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Individually and on behalf of all other similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GUSTAVO DUENAS, an individual, on behalf of himself, and on behalf of all persons similarly situated, Plaintiff, v. BRIDGES COMMUNITY TREATMENT SERVICES, INC., a California Corporation; and DOES 1 through 50, Inclusive; Defendants.	Case No. 24STCV02786 **NOTICE OF MOTION IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT** Hearing Date: May 13, 2025 Hearing Time: 11:00 a.m. Judge: Hon. Kenneth W. Freeman Dept: 14 Date Action Filed: February 1, 2024 Trial Date: None Set

TO ALL THE PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT at 11:00 a.m. on May 13, 2025, or as soon thereafter as the matter can be heard, in Department 14 at the above entitled Court before the Honorable Kenneth W. Freeman, Plaintiff Gustavo Duenas ("Plaintiff") will apply for an order: (1) preliminarily approving the proposed settlement of this class action with Defendant Bridges Community Treatment Services, Inc. ("Defendant"); (2) for settlement purposes only, conditionally certifying the Class; (3) provisionally appoint Plaintiff as the representative of the Class; (4) provisionally appointing

Nicole Barvie, Esq. of Barvie Law, APC, The JCL Law Firm, and Zakay Law, APLC as Class Counsel; (5) approve the form and method for providing class-wide notice; (6) direct that notice of the proposed settlement be given to the class; (7) appointing APEX Class Action, LLC as Administrator, and (8) scheduling a final approval hearing date to consider Plaintiff's motion for final approval of the settlement and entry of the Judgment, and Plaintiff's motion for approval of attorneys' fees and expenses.

This unopposed motion for preliminary approval of the class settlement is brought pursuant to California Rules of Court, rule 3.769. Plaintiff's motion will be based on this notice of motion and motion, the accompanying memorandum of points and authorities, the Declaration of Nicole Barvie, the Class Action and PAGA Settlement Agreement ("Agreement") between the Parties, and the complete files and records in this action. Because all parties have agreed to the proposed class settlement, this motion is not opposed by Defendant.

Dated: October 17, 2024

BARVIÉ LAW, APC

By Nicole Barvié

Nicole Barvié, Esq.
Attorneys for Plaintiff

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GUSTAVO DUENAS, an individual, on behalf of himself, and on behalf of all persons similarly situated, Plaintiff, v. BRIDGES COMMUNITY TREATMENT SERVICES, INC., a California Corporation; and DOES 1 through 50, Inclusive; Defendants.	Case No. 24STCV02786 **POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT** Judge: Hon. Kenneth W. Freeman Dept: C-69 Hearing Date: May 13, 2025 Time: 11:00 a.m. Date Action Filed: February 1, 2024 Trial Date: None Set

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I. INTRODUCTION

Plaintiff Gustavo Duenas ("Plaintiff") respectfully submits this memorandum in support of the unopposed motion for preliminary approval of the proposed class action settlement with Defendant Bridges Community Treatment Services, Inc. ("Defendant"), and seeks entry of an order: (1) preliminarily approving the proposed settlement of this class action with Defendant; (2) for settlement purposes only, conditionally certifying the Class, which consists of both the Wage and Hour Class ("all individuals who are or previously were employed by Defendant in California and classified as a all individuals classified as non-exempt employees who are or previously were employed by Bridges Community Treatment Services, Inc., and performed work in California during the period of February 1, 2020 to October 25, 2024;" (3) provisionally appointing Plaintiff as the representative of the Class; (4) provisionally appointing Nicole Barvie of Barvie Law, The JCL Law Firm, APC, and Zakay Law Group, APLC as Class Counsel; (5) approving the form and method for providing class-wide notice; (6) directing that notice of the proposed settlement be given to the class; (7) appointing APEX Class Action, LLC as Administrator, and (8) scheduling a final approval hearing date to consider Plaintiff's motion for final approval of the settlement and entry of the Judgment, and Plaintiff's motion for approval of attorneys' fees and expenses. Plaintiff and Defendant (collectively the "Parties") have reached a full and final settlement of the above-captioned action, which is embodied in the Class Action and PAGA Settlement Agreement ("Agreement") filed concurrently with the Court.[1] A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Nicole Barvie ("Decl. Barvie"), served and filed herewith.

