily approve the Settlement.

II. BACKGROUND

A. Initial Pleadings.

Plaintiff filed her initial Class Action Complaint on July 12, 2022 in this Court, alleging violations under California wage and hour laws on behalf of a putative California class against Nursefinders, LLC and AMN Services, LLC. ECF 1. Pursuant to the Parties’ agreement, Plaintiff filed a First Amended Complaint on November 17, 2022, which amended the proposed Class definition to exclude employees who signed an arbitration agreement. *See* ECF 25. The Parties subsequently

² The “Settlement” or “Settlement Agreement”, attached as **Exhibit 1** to the accompanying Declaration of Carolyn H. Cottrell in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement (“Cottrell Decl.”)

³ “PAGA” means the Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.*

⁴ Undefined capitalized terms have the meanings ascribed to them in the Settlement Agreement.

1 stipulated to the dismissal of AMN Services, LLC on February 3, 2023. ECF 31.

2 **B. Pre-Mediation Discovery, Mediation, and Settlement.**

3 Following the Parties' agreement to participate in early mediation of this matter, the Parties
4 engaged in informal discovery, through which Defendant produced nearly 12,000 pages of documents,
5 including a 20% sampling of time and pay records, handbooks and written policies, Plaintiff's
6 personnel file, and time punch correction forms. Cottrell Decl., ¶ 8. Defendant further provided
7 classwide figures, including the total number of putative Class members, separated putative Class
8 members, as well as their associated workweeks and pay periods. *Id.*

9 On September 8, 2023, the Parties participated in a full-day mediation before Steve Pearl, a
10 highly skilled mediator with years of experience in wage-and-hour actions. *Id.*, ¶ 12. The case did not
11 settle that day, but the Parties subsequently agreed to the mediator's proposal, which included the
12 substantive terms of the Settlement, on September 26, 2023. *Id.* The Parties thereafter negotiated the
13 specific terms of the Settlement at arm's length and executed a long-form agreement (the Settlement),
14 subject to the Court's approval, on January 19, 2024. *Id.*, ¶ 13.

15 Pursuant to the Settlement, on November 6, 2023, Plaintiff submitted a letter to the Labor &
16 Workforce Development Agency ("LWDA") to notify the LWDA that she would be asserting PAGA
17 claims that would be released under the Settlement, and that same day, the Parties filed a joint
18 stipulation for Plaintiff to file a Second Amended Complaint adding PAGA claims, which Plaintiff
19 filed on November 9, 2023. *See id.*, ¶¶ 15-16; ECF 44, 46; *see also*, Settlement, ¶ 12.

20 Plaintiff's Counsel has made a thorough and independent investigation of the facts and law
21 relating to the allegations in the Action. Cottrell Decl., ¶ 10. In agreeing to the Settlement, Plaintiff
22 has considered: (a) the facts developed during pre-mediation informal discovery and the Parties'
23 mediation process and the law applicable thereto; (b) the attendant risks of continued litigation and
24 the uncertainty of the outcome of the claims alleged against Defendant; and (c) the desirability of
25 consummating the Settlement according to its terms. *Id.* Documents produced by Defendant prior to
26 mediation included time-punch records (*i.e.*, clock-in and clock-out times) and payroll information, as
27 well as COVID-19 and meal and rest break policies applicable to hourly, non-exempt employees. *Id.*,
28 ¶ 8. Plaintiff's counsel extensively reviewed this information and documents to perform a detailed

1 investigation of Defendant's timekeeping and payroll policies and practices, which included a
 2 comprehensive damages analysis. *Id.*, ¶ 11. Based on the information analyzed, Plaintiff and Class
 3 Counsel have concluded that the terms of the Settlement are fair, reasonable and adequate, and that
 4 the Settlement is in the best interests of Plaintiff, the Settlement Class Members, and the Aggrieved
 5 Employees to resolve their claims against Defendant. *Id.*, ¶¶ 10-11.

6 **C. Factual Background.**

7 Defendant is a healthcare employment agency which provides medical staff, including hourly,
 8 non-exempt employees, to facilities throughout the United States. ECF 46 ("Complaint"), ¶ 6. Plaintiff
 9 was employed by Defendant as a certified nursing assistant ("CNA") from August 6, 2019 to January
 10 16, 2021, in different facilities across California. *Id.*, ¶ 5.

11 Defendant employs hourly, non-exempt employees like Plaintiff and other Settlement Class
 12 Members, who share common job duties, which includes, for some, donning appropriate personal
 13 protective equipment ("PPE") such as fully body isolation suits and gowns, and are subject to the same
 14 handbooks, which include Defendant's written policies. *See id.*, ¶ 13. Plaintiff contends that Defendant
 15 compensate employees for time spent donning and doffing PPE and waiting for and undergoing
 16 COVID-19-related temperature checks and completing questionnaires and COVID-19 tests prior to
 17 clocking in before shifts, which Plaintiff contends, without compensation. *Id.*, ¶¶ 13-37.

18 In addition, Plaintiff alleges that Defendant regularly fails to provide putative Class Members
 19 with compliant meal and rest breaks, and fails to provide its employees with the required premium
 20 payments for these noncompliant meal and rest breaks (*i.e.*, a full 1 hour of pay at the regular rate).
 21 *Id.*, ¶ 19-21. Plaintiff alleges that Defendant also requires Settlement Class Members to clock out for
 22 30-minute meal periods but requires her and the other employees to remain on-duty and subject to
 23 interruption during those periods. During these interruptions, Settlement Class Members respond to
 24 emergencies and assist patients and/or answer questions regarding patients, without compensation. *See*
 25 *id.*, ¶ 19. In addition, during COVID-19, many Settlement Class Members were required to doff and
 26 re-don their PPE during their meal and rest breaks to avoid contamination. On the rare occasions when
 27 premium payments are made for such non-compliant breaks, Plaintiff contends that such payments are
 28 not paid at the Settlement Class Members' respective regular rates of pay. *Id.*, ¶ 18.

Plaintiff alleges that Defendant also fails to provide Plaintiff and the Class Members reimbursement for expenses incurred by Plaintiff and the Class Members in direct consequence of the discharge of their duties, or as a result of their obedience to the directions of Defendant, including the use of their personal cell phones to clock in and out, to provide and launder their own scrubs, to undergo medical tests and physical examinations, and to travel between Defendant's sites, all without reimbursement. *See id.*, ¶ 25. Defendant denies all of the allegations in the Complaints and PAGA letter.

III. TERMS OF THE SETTLEMENT

A. Basic Terms and Value of the Settlement

Defendant has agreed to pay a non-reversionary Gross Settlement Amount of \$5,000,000.00 to settle all aspects of the case. Settlement, ¶ 2(q).⁵ The Net Settlement Amount is defined as the Gross Settlement Amount, less deductions for: Service Award to Plaintiff (not to exceed \$10,000.00), attorneys' fees to Class Counsel (not to exceed 33 1/3%, or \$1,666,666.67) Class Counsel's costs (not to exceed \$20,000.00), administrative expenses to the Settlement Administrator (estimated not to exceed \$26,750.00), the LWDA PAGA Payment for its 75% share of the PAGA penalties (\$37,500.00), and the Net PAGA Amount distributed to the Aggrieved Employees (\$12,500.00). Cottrell Decl., ¶ 17; Settlement, ¶¶ 2(t), (v), (w). Defendant has also agreed to pay the employer's portion of payroll taxes on the wage portion of Settlement Awards to Participating Individuals. Settlement, ¶ 2(q). For each individual Settlement Award that is provided from the Net Settlement Amount, 25% of each Settlement Award shall be allocated as wages, and 75% of each Settlement Award shall be allocated as penalties and interest. *Id.*, ¶ 34.

