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on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

AMBER LYNN BOCK, an individual on
behalf of herself and all others similarly
situated,

Plaintiff,

vs.

BARTZ-ALTADONNA COMMUNITY
HEALTH CENTER, a California Non-Profit
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 24STCV05513

CLASS ACTION

Assigned for All Purposes To:
Hon. Lawrence P. Riff

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF SETTLEMENT;
AND (3) SETTING HEARING FOR FINAL
APPROVAL**

Date: March 25, 2025
Time: 10:00 a.m.
Dept: 7

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On March 5, 2024, Plaintiff AMBER LYNN BOCK (hereinafter “Plaintiff” or “Class
4 Representative”) filed a class action complaint in the Superior Court of the State of California,
5 Los Angeles County, Case No. 24STCV05513 against Defendant BARTZ-ALTADONNA
6 COMMUNITY HEALTH CENTER (“Defendant”). Plaintiff alleged the following causes of
7 action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor
8 Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest Break Liability Under
9 Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203;
10 (7) Violation of Labor Code §204; (8) Failure to Keep Required Payroll Records Under Labor
11 Code §§ 1174 and 1174.5; (9) Failure to Reimburse Necessary Business Expenses § 2802; (10)
12 Failure to pay Vacation Wages; and (11) Violation of Business & Professions Code § 17200 *et*
13 *seq.*

14 Simultaneously, on March 5, 2024, Plaintiff gave notice to the Labor Workforce
15 Development Agency (“LWDA”) and Defendant that Plaintiff intended to proceed with a
16 representative action under the Private Attorney’s General Act of 2004 (“PAGA”). On May 9,
17 2024, after the 65 day statutory period passed, Plaintiff filed a First Amended Complaint to add a
18 twelfth (12) cause of action for Penalties under PAGA.

19 Pursuant to the proposed Class Action and PAGA Settlement Agreement (“Settlement” or
20 “Settlement Agreement”), filed concurrently herewith, the class consists of “all persons employed
21 by Defendant in California and classified as non-exempt, hourly employees who worked for
22 Defendant during the Class Period except those employees who negotiated a signed released of
23 claims with Defendant at any time during the Class Period.” The Class Period means the period
24 from March 5, 2020, to December 16, 2024. After engaging in substantial investigation and
25 extensive negotiations with the assistance of a respected third-party neutral, Brandon McKelvey,
26 the parties have agreed to settle all claims alleged in the lawsuit on a class-wide non-reversionary
27 basis for Five Hundred Ninety-Nine Thousand Five Hundred Dollars and Zero Cents
28 (\$599,500.00), inclusive of all fees and costs. All 361 Class Members shall receive a settlement

1 share unless they opt out.

2 The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and
3 adequate, and in the best interests of the Class. Consequently, Plaintiff, with the consent of
4 Defendant, hereby moves this Court for an order: (1) granting preliminary approval of the
5 proposed class action settlement, as embodied in the Settlement Agreement filed concurrently
6 herewith; (2) approving the Notice of Settlement to be sent to Class Members; and (3) setting a
7 hearing for final approval of the class action settlement.

8 **II. STATUS OF THE LITIGATION**

9 **A. Procedural History**

10 On March 5, 2024, Plaintiff filed a class action complaint in the Superior Court of the
11 State of California, Los Angeles County, Case No. 24STCV05513 against Defendant alleging the
12 following eleven (11) causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay
13 Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code §
14 226.7; (4) Rest Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a);
15 (6) Violation of Labor Code § 203; (7) Violation of Labor Code §204; (8) Failure to Keep
16 Required Payroll Records Under Labor Code §§ 1174 and 1174.5; (9) Failure to Reimburse
17 Necessary Business Expenses § 2802; (10) Failure to pay Vacation Wages; and (11) Violation of
18 Business & Professions Code § 17200 *et seq.* (Declaration of Natalie Haritoonian (“Haritoonian
19 Decl.”), filed concurrently herewith, ¶ 10).

20 Plaintiff contends that Defendant failed to pay Class Members all wages due and owing,
21 including by requiring off the clock work, unlawfully rounding to their detriment, failing to
22 provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay
23 wages including final wages, failing to maintain accurate records, failing to reimburse necessary
24 business expenses, and failing to pay vacation wages. (Haritoonian Decl., ¶ 11.)

25 On March 5, 2024, Plaintiff submitted a PAGA Notice letter to the LWDA and served
26 Defendant. (Haritoonian Decl., ¶ 12.) The LWDA did not express an interest in investigating
27 Plaintiff claims within the 65 day period. (*Id.*) Therefore, on May 9, 2024, Plaintiff filed a First
28 Amended Complaint adding a cause of action for penalties under the PAGA. (*Id.*) The First

1 Amended Complaint is the operative complaint.

2 **B. Investigation**

3 Before filing the lawsuit, Class Counsel investigated and researched the facts and
4 circumstances underlying the pertinent issues and the law applicable thereto. (Haritounian Decl., ¶
5 13.) This required thorough discussions and interviews between Class Counsel and Plaintiff, as
6 well as preliminary research into the various legal issues involved in the case. (*Id.*) After
7 conducting their initial investigation, Class Counsel determined that Plaintiff's claims were well-
8 suited for class and representative action adjudication owing to what appeared to be a common
9 course of conduct affecting a similarly situated group of employees. (*Id.*)