The consideration for this Settlement is Two Hundred and Ten Thousand Dollars and Zero Cents ($210,000.00) (the "Gross Settlement Amount"). The Gross Settlement Amount will settle all issues pending in the Action between the Parties and will settle the Released Class Claims in exchange for the payments to Participating Class Members from the Net Settlement Amount. The Gross Settlement Amount includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs, (c) Class Representative Service Payments, and (d) the PAGA Penalties payment allocated 75% to the LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 1.27.) The Gross Settlement Amount does not include

[1] Capitalized terms shall have the same meaning as defined in the Agreement.

the employer's share of payroll taxes which will be separately paid by Defendant. (Agreement at ¶ 1.21.) The Settlement is all-in with no reversion to Defendant and no need to submit a claim form. (*Id.*) Decl. Barvie at ¶ 3.

The following are the key financial terms of the Settlement and the proposed deductions:

$210,000 (Gross Settlement Amount)

- $2,500 (Plaintiff's proposed service award not to exceed $10,000 each)

- $25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)

- $70,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)

- $21,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)

- $5,000 (Administration Expenses Payment - not to exceed amount)

$86,500 (Net Settlement Amount)

Based upon 141 Wage and Hour Class Members who collectively worked 10,500 Workweeks, the Gross Settlement Amount provides an average value of $1,489.36 per Class Member and $20 per Workweek and after deductions the Net Settlement Amount provides an average recovery of $613.48 per Class Member and a recovery of $8.24 per Workweek. Decl. Barvie at ¶ 6.

On July 25, 2024, the Parties participated in an all-day mediation session presided over by Judge Brian Walsh (Ret.), a respected and experienced mediator and jurist of wage and hour class actions. The matter settled at mediation and the parties agreed on the basic terms of a settlement pursuant to a mediator's proposal which was memorialized in the form of a Memorandum of Understanding. Decl. Barvie at ¶ 5. The Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a substantial monetary payment, and there are significant litigation and class-certification risks. Therefore, Plaintiff respectfully requests this Court grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount is Two Hundred and Ten Thousand Dollars. Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class Representative Service

Payments to Plaintiff; and (5) the PAGA Penalties payment. (Agreement at ¶ 1.21.) The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶ 1.21.) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (*Id*.) Decl. Barvie at ¶ 15.

Within thirty (30) days of the Effective Date, Defendant shall deposit the Gross Settlement Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments to Participating Class Members along with the other Court-approved distributions shall be made by the Administrator within fourteen (14) days after Defendant funds the Gross Settlement Amount. (Agreement at ¶ 5.1.). Decl. Barvie at ¶ 16.

The amount remaining in the Gross Settlement Amount after the deduction of Court-approved amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment (called the "Net Settlement Amount") shall be allocated to Class Members as their Individual Class Payments. (Agreement at ¶¶ 1.27 and 3.2.) From the Net Settlement Amount, the Individual Class Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Wage and Hour Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks will be based on Defendant's records, however, Class Members will have the right to challenge the number of Workweeks. Decl. Barvie at ¶ 17.

Class Members may choose to opt-out of the Settlement by following the directions in the Class Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed Participating Class Members who will be bound by the Settlement and will be entitled to receive an Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain subject to the release of the Released PAGA Claims regardless of their request for exclusion. (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.) Decl. Barvie at ¶ 18.

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A Participating Class Member must cash his or her Individual Class Payment check within 180 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will be voided and any funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of C.C.P. § 384(b). (Agreement at ¶ 5.4.) Decl. Barvie at ¶ 19.

Subject to Court approval, the Parties have agreed on APEX Class Actions, LLC to administer the settlement in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement administration in an amount not to exceed $5,000. (Agreement at ¶ 3.2(c).) Decl. Barvie at ¶ 20.

Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel Litigation Expenses Payment in an amount not to exceed $25,000. (Agreement at ¶ 3.2(b).) Subject to Court approval, the Agreement provides for a payment of no more than $2,500 to the Plaintiff as the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Barvie at ¶ 21.

Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698, et seq. ("PAGA"). The PAGA Penalties are $21,000. (Agreement at ¶¶ 1.34 and 3.2(g).) Pursuant to the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows: 75% shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil penalties and 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(g).) As set forth in the accompany proof of service, the LWDA has been served with this motion and the Agreement. Decl. Barvie at ¶ 22.