B. Class and Aggrieved Employee Definitions

The Class is defined as all current and former hourly, non-exempt employees who worked for Defendant in the state of California, excluding those individuals who signed an arbitration agreement, during the time period between July 12, 2018 and the date of Preliminary Approval of the Settlement.

⁵ Pursuant to the Settlement's escalator clause, should the estimated number of actual pay periods worked by the Class exceed the estimated number of pay periods at mediation – i.e., 78,247 – by 10% or more, Defendant must either increase the Gross Settlement Amount proportionally or shorten the release period so that there is no increase in the amount. Settlement, ¶ 26(a).

1 *Id.*, ¶ 2(c). There are approximately 2,919 putative Class Members. *Id.*, ¶ 26(a); Cottrell Decl., ¶ 18.
 2 The Aggrieved Employees include all non-exempt employees for Defendant in California between
 3 July 12, 2021 and the date of Preliminary Approval of the Settlement. Settlement, ¶ 2(b).

4 **C. Allocation and Awards**

5 The Net Settlement Amount to be paid to participating Settlement Class Members – *i.e.*,
 6 Settlement Class Members who do not exclude themselves from the Settlement – is currently estimated
 7 to be approximately \$3,226,583.33. Cottrell Decl., ¶ 17. Settlement Class Members will receive a
 8 Settlement Award check without the need to submit a claim form. *See* Settlement, ¶¶ 29, 30.
 9 Participating Settlement Class Members shall be eligible to receive a share of the Net Settlement
 10 Amount based on their *pro rata* percentage of pay periods worked in California between July 12, 2018
 11 and the date of Preliminary Approval of the Settlement. *Id.*, ¶ 31(a). Aggrieved Employees shall be
 12 eligible to receive a share of the Net PAGA Amount based on their *pro rata* percentage of pay periods
 13 worked in California between July 12, 2021 and the date of Preliminary Approval of the Settlement.
 14 *Id.* Settlement, ¶ 31(b).

15 The Settlement Administrator will mail all Settlement Awards and Individual PAGA Payments
 16 to Participating Settlement Class Members and/or Aggrieved Employees within thirty (30) days after
 17 the Effective Date⁶ or as soon as reasonably practicable. *Id.*, ¶ 37. Settlement Award checks will remain
 18 valid for 180 days from the date of their issuance, and the face of each check will prominently display
 19 the date on which the check will be voided. *Id.*, ¶ 38. The Settlement Administrator will cancel any
 20 check not cashed within that time, and will promptly send a replacement check to any Settlement Class
 21 Member whose original check was lost or misplaced, if requested by the Settlement Class Member
 22 prior to the void date. *Id.*, ¶ 38. Ninety days into the 180-day check-cashing period, the Settlement
 23 Administrator will also send a reminder letter (attached as **Exhibit B** to the Settlement) via U.S. mail
 24 to those who have not yet cashed their Settlement Award or Individual PAGA Payment check. *Id.* For
 25

26 ⁶ “Effective Date” means (i) if there is an objection to the settlement that is not subsequently withdrawn,
 27 then the date upon the expiration of time for appeal of the Court’s Final Approval Order; or (ii) if there is
 28 a timely objection and appeal, then after such appeal is dismissed or the Court’s Final Approval Order is
 affirmed on appeal; or (iii) if there are no timely objections to the settlement, or if any objections which
 were filed are withdrawn before the date of final approval, then the first business day after the Court’s
 order granting Final Approval of the Settlement.

any Participating Settlement Class Member and/or Aggrieved Employee whose Settlement Award and/or Individual PAGA Payment check is uncashed and cancelled after the void date, the Settlement Administrator will transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Settlement Class Member and/or Aggrieved Employee, thereby leaving no "unpaid residue" subject to the requirements of Cal. Code Civ. Proc. § 384(b). *Id.*

D. Scope of Release

Upon Final Approval by the Court, and subject to the exclusions described below, each Participating Settlement Class Member will fully release all claims that were raised in the Action and all claims that could have been brought based on the facts alleged in the Complaints, between July 12, 2018 and the date of Preliminary Approval of the Settlement. Settlement, ¶ 16(a). Aggrieved Employees will also be deemed to have released PAGA claims that were or could have been brought based on the facts alleged in the Complaints or PAGA letter, between July 12, 2021 and the date of Preliminary Approval of the Settlement. *Id.*, ¶ 16(b). Plaintiff has also agreed to a general release from all known and unknown claims she may have against the Released Parties,⁷ through the date of Preliminary Approval of the Settlement. *Id.*, ¶ 18.

E. Settlement Administration

The Parties have agreed to use Phoenix Class Action Administration Solutions ("Phoenix") to administer the Settlement, whose costs shall be paid from the Gross Settlement Amount. *Id.*, ¶¶ 2(ff), 2(gg), 27(d)); Cottrell Decl. ¶ 19. Phoenix will distribute the Settlement Notices to Settlement Class Members via U.S. mail, re-mail any Settlement Notices returned as undeliverable but with forwarding addresses, and re-mail the Settlement Notice to any new address obtained by way of skip-tracing or other search methods. Settlement, ¶¶ 2(g), 19(f), (g). Phoenix will receive and process disputes regarding workweeks, objections, and requests for exclusion. *Id.*, ¶¶ 20–22. Phoenix will calculate Settlement payments, calculate applicable payroll taxes, withholdings, and deductions, and issue disbursements to Settlement Class Members, the Service Award to Plaintiff, payment to the LWDA and the Aggrieved Employees, payment to Class Counsel for fees and costs, and payment to itself. *Id.*, ¶ 27. Phoenix will also calculate, file, and remit all required tax returns to appropriate taxing and other

⁷ "Released Parties" is defined in the Settlement at ¶ 2(dd).

governmental authorities, all amounts to be deducted or paid on account of the Settlement Class Member Allocation Amounts, including the employee's share of wage withholdings. *Id.* The Settlement Administrator will further set up a toll-free number and a dedicated email address for any settlement inquiries. *Id.*, ¶ 34.

IV. ARGUMENT

A. The Court Should Grant Preliminary Approval of the Settlement.

A certified class action may only be settled with court approval. *See* Fed. R. Civ. P. 23(e). Court approval of a class-action settlement requires three steps: (1) preliminary approval of the proposed settlement upon a written motion; (2) dissemination of notice of the settlement to all class members; and (3) a final settlement approval hearing at which objecting class members may be heard, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented. Manual for Complex Litigation, *Judicial Role in Reviewing a Proposed Class Action Settlement*, § 21.61 (4th ed. 2004). The decision to approve or reject a proposed settlement is committed to the sound discretion of the court. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) ("*Hanlon*"). Rule 23 requires that all class-action settlements satisfy two primary prerequisites before a court may grant certification for purposes of preliminary approval: (1) that the settlement class meets the requirements for class certification if it has not yet been certified; and (2) that the settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(a), (e)(2); *Hanlon, supra*, at 1020. Defendant does not oppose certification of the Class for settlement purposes, only, and agrees to seek this Court's approval thereon. *See* Settlement, ¶¶ 11, 19, 24. As discussed below, this class-action settlement satisfies the requirements of Rule 23(a) and (b), and it is fair, reasonable, and adequate in accordance with Rule 23(e)(2). Accordingly, the Court should preliminarily approve the Settlement.

B. The Court Should Certify the Settlement Class.

A class may be certified under Rule 23 if (1) the class is so numerous that joinder of all members individually is "impracticable"; (2) questions of law or fact are common to the class; (3) the claims or defenses of the class representative are typical of the claims or defenses of the class; and (4) the person representing the class is able to fairly and adequately protect the interests of all members

of the class. *See* Fed. R. Civ. P. 23(a). Furthermore, Rule 23(b)(3) provides that a class action seeking monetary relief may only be maintained if “the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” *Id.* at 23(b)(3). Applying this standard, numerous cases like this case have certified classes of employees who have allegedly suffered wage-and-hour violations under California wage-and-hour laws.⁸

1. The Putative Class Members are numerous and ascertainable.

The numerosity requirement demands that a class be large enough that joinder of all members would be impracticable. Fed. R. Civ. P. 23(a)(1). Courts routinely find numerosity satisfied with classes of at least 40 members. *See, e.g., Ikonen v. Hartz Mountain Corp.*, 122 F.R.D. 258, 262 (S.D. Cal. 1988); *Romero v. Producers Dairy Foods, Inc.*, 235 F.R.D. 474, 485 (E.D. Cal. 2006). Here, there are approximately 2,919 Class Members who are readily identified from Defendant’s payroll records, thereby rendering the class so large as to make joinder impracticable. Cottrell Decl., ¶ 20.

2. Plaintiff’s claims raise common issues of fact or law.

The commonality requirement of Rule 23(a)(2) “is met if there is at least one common question or law or fact.” *Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461, 467 (E.D. Pa. 2000) (“*Fry*”). Plaintiff “need not show that every question in the case, or even a preponderance of questions, is capable of class wide resolution.” *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 544 (9th Cir. 2013) (“*Wang*”). “[E]ven a single common question” can satisfy the commonality requirement of Rule 23(a)(2). *Id.*

Common questions of law and fact predominate here, satisfying Rule 23(a)(2) and (b)(3), as alleged in the Complaint. Defendant has uniform policies applicable to all Settlement Class members. Specifically, Defendant’s uniform policies apply to all non-exempt employees, including: the requirement that Settlement Class Members undergo COVID-19 screening checks, Defendant’s policy

⁸ *See, e.g., Woehrle v. AMN Servs., LLC*, Los Angeles Superior Court, Case No. 19STCV15213 (approving a settlement class of healthcare professionals who worked in California for dismissed Defendant AMN Services, LLC and alleged policy-driven wage violations); *Caudle v. Sprint/United Mgmt. Co.*, 2018 WL 6618280, at *7 (N.D. Cal. Dec. 18, 2018) (certifying California Rule 23 class in a case asserting policy-driven wage violations); *Shaw v. AMN Healthcare, Inc.*, 326 F.R.D. 247, 275 (N.D. Cal. 2018) (certifying California Rule 23 class in a case asserting policy-driven off-the-clock, overtime, and meal and rest break violations).

of requiring employees to use common time recording devices or handwritten time sheets, Defendant's policies requiring employees to don and doff PPE, and Defendant's alleged policy of not providing off-duty meal periods or rest periods. Cottrell Decl., ¶ 21. Plaintiff alleges that the wage and hour violations are in large measure borne of Defendant's standardized policies, practices, and procedures, creating pervasive issues of fact and law that are amenable to resolution on a class-wide basis. These issues include: whether Defendant's alleged practice of failing to pay Settlement Class Members for time worked to undergo COVID-19 checks and to don and doff PPE at the proper overtime rate, and of allegedly failing to pay premium payments at the regular hourly rate for non-compliant meal and rest periods. Plaintiff's derivative claims will rise or fall with the primary claims. *Id.* Because these questions can all be resolved at the same juncture, Plaintiff contends the commonality requirement is satisfied for the Class.

3. Plaintiff's claims are typical of the claims of the Class.

"Rule 23(a)(3) requires that the claims of the named parties be typical of the claims of the members of the class." *Fry*, 198 F.R.D. at 468. "[A] representative's claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. Here, Plaintiff claims are typical of those of all other Settlement Class Members. They were subject to the alleged illegal policies and practices that form the basis of the claims asserted in this case. Interviews with Settlement Class members and review of timekeeping and payroll data further confirm that Plaintiff and other Settlement Class members were subjected to the same alleged illegal policies and practices to which Plaintiff was subjected. Cottrell Decl., ¶ 22. Thus, the typicality requirement is also satisfied.

4. Plaintiff and Class Counsel will adequately represent the Class.

To meet the adequacy of representation requirement in Rule 23(a)(4), Plaintiff must show "(1) that the putative named plaintiff has the ability and the incentive to represent the claims of the class vigorously; (2) that he or she has obtained adequate counsel, and (3) that there is no conflict between the individual's claims and those asserted on behalf of the class." *Fry, supra*, at 469. Plaintiff's claims are in line with the claims of the Settlement Class, and Plaintiff's claims are not antagonistic to the claims of Settlement Class Members. Cottrell Decl., ¶ 23. Plaintiff has prosecuted this case with the

interests of the Settlement Class Members in mind. *Id.* Moreover, Class Counsel has extensive experience in class-action and employment litigation, including wage-and-hour class actions, and does not have any conflict with the Settlement Class. *Id.* at ¶¶ 5-7, 23.

5. The Rule 23(b)(3) requirements for class certification are also met.

Under Rule 23(b)(3), Plaintiff must demonstrate that common questions “predominate over any questions affecting only individual members” and that a class action is “superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). “The predominance analysis under Rule 23(b)(3) focuses on ‘the relationship between the common and individual issues’ in the case and ‘tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.’” *Wang*, 737 F.3d at 545.

Here, the common questions raised in this action predominate over any individualized questions concerning the Settlement Class Members. Cottrell Decl., ¶ 24. Resolution of the claims hinges on the uniform policies and practices of Defendant, rather than the treatment the Settlement Class Members experienced on an individual level. *Id.* As a result, the resolution of these alleged class claims would be achieved through the use of common forms of proof, such as Defendant’s uniform policies, and would not require inquiries specific to individual class members.⁹

Further, Plaintiff contends that the class-action mechanism is a superior method of adjudication compared to a multitude of individual suits. *Id.*, ¶ 25. To determine whether the class approach is superior, courts consider: (1) the class members’ interests in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already begun by or against class members; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3)(A)–(D).