III. CASE BACKGROUND

The description of the case and claims, along with the procedural history is set forth in the Declaration of Nicole Barvie at ¶¶ 7-14. The Parties engaged in a thorough investigation and exchanged documents and information in connection with the Action which permitted Class Counsel to perform a thorough analysis of the claims. Decl. Barvie, ¶¶ 10 and 14. The Parties participated in mediation on

July 25, 2024 with Judge Brian Walsh (Ret.), which after arms' length negotiations during the mediation, resulted in this Settlement. Decl. Barvie, ¶ 12.

IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL

When a proposed class-wide settlement is reached, the settlement must be submitted to the court for approval. 2 H. Newberg & A. Conte, Newberg on Class Actions (3d ed. 1992) at §11.41, p.11-87. California "[p]ublic policy generally favors the compromise of complex class action litigation." *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.,* 48 Cal.App.4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n,* 688 F.2d 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983)).

Preliminary approval is the first of three steps that comprise the approval procedure for settlements of class actions. The second step is the dissemination of notice of the settlement to all class members. The third step is a final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class members may be heard regarding the settlement. See *Dunk v. Ford Motor Co.,* 48 Cal.App.4th 1794, 1801 (1996); Manual for Complex Litigation, Second §30.44 (1993); Cal. Rules of Court, rule 3.769.

The primary question presented on an application for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval." Manual for Complex Litigation, Second §30.44 at 229; *Gautreaux v. Pierce,* 690 F.2d 616, 621 n.3 (7th Cir. 1982).[2] Preliminary approval is merely the prerequisite to giving notice so that "the proposed settlement … may be submitted to members of the prospective Class for their acceptance or rejection." *Sayaman v. Baxter Healthcare Corp.,* 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is "a presumption of

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[2] California courts look to federal authority on class actions. *Vasquez v. Superior Court,* 4 Cal.3d 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for conducting class actions." *Frazier v. City of Richmond,* 184 Cal. App.3d 1491, 1499 (1986), citing *Green v. Obledo,* 29 Cal.3d 126, 145-146 (1981).

fairness … where … [a] settlement is reached through arms-length bargaining." *Wershba v. Apple Computer, Inc.,* 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v. Seagate Tech. Holdings, Inc.,* 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's determination that settlement was "fair, reasonable and adequate" where the settlement "provided valuable benefits to the class … that were 'particularly valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.'"); Newberg, 3d Ed., §11.41, p.11-88. However, the ultimate question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the settlement is given to the class members and a final settlement hearing is held by the Court.

A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. *Wershba*, supra, 91 Cal.App.4th at 234-235; *Dunk,* 48 Cal.App.4th 1794. Preliminary approval does not require the trial court to answer the ultimate question of whether a proposed settlement is fair, reasonable and adequate. That final determination is made only after notice of the settlement has been given to the class members and after they have been given an opportunity to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore, *Moore's Federal Practice* §§23.80 - 23.85 (2003).

In considering a potential settlement for preliminary approval purposes, the trial court does not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*, *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily requires a judgment and evaluation by the attorneys for the parties based upon a comparison of "'the terms of the compromise with the likely rewards of litigation.'" *Weinberger v. Kendrick,* 698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting Protective Comm. for Indep. Stockholders of *TMT Trailer Ferry, Inc. v. Anderson,* 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the settlement, the amount is "not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice*, 688 F.2d at 625, 628.

With regard to class action settlements, the opinions of counsel should be given considerable weight both because of counsel's familiarity with this litigation and previous experience with cases such as these. *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec. Litig*., 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli,* 695 F. Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*, 698 F.2d at 74. "The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *Boyd v. Bechtel Corp.,* 485 F. Supp. 610, 622 (N.D. Cal. 1979). As a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.,* 221 F.R.D. 523, 528 (C.D. Cal. 2004).

B. Factors To Be Considered In Granting Preliminarily Approval

A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. In determining whether to grant preliminary approval, the court considers whether the "(1) the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust Litig*., 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). No one factor should be determinative, but rather all factors should be considered. The analysis has been summarized as follows:

> If the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

Manual of Complex Litigation, Second § 30.44, at 229.

Here, the Settlement meets all of these criteria for preliminary approval.