Here, the Settlement Class Members do not have a strong interest in controlling their individual

⁹ Although the amount of time worked off-the-clock may vary, that is a damages issue and should not impact class certification. *Yokoyama v. Midland Nat’l. Life Ins. Co.*, 594 F.3d 1087, 1094 (9th Cir. 2010). The fact that individual inquiry might be necessary to determine the amount of time each individual employee spent changing into isolation suits, for example, despite Defendant’s allegedly unlawful policy, is not a proper basis for denying certification. *Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701 (2014).

claims. The Action involves thousands of workers with very similar, but relatively small, claims for monetary injury. If the Settlement Class Members were to proceed on their claims as individuals, their many individual suits would require duplicative discovery and duplicative litigation, and each Settlement Class Member would have to personally participate in the litigation effort to an extent that would never be required in a class proceeding. Thus, Plaintiff contends that the class-action mechanism would efficiently resolve numerous substantially identical claims at the same time while avoiding a waste of judicial resources and eliminating the possibility of conflicting decisions from repetitious litigation.

The issues raised by the present case are much better handled collectively by way of a settlement. Manageability is not a concern in the settlement context. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 593 (1997). The Settlement presented by the Parties provides finality, ensures that workers receive redress for their relatively modest claims, and avoids clogging the legal system with numerous cases. Accordingly, class treatment is efficient and warranted, and the Court should conditionally certify the Settlement Class for settlement purposes.

C. The Settlement Should Be Preliminarily Approved Because it is Fair, Reasonable, and Adequate.

In deciding whether to approve a proposed class settlement, the Court must find that the proposed settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982) (“*Officers for Justice*”); *Lynn’s Food Stores v. United States Dept. of Labor*, 679 F.2d 1350 at 1354-55 (11 Cir. 1982); *Otey v. Crowdfunder, Inc.*, Case No. 12-cv-05524-JST, 2015 WL 6091741, at *4 (N.D. Cal., Oct. 16, 2015). Before making such a finding, the Court must consider whether (1) class representative and counsel have adequately represented the class; (2) the proposal was negotiated at arm’s length; (3) the relief provided for the class is adequate in light of: (a) the costs, risks, and delay of trial; (b) the effectiveness of any proposed method of distributing relief to the class; (c) the terms of any proposed award of attorney’s fees; and (d) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2). “While Rule 23(e) does not mandate that courts consider these same factors for purposes of determining whether preliminary approval is warranted, doing so often proves useful given the role these factors

play in final approval determinations.” *Lusk v. Five Guys Enters. LLC*, No. 1:17-cv-00762-AWI-EPG, 2022 U.S. Dist. LEXIS 12812, at *6 (E.D. Cal. Jan. 22, 2022).

Included in this analysis are considerations of: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *Churchill Village, LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (citing *Hanlon*, 150 F.3d at 1026). Importantly, courts apply a presumption of fairness, where, as here, “the settlement is recommended by class counsel after arm’s length bargaining.” *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *6 (N.D. Cal. Apr. 1, 2011) (“*Wren*”). There is also “a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.” *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). Considering these factors, the proposed Settlement is fair, reasonable, and adequate.

1. The terms of the Settlement are fair, reasonable, and adequate.

In evaluating the fairness of a proposed settlement, courts compare the settlement amount with the estimated maximum damages recoverable in a successful litigation. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000). Courts routinely approve settlements that provide a fraction of the maximum potential recovery. *See, e.g., Officers for Justice*, 688 F.2d at 623; *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869, at *7 (N.D. Cal. Oct. 11, 2016) (approving wage-and-hour settlement which represented 8.1% of the total verdict value).¹⁰ A review of the Settlement shows the fairness, reasonableness, and adequacy of its terms.

Here, the Gross Settlement Amount of \$5,000,000 represents approximately 42% of the \$11,946,406 total that Plaintiff calculated for core claims for unpaid meal and rest premiums and

¹⁰ *See also Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. June 17, 2015) (“10% gross and 7.3% net figures are ‘within the range of reasonableness’”); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (gross settlement amount of 8% of maximum recovery and net settlement amount of 5%); *Ma v. Covidien Holding, Inc.*, SACV 12-02161-DOC (RNBx), 2014 U.S. Dist. LEXIS 13296, at *12 (C.D. Cal. Jan. 31, 2014) (9.1% of “the total value of the action” is within the range of reasonableness).

1 unpaid wages and business expenses. Cottrell Decl., ¶ 26. When adding the calculated derivative
 2 penalties, this settlement amount represents approximately 30.6% of Defendant's total potential
 3 exposure of \$28,264,795. *Id.*

4 Plaintiff's counsel based their exposure analysis and settlement negotiations on the discovery
 5 propounded, including payroll and timekeeping data, as well as outreach to Settlement Class Members
 6 and other factual investigation. *Id.*, ¶ 27. Based on this information, Plaintiff made reasonable
 7 assumptions regarding the wage-and-hour violation rates, including that Settlement Class Members
 8 spent an average of twelve minutes changing into isolation suits and waiting in line for temperature
 9 checks and were subject to noncompliant meal periods 12% of time, and subject to noncompliant rest
 10 periods 40% of the time. *Id.* Plaintiff also calculated that the 2,919 Settlement Class Members worked
 11 approximately 78,247 work weeks during the relevant time period, at an average hourly rate of \$48.40.
 12 *Id.* Using these assumptions and other datapoints derived from the timekeeping and payroll
 13 information, and further assuming that Plaintiff and Settlement Class Members would certify all of
 14 their claims and prevail at trial, Plaintiff's Counsel calculated the total substantive potential exposure
 15 if Plaintiff prevailed on all of her claims of approximately \$11,946,406 and the total exposure of
 16 \$28,264,795. *Id.*, ¶ 28. This total exposure is further broken down as follows: approximately
 17 \$1,693,088 for unpaid meal break premiums; approximately \$6,757,713 for unpaid rest break
 18 premiums; approximately \$2,899,215 for unpaid off-the-clock work at the overtime rate;
 19 approximately \$596,391 for unpaid business expenses; approximately \$3,276,238 for failure to
 20 provide accurate wage statements; approximately \$10,460,000 for waiting time penalties; and
 21 approximately \$2,582,151 for PAGA penalties.¹¹ *Id.* These derivative and PAGA claims – totaling
 22 approximately \$16,318,389 – are premised on, and rise and fall with, the substantive violations. *Id.*

23 These figures are based on Plaintiff's assessment of a best-case-scenario. To obtain such a
 24 result at trial, Plaintiff would have to, at the minimum: (1) certify all claims and withstand any
 25

26 ¹¹ Given that courts decline to "stack" PAGA penalties for single substantive violations, Plaintiff assumed
 27 1 PAGA violation per pay period, per PAGA Employee for purposes of its analysis. *See Smith v. Lux Retail*
 28 *N. Am., Inc.*, No. C 13-01579 WHA, 2013 U.S. Dist. LEXIS 83562, at *9 (N.D. Cal. June 13, 2013) ("For
 the single mistake of failing to include commissions in the overtime base, plaintiff has asserted five (count
 them, five) separate labor code violations that could lead to statutory penalties. One is a penalty for failure
 to pay overtime at the appropriate rate []. Another is for denying employees minimum wage and overtime
 []. But is it plausible that we would really pile one penalty on another for a single substantive wrong?").

decertification motions; (2) prove that each Settlement Class Member worked off-the-clock during COVID-19 protocols and during meal and rest breaks; (3) prevail on the merits on all claims; (4) prove that Defendant acted knowingly or in bad faith; and (5) prove that all Settlement Class members experienced the violations at the levels described above for every shift. *Id.*, ¶ 29. For Settlement Class Members who worked at multiple facilities during one pay period at different hourly rates, such employees were also not paid overtime based on a blended regular rate, and thus Plaintiff would also need to prove this failure caused a resulting detriment to the employees. *See Levanoff v. Dragas*, 65 Cal.App.5th 1079, 1097-1100 (2021) (considering whether using a rate-in-effect method underpays employees through a discussion of time-rounding cases).

The Gross Settlement Amount is a negotiated amount that resulted only after over months of substantial arm's length negotiations following a full-day mediation session with a well-respected mediator, and significant investigation and analysis by Plaintiff's counsel. Cottrell Decl., ¶¶ 30. Plaintiff and her counsel considered the significant risks of continued litigation when considering the proposed Settlement. *Id.* These risks were front and center, particularly given the nature of the off-the-clock work, that the Settlement Class Members work in hundreds of different facilities throughout California, which could invariably complicate certification efforts and proving the claims on the merits. *Id.* In contrast, the Settlement will result in immediate and certain payment to Settlement Class members of meaningful amounts. *Id.*

The average recovery is approximately \$1,105 per Settlement Class Member.¹² *Id.*, ¶ 31. This amount provides significant compensation to the Settlement Class Members, and the Settlement provides an excellent recovery in the face of expanding and uncertain litigation. *Id.* The final settlement amount considers the substantial risks inherent in any class-action wage-and-hour case, as well as the procedural posture of the Action and the specific defenses asserted by Defendant, many of which are unique to this case. *Id.*; *see Officers for Justice*, 688 F.2d at 623. In light of all of the risks, the settlement amount is fair, reasonable, and adequate. *Id.*

2. The Parties' discovery enabled them to make informed decisions regarding

¹² This amount divides the Net Settlement Amount of approximately \$3,226,583 by total number of 2,919 putative Class Members. The averages provided here assume all Class Members participate in the Settlement and worked identical lengths of employment.

settlement.

The amount of discovery completed prior to reaching a settlement is important because it bears on whether the Parties and the Court have sufficient information before them to assess the merits of the claims. *See, e.g., Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617, 625 (N.D. Cal. 1979); *Lewis v. Starbucks Corp.*, 2008 WL 4196690, at *6 (E.D. Cal. Sept. 11, 2008). Informal discovery may also assist parties with “form[ing] a clear view of the strengths and weaknesses of their cases.” *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 454 (E.D. Cal. 2013).

The Parties here engaged in extensive discovery that has enabled both sides to assess the claims and potential defenses in this action, including discovery, interviews with Settlement Class Members, mediation, and arm’s length negotiations. Cottrell Decl., ¶¶ 8-10, 32. This allowed the Parties to accurately assess the legal and factual issues that would arise if the case proceeded to trial. *Id.* In addition, in reaching this Settlement, Plaintiff’s Counsel relied on their substantial litigation experience in similar wage-and-hour class actions. *Id.*, ¶ 32 Plaintiff’s Counsel’s liability and damages evaluation was premised on a careful and extensive analysis of the effects of Defendant’s policies and practices on Settlement Class Members’ pay. *Id.* Ultimately, facilitated by mediator Steve Pearl, the Parties used this information and discovery to fairly resolve the litigation. *Id.*

3. Litigating the Action not only would delay recovery, but would be expensive, time consuming, and involve substantial risk.

The monetary value of the proposed Settlement represents a fair compromise given the risks and uncertainties posed by continued litigation. *Id.*, ¶ 33. If the Action were to go to trial as a class action, the fees and costs would certainly exceed the fees and costs requested here. *Id.* Litigating the class action claims would require substantial additional preparation and discovery. *Id.* Plaintiff would need to complete fact and expert discovery. This would include: (1) written discovery to and depositions of Settlement Class members; (2) depositions of Defendant’s 30(b)(6) witnesses, managers, and executives; (3) third party discovery to Defendant’s timekeeping and payroll custodians of records, and (4) expert discovery. Finally, Plaintiff would need to prepare for trial, which would require the presentation of percipient and expert witnesses, as well as the consideration, preparation, and presentation of voluminous documentary evidence and the preparation and analysis of expert

1 reports. *Id.*

2 Even if Plaintiff successfully overcame these procedural obstacles, recovery of the damages
3 and penalties previously referenced would also require complete success and certification of all of
4 Plaintiff's claims, a questionable feat in light of developments in wage and hour and class and
5 collective action law as well as the legal and factual grounds that Defendant has asserted to defend
6 this action. *Id.*, ¶ 34. Off-the-clock claims may pose difficulty to certify for class treatment, given that
7 the nature, cause, and amount of the off-the-clock work may vary based on the individualized
8 circumstances of the worker, which can be a considerable hurdle here, where Settlement Class
9 Members carried many different job titles and worked at hundreds of facilities throughout California,
10 and were often required to complete their time punches via handwritten timesheets.¹³ Plaintiff would
11 face fundamental logistical difficulties in reviewing and analyzing the massive amounts of hard copy
12 records to provide evidence that Defendant, indeed, failed to pay Settlement Class members wages for
13 all worked hours during that time period. *Id.*

14 In addition, certification of off-the-clock work claims is complicated by a similar lack of
15 documentary evidence and reliance on employee testimony. *Id.*, ¶ 35. While Plaintiff is confident that
16 she would establish that common policies and practices give rise to the off-the-clock work for
17 Settlement Class Members, Plaintiff faces the risk that the Court would decline to certify the
18 Settlement Class altogether, or for at least some claims. *Id.* As to Plaintiff's PAGA claims, Plaintiff
19 would first need to overcome similar procedural hurdles, including completing substantial amounts of
20 written discovery and depositions. *See id.*, ¶ 36.