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1. The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel

This settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected wage and hour jurist. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class

Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims of the Class in accordance with this Settlement.[3]

Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in wage and hour employment class actions, as Class Counsel has previously litigated and certified similar claims against other employers. Decl. Barvie at ¶ 3o. The view of qualified and well-informed counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight. See *Kullar v. Foot*

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[3] The release applicable to the Class is appropriately tethered to allegations in the Action and the "Released Wage and Hour Class Claims" are narrowly defined as "all claims that could have been stated based upon the claims or allegations asserted in the Action," under federal, state, or local laws, and/or ordinances, or tort or contract theories, whether known or unknown, and whether anticipated or unanticipated, including without limitation statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, equitable relief or other relief under Business & Professions Code section 17200, et seq., including, without limitation, the following categories: (a) any and all claims involving any alleged failure to pay minimum wage (including, but not limited to, any claims for additional wages owed due to "rounding" and/or "off the clock work"); (b) any and all claims involving any alleged failure to pay overtime and double time wages (including, but not limited to, any claims for additional wages owed due to "rounding," "off the clock work," and/or not factoring bonuses or shift differentials into the regular rate of pay); (c) any and all claims arising under state law involving any alleged failure to properly provide meal periods and/or authorize and permit meal periods, to pay premiums for missed, late, short or interrupted meal periods, or to pay such premiums as required by Labor Code section 226.7; (d) any and all claims arising under state law involving any alleged failure to properly provide rest periods and/or authorize and permit rest periods, to pay premiums for missed, late, short or interrupted rest periods, or to pay such premiums as required by Labor Code section 226.7; (e) any and all claims involving any alleged failure to reimburse for business expenses; (f) any and all claims involving any alleged failure to keep accurate records or to issue proper wage statements; (g) any and all claims involving any alleged failure to timely pay wages, including but not limited to any claim that Defendant violated Labor Code sections 201, 202, or 204, and any claim for waiting time penalties under Labor Code section 203; (h) any and all claims involving any alleged failure to pay sick pay; and (i) any and all claims for unfair business practices in violation of Business and Professions Code sections 17200, et seq. The Released Claims with respect to Plaintiff includes all such claims arising under the California Labor Code that were asserted or could have been asserted in the Action against the Released Parties based on the facts alleged or ascertained during the pendency of the Action (including, but not limited to, sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, and 2698, et seq.); the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code section 17200, et seq., and the California common law of contract. Plaintiff shall further execute a release of any and all unknown claims pursuant to the provisions of California Code of Civil Procedure section 1542. This release excludes the release of claims not permitted by law. (Agreement at ¶ 6.1.)

Locker, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should continue to place reliance on the competence and integrity of counsel, the involvement of a qualified mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802. The Parties attended an arms-length mediation session with Judge Brian Walsh, a respected and experienced retired judge and now mediator of wage and hour class actions, in order to reach this Settlement. In preparation for the mediation, Defendant provided Class Counsel with payroll and employment data and other information regarding the Class Members, various internal documents, and other compensation and employment-related materials. Class Counsel analyzed the data with the assistance of damages expert Berger Consulting and prepared and submitted a mediation brief to the mediator. The final settlement terms were negotiated and set forth in the Agreement now presented for this Court's approval. Decl. Barvie at ¶ 5. Importantly, Plaintiff and Class Counsel believe that this Settlement is fair, reasonable and adequate.

As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is Two Hundred and Ten Dollars and Zero Cents ($210,000.00). The Settlement is all-in with no reversion to Defendant and no need to submit a claim form. Decl. Barvie at ¶ 3.

Class Counsel has conducted an investigation into the facts of the class action. Extensive informal discovery was performed. Class Counsel engaged in a thorough review and analysis of the relevant documents and data with the assistance of an expert. Accordingly, 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. In addition, Class Counsel previously negotiated settlements with other employers in actions involving nearly identical issues and analogous defenses. Based on the foregoing data and their own independent investigation, evaluation and experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the 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 potential appellate issues. Decl. Barvie at ¶ 13.

Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying this Action against Defendant through possible appeals which could take several years. Class Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex class actions such as this Action. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class Members. Decl. Barvie, ¶ 22.

Here, there can be no dispute that the litigation has been hard-fought with aggressive and capable advocacy on both sides. The Parties were represented by experienced and capable counsel who zealously advocated their positions. Accordingly, "[t]here is likewise every reason to conclude that settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue influence." *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. at 1392.