21 Plaintiff would further likely need to move for and defend against motions for summary
22 judgment or adjudication, and would have been further required to take their claims to trial. *Id.*, ¶ 37.
23 Trials are inherently risky for all parties. Although Plaintiff believes that she could have been
24 successful in proving these claims, and that Defendant's evidence would not have been as persuasive,
25

26
27 ¹³ See, e.g., *In re AutoZone, Inc., Wage & Hour Emp't Practices Litig.*, 289 F.R.D. 526, 539 (N.D. Cal.
28 2012), *aff'd*, 2019 WL 4898684 (9th Cir. Oct. 4, 2019); *Kilbourne v. Coca-Cola Co.*, 2015 WL 5117080,
at *14 (S.D. Cal. July 29, 2015); *York v. Starbucks Corp.*, 2011 WL 8199987, at *30 (C.D. Cal. Nov. 23,
2011).

a trial on the off-the-clock claims and meal and rest periods would have carried a high degree of risk.¹⁴

In contrast to litigating this suit, resolving this case by means of the Settlement will yield a prompt, certain, and very substantial recovery for the Settlement Class Members. *Id.*, ¶ 38. Such a result will benefit the Parties and the court system. *Id.* It will bring finality to the Action and will foreclose the possibility of expanding litigation. *Id.*

4. The Settlement is the product of informed, non-collusive, and arm's length negotiations between experienced counsel.

Courts routinely presume a settlement is fair where it is reached through arm's length bargaining. *See Hanlon*, 150 F.3d at 1027; *Wren*, 2011 WL 1230826, at *14. Furthermore, where counsel are well-qualified to represent the proposed class in a settlement based on their extensive class action experience and familiarity with the strengths and weaknesses of the action, courts find this factor to support a finding of fairness. *Wren*, *supra*, at *10; *Carter v. Anderson Merch., LP*, 2010 WL 1946784, at *8 (C.D. Cal. May 11, 2010) ("Counsel's opinion is accorded considerable weight.").

Here, the Settlement was a product of non-collusive, arm's length negotiations. Cottrell Decl., ¶¶ 12-14. The Parties participated in a lengthy mediation session before Steve Pearl, a skilled mediator with many years of experience mediating employment matters. *Id.*, ¶ 12. The Parties then spent many months discussing settlement and negotiating the Settlement Agreement, with several rounds of edits related to the terms and details of the Settlement. *Id.*, ¶ 13. Plaintiff is represented by experienced and respected class-action litigators who feel strongly that the proposed Settlement achieves an excellent result for the Settlement Class Members. *Id.*, ¶ 39.

D. The Settlement Also Provides a Fair and Reasonable Resolution for the State of California and the Aggrieved Employees.

Not only does the Settlement serve as a deterrent to future violations, but the result achieved

¹⁴ For example, on the California derivative claims, Defendant would argue that no penalties for waiting-time violations can be awarded unless the failure to pay wages is "willful," an element that Plaintiff acknowledge given Defendant's policies and enforcement would have been difficult to prove. *See* Cal. Lab. Code § 203; 8 C.C.R. 13520 ("[a] willful failure to pay wages within the meaning of Labor Code section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages were due."); *Smith v. Rae Venter Law Grp.*, 29 Cal.4th 345, 354 n.2 (2002) (holding that a good faith dispute that any wages are due will preclude an award of waiting time penalties). Defendant would also have argued that an employer's failure to pay wages is not willful unless it reached the standard of "gross negligence or recklessness." *See Amaral v. Cintas*, 163 Cal.App.4th 1157, 1201 (2008).

is well within the range of reasonableness based on the underlying facts and the risks faced by Plaintiff in proving these claims. “Courts have recognized that PAGA settlements must be viewed in light of PAGA’s public purpose, namely augmenting the state’s enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance with California’s labor laws.¹⁵ “In determining whether the proposed settlement falls within the range of reasonableness, perhaps the most important factor to consider is plaintiffs’ expected recovery balanced against the value of the settlement offer.” *O’Connor v. Uber Techs., Inc.*, 201 F.Supp.3d 1110, 1120-21 (N.D. Cal. 2016) (citing *Cotter v. Lyft, Inc.*, 176 F.Supp.3d 930, 935 (N.D. Cal. Apr. 7, 2016)). A court’s focus is thus not the amount employees ultimately receive as a result of a settlement, but on whether the settlement achieves PAGA’s objectives, even if it represents only a portion of an employer’s total exposure.

The PAGA Amount of \$50,000.00 represents 1% of the Gross Settlement Amount, well within the PAGA settlements previously approved in this district and other California district courts.¹⁶ See Cottrell Decl., ¶ 26. The PAGA Amount of \$50,000 also represents approximately 1.9% of the total amount Aggrieved Employees could have obtained through a best-case scenario. Cottrell Decl., ¶ 28, n. 2. As discussed *supra*, Plaintiffs calculated the best-case scenario would result in Defendant’s total exposure of \$2,582,151 for PAGA penalties for *all* estimated pay periods (*i.e.*, following allocation of 75% of this exposure to the LWDA, this represents a total exposure of \$645,538 to be allocated to the Aggrieved Employees). *Id.*¹⁷

¹⁵ See, e.g., *Ramirez v. Benito Valley Farms, LLC*, Case No. 16-CV-04708-LHK, 2017 U.S. Dist. LEXIS 137272 (N.D. Cal. Aug. 25, 2017); see also *Jordan v. NCI Grp., Inc.*, EDCV 16-1701 JVS (SPx) 2018 U.S. Dist. LEXIS 25297 at *5 (C.D. Cal. Jan. 5, 2018) (“The Court will approve the PAGA settlement upon a showing that the settlement terms are fundamentally fair, adequate, and reasonable in light of PAGA’s policies and purposes.”).

¹⁶ See also, *Hartley v. On My Own, Inc.*, 2020 U.S. Dist. LEXIS 154315, 2020 WL 5017608, * 4 (E.D. Cal. Aug. 25, 2020) (approving settlement at 3.47% of verdict value of PAGA penalty, resulting in average payment per employee of \$61); *Ahmed v. Beverly Health & Rehab. Servs., Inc.*, 2018 U.S. Dist. LEXIS 20460, 2018 WL 746393, at *10 (E.D. Cal. 2018) (approving PAGA settlement of \$4,500, or 1% of the total settlement); *Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, at *35-36 (E.D. Cal. 2012) (approving PAGA settlement of \$7,500 or 0.14% of the total settlement); *Franco v. Ruiz Food Prods., Inc.*, 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801 at *14 (E.D. Cal. 2012) (approving PAGA settlement of \$10,000, or 0.4% of total settlement); *Garcia v. Gordon Trucking*, 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575 at *3 (E.D. Cal. 2012) (approving PAGA settlement of \$10,000 or 0.27% of the total settlement).

¹⁷ These calculations are based on a \$100 per pay period penalty, as recent case law found that an employer cannot be presumed to be aware that its continuing underpayment is a violation subject to the “subsequent” violation rate of \$200 until the employer is notified it is in violation of the Labor Code by the Labor Commissioner or a court. See *Bernstein v. Virgin Am., Inc.*, Nos. 19-15382, 20-15186, 2021 U.S. App. LEXIS 5197, at *35 (9th Cir. Feb. 23, 2021); see also, *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008); see Cottrell Decl., ¶ 28, n. 2.

As is the case here, a settlement that represents only a fraction of the potential recovery is still reasonable. *See, e.g., In re Mego Fin. Corp.*, 213 F.3d at 459 (“It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.”) (citation omitted)). This District is generally cautious about PAGA settlements representing less than 1% of the total value of a PAGA claim, but not regarding PAGA settlements representing 1% or more of the total value of a PAGA claim. *Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959, 972-73 (N.D. Cal. 2019) (collecting cases discussing settlements of less than 1% of the total value of a PAGA claim); *Moreno v. Capital Bldg. Maint. & Cleaning Servs.*, No. 19-cv-07087-DMR, 2021 U.S. Dist. LEXIS 87268, at *25 n.3 (N.D. Cal. May 5, 2021) (noting the PAGA portion of a proposed settlement representing 2.4% of total exposure under the PAGA exceeded the 1% benchmark “and therefore does not invoke the additional concerns examined in *Haralson*”). The reasoning for this approach is multifaceted; however, one of the major concerns regarding PAGA settlements is that PAGA penalties may be reduced at a court’s discretion. “A trial court’s discretion to reduce PAGA penalties might be a reason to ultimately discount the value of PAGA claims, perhaps even significantly, in reaching a settlement. However, before the court could exercise that discretion it would have to know the actual estimated values of the PAGA claims.” *Gonzales v. CoreCivic of Tennessee, LLC*, 2018 WL 4388425, at *6-9 (E.D. Cal. Sept. 13, 2018). The Court could, and likely would, exercise its discretion pursuant to Cal. Lab. Code § 2699(e)(2) to award an amount less than the maximum civil penalty amount based on the facts and circumstances of the case.

Here, if the case were to proceed to judgment, multiple factors could lead the Court to award a lower penalty, including that Defendant contends that putative Class Members were paid hundreds of premium payments during the claims period, and that Defendant maintained complaint written policies. Ultimately, the PAGA settlement amount of \$50,000 assumes that Plaintiff prevails on liability and proves the violations at the levels described above for every single Aggrieved Employee and every pay period. Plaintiff faces risks in proving her claims in this manner, including showing that trial can move forward without violating any due process concerns, as suggested in the California Superior Court’s recent decision in *Estrada v. Royalty Carpet Mills, Inc.*, No. S274340, 2024 Cal. LEXIS 123, at *42 (Jan. 18, 2024). In light of these risks discussed in this Motion and in the supporting

Cottrell Decl., and under an analysis of similar PAGA settlements, \$50,000 constitutes a material percentage of the total damage exposure and is a reasonable overall settlement sum.

E. The Service Award to Representative Plaintiff is Reasonable.

Named plaintiffs in class-action litigation are eligible for reasonable service awards. *See Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003).¹⁸ The service payment not to exceed \$10,000.00 for Plaintiff is intended to compensate her for the critical role she played in this case, including but not limited to responding to discovery and the time, effort, and risks undertaken in helping secure the result obtained on behalf of the Settlement Class Members. *See Settlement*, ¶ 2(ee).

Plaintiff's proposed enhancement payment represents only 0.2% of the Gross Settlement Amount, Cottrell Decl., ¶ 41, well within payments approved in similar cases.¹⁹ In agreeing to serve as a Class representative, Plaintiff formally agreed to accept the responsibilities of representing the interests of all Settlement Class Members. *Id.*, ¶ 40. Moreover, Plaintiff agreed to a general release, unlike other Settlement Class Members. *Id.*, ¶ 42; Settlement, ¶ 2(ee). Defendant does not oppose the requested payments to the Plaintiff as a reasonable service award. Settlement, ¶¶ 2(ee), 19(b), 27(a). The proposed service award is fair and reasonable, and should be preliminarily approved.

F. The Requested Attorneys' Fees and Costs are Reasonable.

In their fee motion to be submitted with the final approval papers, Class Counsel will request a percentage of the common fund, up to 33 1/3% of the Gross Settlement Amount, or \$1,666,666.67,

¹⁸ "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (named plaintiff received \$50,000 for work in class action).

¹⁹ *See, e.g., Villafan v. Broadpectrum Downstream Servs.*, No. 18-cv-06741-LB, 2021 U.S. Dist. LEXIS 249763 at *18 (approving \$10,000 service award); *Soto v. O.C. Commc'ns, Inc.*, Case No. 3:17-cv-00251-VC, ECF 304 (N.D. Cal. Oct. 23, 2019) (approving \$15,000.00 and \$10,000.00 service awards in recent hybrid FLSA/Rule 23 settlement); *Guilbaud v. Sprint/United Mgmt. Co., Inc.*, No. 3:13-cv-04357-VC, Dkt. No. 181 (N.D. Cal. Apr. 15, 2016) (approving \$10,000.00 service payments for each class representative in FLSA and California state law representative wage-and-hour action); *Van Liew v. North Star Emergency Servs., Inc.*, No. RG17876878 (Alameda Co. Super. Ct., Dec. 11, 2018) (approving \$15,000.00 and \$10,000.00 service awards, respectively, to class representatives in California Labor Code wage and hour class action); *Greer v. Dick's Sporting Goods, Inc.*, No. 2:15-CV-01063-KJM-CKD, 2020 U.S. Dist. LEXIS 168923, at *15 (E.D. Cal. Sep. 15, 2020) (approving \$10,000 service award representing .003 percent of gross settlement amount in wage and hour settlement where class members were estimated to receive \$155 on average); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.*, No. 1:17-cv-00853-DAD-EPG, 2019 U.S. Dist. LEXIS 142331, at *32 (E.D. Cal. Aug. 21, 2019) (approving \$10,000 service awards each to two class representatives, which amounted to 0.6 percent of the overall settlement amount of \$3,400,000); *Spann v. J.C. Penney Corp.*, 211 F.Supp.3d 1244, 1265 (C.D. Cal. 2016) (awarding service award of \$10,000, approximately 100 times average the award and less than 0.25 percent of gross settlement).

1 plus reimbursement of costs up to \$20,000.00.²⁰ *Id.*, ¶ 27(b). Plaintiff’s counsel will provide their
 2 lodestar information with their fee motion, which will demonstrate the reasonableness of Plaintiff’s
 3 Counsel’s rates. Cottrell Decl., ¶¶ 44-45; *see, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050-
 4 51 (9th Cir. 2002) (“Calculation of the lodestar, which measures the lawyers’ investment of time in the
 5 litigation, provides a check on the reasonableness of the percentage award”).

6 In California, federal and state courts routinely approve payments of attorneys’ fees amounting
 7 to one-third of the common fund in comparable wage-and-hour class actions. *See, e.g., Soto v. O.C.*
 8 *Commc’ns, Inc.*, No. 3:17-cv-00251-VC, ECF 304 (N.D. Cal. Oct. 23, 2019) (approving attorneys’
 9 fees of one-third of the gross settlement in recent hybrid FLSA/Rule 23 settlement); *Regino Primitivo*
 10 *Gomez v. H&R Gunlund Ranches, Inc.*, 2011 WL 5884224 (E.D. Cal. 2011) (approving attorneys’ fees
 11 award equal to 45% of the settlement fund); *Wren*, 2011 WL 1230826 (approving attorneys’ fee award
 12 of just under 42% of common fund). These awards fall within the typical range of acceptable attorneys’
 13 fees in the Ninth Circuit of 20% to 33 1/3% of the total settlement value. *Vasquez v. Coast Valley*
 14 *Roofing*, 266 F.R.D. 482, 491–92 (E.D. Cal. 2010) (citing *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th
 15 Cir. 2000)); *Hanlon*, 150 F.3d at 1029; *Staton*, 327 F.3d at 952.²¹

16 In this case, given the excellent results achieved and the effort expended to achieve it, 33 1/3%
 17 is warranted. Cottrell Decl., ¶ 46. There was no guarantee of compensation or reimbursement. *Id.*
 18 Rather, counsel undertook all the risks of this litigation on a completely contingent fee basis. *Id.* These
 19 risks were front and center. *Id.* Defendant’s vigorous and skillful defense further confronted Plaintiff’s
 20 counsel with the prospect of recovering nothing or close to nothing for their commitment to and
 21 investment in the case. *Id.* Nevertheless, Plaintiff and his counsel committed themselves to developing
 22 and pressing Plaintiff’s legal claims to enforce the employees’ rights and maximize the class recovery.
 23 *Id.* The challenges that Plaintiff’s Counsel had to confront and the risks they had to fully absorb on
 24 behalf of the Settlement Class Members here are precisely the reasons for multipliers in contingency
 25

26 ²⁰ Such requested fees and costs will also be based on the fees and costs incurred by co-counsel Lawyers
 for Justice, PC. Cottrell Decl., ¶ 44.