2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within the Range for Approval

The proposed Settlement herein has no "obvious deficiencies" and is well within the range of possible approval. All Class Members will receive an opportunity to participate in the Settlement and receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 141 Class Members who collectively worked 10,500 Workweeks, the Gross Settlement Amount provides an average value of $1,489.36 per Class Member and $20 per Workweek and after deductions the Net Settlement Amount provides an average recovery of $613.48 per Class Member and a recovery of $8.19 per Workweek. Decl. Barvie, ¶ 6.

The calculations to compensate for the amount due for the Class at the time of the mediation were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid wages for the employees. The maximum potential damages were calculated to be $29,045 for the alleged unpaid wages due to rounding, $295,044 for unpaid off the clock work, $157,521 for alleged meal period damages based upon the potential violations observed in the records, $1,067,625 for alleged rest period damages based upon a 100% violation rate assumption, $157,641 for alleged unreimbursed business expenses for personal cell phone usage at $25 per month. Decl. Barvie, ¶ 6. As a result, the total damage valuation was calculated that Defendant was subject to a maximum damage claim in the amount of $1,526,118. As to potential penalties, Plaintiff calculated that potential waiting time penalties were a maximum of $320,155 and potential wage statement penalties were $168,500, depending on the predicate violation. Defendant vigorously disputed Plaintiff's calculations and exposure theories. Consequently, the Gross Settlement Amount represents more than 13.76% of the maximum value of the alleged wage and hour damages at issue in this case at the time this Settlement was negotiated. [4] The above maximum calculations should then be adjusted in consideration for both the risk of class certification and the risk of establishing class-wide liability on all claims. Decl. Barvie, ¶ 6.

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that all work time was paid for and that any rounding was facially neutral and therefore lawful. Defendant contends that its meal and rest period policies fully complied with California law and Defendant did not fail to provide the opportunity for legally required meal and rest breaks. Defendant contended that there was no failure to pay for business expenses and any cell phone usage was merely convenient and voluntary such that reimbursement was not legally required. Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court,* 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendant also argues that based on its facially lawful practices, Defendant acted in good faith and without willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiff believes that these defenses could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk to recovery by the Class. Decl. Barvie, ¶ 23.

After arm's length negotiations between experienced and informed counsel, the Parties recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of $210,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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[4] Because the PAGA claim is not a class claim and primarily is paid to the State of California, Plaintiff have not included the PAGA claim in this discussion of the value of the class claims. The PAGA claim is addressed in the Decl. Barvie at ¶ 33.

> In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favors the settlement. Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigating an appeal. 'The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement.'" 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000)).

3. The Settlement Does Not Improperly Grant Preferential Treatment To Class Representatives or Segments Of The Class

The relief provided in the Settlement will benefit all members of the Class. The Settlement does not grant preferential treatment to Plaintiff or segments of the Class in any way. Payments to the Class Members are all determined under a neutral methodology. Each Participating Class Member will receive the same opportunity to participate in and receive payment through a neutral formula that is based upon the Workweeks for that individual. Decl. Barvie, ¶ 4.

Plaintiff will apply to the Court for a Class Representative Service Payment in consideration for his service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiff performed his duties admirably by working with Class Counsel for over almost a year. The Declaration of the Plaintiff is submitted herewith in support. Decl. Barvie at ¶ 27. At this stage, the requested service award of $2,500 is well within the accepted range of awards for purposes of preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.,* 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding $12,500 where average class member payment was $351); *Holman v. Experian Info. Solutions, Inc.,* 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving $10,000 service award where class member recovery was $375); *Louie v. Kaiser Foundation Health Plan, Inc.,* 2008 WL 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding $25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.,* 2007 WL 221862, *16-17 (N.D. Cal. Jan. 27, 2007) (awarding $25,000 service award in overtime class action and a pool of $100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17. Decl. Barvie at ¶ 26.

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4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval Of The Settlement

The stage of the proceedings at which this Settlement was reached also militates in favor of preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted a thorough investigation into the facts of the class action. Class Counsel began investigating the Class Members' claims before the Action was filed, and during the course of litigation. Class Counsel conducted a review and analysis of all the relevant documents and data. Class Counsel was also experienced with the claims at issue here, as Class Counsel previously litigated and settled similar claims in other actions. Accordingly, 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. Decl. Barvie at ¶ 27.

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 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 potential appellate issues. 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. Decl. Barvie at ¶ 28.

V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY

Plaintiff contends that the proposed settlement meets all of the requirements for class certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court should conditionally certify the Class for settlement purposes only which consists of "the member of the Class, as either a Participating Class Member or Non-Participating Class Member." (Agreement at ¶ 1.9.) This Court should conditionally certify the Class for settlement purposes only, defined as follows: "all individuals classified as non-exempt employees who are or previously were employed by Bridges Community Treatment Services, Inc., and performed work in California during the period of February 1, 2020 to October 25, 2024 (the "Class Period")." (Agreement at ¶ 1.5.)

A. California Code of Civil Procedure § 382

Plaintiff seeks certification of this Class for settlement purposes under California Code of Civil Procedure § 382. The California Supreme Court has summarized the standard for determining whether class certification is appropriate as follows:

> Code of Civil Procedure Section 382 authorizes class actions "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court …." The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. (citations omitted). The "community of interest" requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. *Sav-On Drug Stores, Inc. v. Superior Court,* 34 Cal. 4th 319, 326 (2004).

While Defendant reserves all rights to dispute that the Plaintiff can satisfy these requirements, the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case for purposes of settlement only and therefore, the proposed Class should be certified for purposes of settlement only. (Agreement at ¶ 2.6.).

B. The Proposed Class Is Ascertainable and Numerous

Plaintiff brings this action on behalf of a Class of hourly, non-exempt employees of Defendant during the Class Period. Plaintiff asserts that all of these individuals are ascertainable because the class members can readily be determined through examination of Defendant's files. Given that the Class consists of 141 Class Members, Plaintiff maintains that numerosity is clearly satisfied. See *Bowles v. Superior Court,* 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward,* 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiff asserts that the 141 current and former employees that comprise the Class can be identified based on Defendant's records and are sufficiently numerous for class certification. Decl. Barvie at ¶ 31.

C. Common Issues of Law and Fact Predominate

Predominance of common issues of law or fact does not require that the common issues be dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 Newberg on Class Actions, Section 4.25 at 4-82, 4-83 (1992). "Predominance is a comparative concept, and 'the

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necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.'" *Sav-On*, 34 Cal. 4th at 334.

Commonality exists if there is a predominant common legal question regarding how an employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.,* 169 Cal. App. 4th 1524, 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the certification stage since the question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." *Linder v. Thrifty Oil Co.,* 23 Cal. 4th 429, 439-440 (2003).

Here, Plaintiff contend that common questions of law and fact are present, specifically the common questions of whether Defendant's employment practices were lawful, whether Defendant failed to provide meal and rest periods to Class Members, whether Class Members were lawfully compensated for all hours worked, whether Defendant failed to provide required expense reimbursement, and whether Class Members are entitled to damages and penalties as a result of these practices. Plaintiff contends that certification of this Class is appropriate because Defendant allegedly engaged in uniform practices with respect to the Class Members. As a result, these common questions of liability could be answered on a class wide basis. Decl. Barvie, ¶ 30. Defendant disputes that common questions predominate but will not oppose such a finding for purposes of this Settlement only.

D. The Claims of the Plaintiff Are Typical of the Class Claims

The typicality requirement requires the Plaintiff to demonstrate that the members of the class have the same or similar claims as the Plaintiff. "The typicality requirement is met when the claims of the [p]laintiff arise from the same event or are based on the same legal theories." *Tate v. Weyerhaeuser Co.,* 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon, supra*, 150 F.3d at 1020, the Ninth Circuit held that "[u]nder the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical."

In the instant case, Plaintiff contends that the typicality requirement is fully satisfied. Plaintiff, like every other member of the Class, was employed by Defendant as a non-exempt employee, and, like every other member of the Class, was subject to the same employment practices. Plaintiff, like every other member of the Class, also claims owed compensation as a result of the Defendant's uniform company policies and practices. Thus, Plaintiff's claims and the members of the Class arise from the same course of conduct by Defendant, involve the same issues, and are based on the same legal theories. Decl. Barvie at ¶ 31. For purposes of settlement, Plaintiff asserts that the typicality requirement is met as to the common issues presented in this case. Defendant does not oppose a finding of typicality for purposes of this Settlement only.