27 ²¹ The exact percentage varies depending on the facts of the case, and in “most common fund cases, the
 28 award exceeds that benchmark.” *Id.* (citing *Knight v. Red Door Salons, Inc.*, 2009 WL 248367 (N.D. Cal.
 2009); *In re Activision Sec. Litig.*, 723 F.Supp. 1373, 1377–78 (N.D. Cal. 1989) (“nearly all common fund
 awards range around 30%”).

1 fee cases. *See, e.g., Noyes v. Kelly Servs., Inc.*, 2008 WL 3154681 (E.D. Cal. Aug. 4, 2008); Posner,
 2 *Economic Analysis of the Law*, 534, 567 (4th ed. 1992) (“A contingent fee must be higher than a fee
 3 for the same legal services paid as they are performed... because the risk of default (the loss of the
 4 case, which cancels the debt of the client to the lawyer) is much higher than that of conventional
 5 loans”).

6 Attorneys who litigate on a wholly or partially contingent basis expect to receive significantly
 7 higher effective hourly rates in cases where compensation is contingent on success, particularly in
 8 hard-fought cases where, like in the case at bar, the result is uncertain. Cottrell Decl., ¶ 47. Adjusting
 9 court-awarded fees upward in contingent fee cases to reflect the risk of recovering no compensation
 10 whatsoever for hundreds of hours of labor simply makes those fee awards consistent with the legal
 11 marketplace, and in so doing, helps to ensure that meritorious cases will be brought to enforce
 12 important public interest policies and that clients who have meritorious claims will be better able to
 13 obtain qualified counsel.

14 The amount of fees and costs requested are clearly set forth in the Settlement Notice, and
 15 Plaintiff’s fee motion will be uploaded onto the corresponding website – which is also provided on the
 16 Settlement Notice – prior to the close of the notice deadline. *See* Settlement, ¶ 19(c); Ex. A.
 17 Accordingly, Plaintiff respectfully requests that the Court preliminarily approve the terms of the
 18 Settlement, including the request for fees and costs. Any objections by Settlement Class Members to
 19 the request for fees and costs may be considered by the Court at final approval. *Id.*

20 **G. The Proposed Settlement Notice is Reasonable.**

21 The Court must ensure that Settlement Class Members receive the best notice practicable under
 22 the circumstances of the case. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811–12 (1985);
 23 *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174–75 (1974). Procedural due process does not
 24 guarantee any particular procedure but rather requires only notice reasonably calculated “to apprise
 25 interested parties of the pendency of the action and afford them an opportunity to present their
 26 objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Silber v. Mabon*,
 27 18 F.3d 1449, 1454 (9th Cir. 1994). A settlement notice “is satisfactory if it ‘generally describes the
 28 terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to

1 come forward and be heard.” *Churchill Village LLC*, 361 F.3d at 575.

2 The Settlement Notice, attached as **Exhibit A** to the Settlement Agreement, is “the best notice
3 practicable.” Fed. R. Civ. P. 23(c)(2)(B). All Settlement Class Members have been identified and the
4 Settlement Notice will be mailed directly to each Settlement Class Member. Settlement, ¶ 19(c). The
5 proposed class Notice clearly explains the procedures and deadlines for requesting exclusion from the
6 Settlement, objecting to the Settlement, the consequences of taking or foregoing the various options
7 available to Settlement Class Members, and the date, time and place of the Final Approval Hearing.
8 *Id.*, Ex. A. Pursuant to Rule 23(h), the proposed Notices also set forth the amount of attorneys’ fees
9 and costs sought by Plaintiff, as well as an explanation of the procedure by which Class Counsel will
10 apply for them. *Id.* The Notice clearly states that the Settlement does not constitute an admission of
11 liability by Defendant. *Id.* It makes clear that the final settlement approval decision has yet to be made.
12 *Id.* Accordingly, the Notices comply with the standards of fairness, completeness, and neutrality
13 required of a settlement class notice disseminated under authority of the Court. *See* Conte, Newberg
14 on Class Actions, §§ 8.21 and 8.39 (3rd Ed. 1992); Manual for Complex Litigation, Certification
15 Notice, § 21.311; Settlement Notice, § 21.312 (4th ed. 2004).

16 Furthermore, reasonable steps will be taken to ensure that all Settlement Class Members
17 receive the Notices. Before mailing, Defendant will provide Phoenix a database that contains the
18 names, last known addresses, telephone numbers (if any), and social security numbers of each Class
19 Member, along with the applicable number(s) of workweeks for calculating the respective settlement
20 shares. Settlement, ¶¶ 2(f), 19(d). Phoenix will make reasonable efforts to update the contact
21 information in the database using public and private skip tracing methods. *Id.*, ¶¶ 2(g), 19(f). Within
22 ten business days of receipt of the Class List from Defendants, Phoenix will mail the Notices to each
23 Settlement Class Member. *Id.*, ¶ 19(f). With respect to Notices returned as undeliverable, Phoenix will
24 re-mail any Notices returned to it with a forwarding address following receipt of the returned mail. *Id.*
25 If any Notice is returned to Phoenix without a forwarding address, it will undertake reasonable efforts
26 to search for the correct address, including skip tracing, and will promptly re-mail the Notice to any
27 newly found address. *Id.*

28 Settlement Class Members will have 46 days from the initial mailing of the Settlement Notice

to dispute workweeks, object to the Settlement, or request exclusion. *Id.*, ¶¶ 2(x), 19(h). This deadline will be extended an additional 14 days for all Settlement Class members whose Notice is remailed. *Id.*, ¶ 19(h). Because the proposed Settlement Notice clearly and concisely describes the terms of the Settlement and the awards and obligations for Settlement Class Members who participate, and because the Notice will be disseminated in a way calculated to provide notice to as many Settlement Class Members as possible, the Notice should be preliminarily approved.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement, in accordance with the schedule set forth herein.

Date: January 26, 2024

Respectfully Submitted,

/s/ Carolyn H. Cottrell

Carolyn Hunt Cottrell

Ori Edelstein

Michelle S. Lim

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Northern District of California, by using the Court's CM/ECF system on January 26, 2024. Service will be accomplished on all parties by the Court's CM/ECF system.

/s/ Carolyn H. Cottrell
Carolyn H. Cottrell