E. The Class Representation Fairly and Adequately Protected the Class

Plaintiff contends that the Class Members are adequately represented here because Plaintiff and representing counsel (a) do not have any conflicts of interest with other class members, and (b) will prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is met here. First, Plaintiff is well aware of his duties as the representatives of the Class and have actively participated in the prosecution of this case to date. Plaintiff effectively communicated with Class Counsel, provided documents and information to Class Counsel, and participated in the investigation and resolution of the Action. The personal involvement of Plaintiff was essential to the prosecution of the Action and the monetary settlement reached. Second, Plaintiff retained competent counsel who are experienced in employment class actions and who have no conflicts. Decl. Barvie at ¶ 29. Third, there is no antagonism between the interests of the Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary relief under the same set of facts and legal theories. Under such circumstances, there can be no conflicts of interest, and adequacy of representation is satisfied. *Reaves v. Ketoro, Inc.,* 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020). Defendant disputes that the adequacy requirement is satisfied but will not oppose such a finding for purposes of this Settlement only.

F. The Court Should Preliminarily Approve the Negotiated Class Counsel Award

The purpose of a Class Counsel Award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantially positive result for the class. California courts routinely award attorneys' fees equaling one-third or more of the potential value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 ("Empirical studies show that regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study,* *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent with market rates).)

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Class Members and in light of the supporting authority, the proposed Class Counsel payment is fair and reasonable. Barvie Dec., ¶ 37.

Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. Barvie Dec., ¶ 37.

G. The Superiority Requirement Is Met

To certify a class, the Court must also determine that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. "Where classwide litigation of common issues will reduce litigation costs and promote greater efficiency, a class action may be superior to other methods of litigation." *Valentino v. Carter-Wallace, Inc.,* 97 F.3d 1227, 1234 (9th Cir. 1996). As courts have previously observed:

> Absent class treatment, each individual plaintiff would present in separate, duplicative proceedings the same or essentially the same arguments and evidence, including expert testimony. The result would be a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants. "It would be neither efficient nor fair to anyone, including defendants, to force multiple trials to hear the same evidence and decide the same issues."

Sav-On, 34 Cal. 4th at 340, citing *Boggs v. Divested Atomic Corp.,* 141 F.R.D. 58, 67 (S.D. Ohio 1991).

Here, Plaintiff contends that a class action is the superior mechanism for resolution of the claims as pled by the Plaintiff. While Defendant disputes that class treatment is superior, Defendant does not dispute a finding of superiority in this action for purposes of this Settlement only.

VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. The Parties have agreed upon procedures by which the Class Members will be provided with written notice of the Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance with the Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet containing the Class Data. (Agreement at ¶ 4.2.) Within 10 days after receiving the Class Data, the Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most current mailing address information available. (Agreement at ¶ 8.4(b).)

The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel and to be approved by the Court, includes all relevant information. (See Exhibit "A" to the Agreement.) The Class Notice will include, among other information: (i) information regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt out, including a description of the applicable release; (iii) information to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the amount of attorneys' fees and expenses to be sought; (v) the amount of the Plaintiff's service award request; and (vi) the anticipated expenses of the Administrator. Decl. Barvie at ¶ 31.

The Class Notice will state that the Class Members shall have forty-five (45) calendar days from the date that the Class Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out) or to submit a written objection. (Agreement at ¶¶ 1.41, 8.4, 8.5, 8.7.) The Response Deadline will be extended by 14 days in the event of a re-mailing. (Agreement at ¶ 8.4.) Class Members shall be given the opportunity to object to the Settlement and/or requests for attorneys' fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and proper request to opt-out will automatically receive a payment of their Individual Class Payment. This notice program was designed to meaningfully reach the Class Members and it advises them of all pertinent information concerning the Settlement. Decl. Barvie at ¶ 31. The mailing and distribution of the Class Notice satisfies the requirements of due process and is the best notice practicable under the circumstances and complies with Rules of Court 3.766 and 3.769(f).

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VII. CONCLUSION

Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final approval hearing in September 10, 2025, which is at least one hundred twenty (120) days from the date of Preliminary Approval.

Dated: October 17, 2024

BARVIÉ LAW, APC

By: Nicole Barvié

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