10 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
11 claims giving rise to the action, including: (1) conducting informal discovery and meeting and
12 conferring with defense counsel about same; (2) reviewing and analyzing a sampling of time and
13 pay records as well as employment handbooks, Plaintiff's personnel files, relevant policies and
14 other documentation; (3) researching the applicable law and potential defenses; (4) constructing
15 damage models based on interpretations of California law; and (5) reviewing information
16 provided by Defendant at the mediation. (Haritounian Decl., ¶ 14.) The Class enumerated in this
17 action is ascertainable because the Class Members may be readily identified by reference to
18 Defendant's records. (*Id.*) Defendant has agreed to share the information from these records with
19 the Settlement Administrator in order to identify and contact the Class Members. (*Id.*) There are
20 approximately 361 total Class Members. (*Id.*)

21 Defendant, for their part, vigorously contested liability, the amount of claimed damages,
22 and the propriety of class certification. (Haritounian Decl., ¶ 15.) After Class Counsel analyzed
23 the relevant documents and other gathered data, Class Counsel believed that this case was
24 appropriate for resolution via mediation. (*Id.*) Given the high level of risk present for both sides,
25 the parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

26 **C. Settlement Efforts**

27 On October 15, 2024, the parties mediated this case with Brandon McKelvey, a respected
28 and highly experienced mediator in wage and hour class actions. (Haritounian Decl., ¶ 16.)

1 During mediation, Plaintiff’s and Defendant’s counsel discussed all aspects of the case, including
2 the risks of litigation and the risks to both parties of proceeding with a motion for class
3 certification as well as the law relating to unpaid wages, meal periods, rest periods, wage
4 statements, and final pay. (*Id.*) As a result of the mediation, the parties agreed to settle the lawsuit
5 according to the terms set forth in the Settlement Agreement. (*Id.*; See Exhibit 1 attached to
6 Haritoonian Decl., “Settlement” or “Settlement Agreement”.)

7 From Class Counsel’s review of the facts, strengths, and weaknesses of the case, the risks
8 and delays posed by further litigation, and Class Counsel’s own prior litigation experience, Class
9 Counsel believes that the recovery for each Class Member is fair and reasonable taking into
10 consideration the amounts received in other wage and hour class actions, the risks inherent in
11 litigation of this genre, and the reasonable tailoring of each Class Member’s claim to the
12 settlement award he or she will receive. (17.) Further, and based on the settlement negotiations,
13 which were extensive, and conducted in good faith and at arm’s length between attorneys with
14 substantial experience litigating class actions and wage and hour cases, the Settlement Agreement
15 was the product of a non-collusive settlement process in which the parties were forced to make
16 significant compromises in the interest of reaching a full and complete settlement of the lawsuit.
17 (*Id.*)

18 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

19 Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay Five
20 Hundred Ninety-Nine Thousand Five Hundred Dollars and Zero Cents (\$599,500) (“Gross
21 Settlement Amount”) on a non-reversionary basis to settle and release all claims asserted by
22 Plaintiff in the Class Action and PAGA Action on behalf of the proposed Class. (Haritoonian
23 Decl., ¶ 18; Exh. 1, §1.22.) The Settlement Agreement defines the “Class” as “all persons
24 employed by Defendant in California and classified as non-exempt, hourly employee who worked
25 for Defendant during the Class Period except those employees who negotiated a signed release of
26 claims with Defendant at any time during the Class Period.” (Haritoonian Decl., ¶ 19; Exh. 1,
27 §1.5.) The “Class Period” is “the period from March 5, 2020, to December 16, 2024.”
28 (Haritoonian Decl., ¶ 19; Exh. 1, §1.12.) The “Net Settlement Amount,” available for distribution

1 to Class Members, shall be the Gross Settlement Amount, less the Attorneys' Fees and Costs, the
2 Class Representative Enhancement Payment, Settlement Administration Costs, and seventy-five
3 percent (75%) of the LWDA Payment. (Haritounian Decl., ¶ 20; Exh. 1, §1.28.) These amounts
4 are detailed as follows:

- 5 • not more than One Hundred Ninety-Nine Thousand Eight Hundred Thirty-Three
6 Dollars and Thirty-Three Cents (\$199,833.33) to Class Counsel for attorneys' fees,
7 and not more than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) to
8 Class Counsel for litigation costs; (Haritounian Decl., ¶ 20; Exh. 1, §3.2.2);
- 9 • not more than Six Thousand Five Hundred Dollars and Zero Cents (\$6,500.00) for
10 the Settlement Administration Costs; (Haritounian Decl., ¶ 20; Exh. 1, §3.2.3);
- 11 • not more than Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff for a
12 Class Representative Enhancement Payment; and (Haritounian Decl., ¶ 20; Exh. 1,
13 §3.2.1);
- 14 • Forty Thousand Dollars and Zero Cents (\$40,000.00) for civil penalties under the
15 PAGA, where 75% (\$30,000.00) will be paid to the LWDA and 25% (\$10,000.00)
16 will be included in the Net Settlement Amount and distributed to Settlement Class
17 Members). (Haritounian Decl., ¶ 20; Exh. 1, §3.2.5.)

18 The "Individual Class Payment" and the "Individual PAGA Payment" is each Class
19 Member's share of the Net Settlement Amount, which will be calculated and apportioned from
20 the Net Settlement Amount based on the number of workweeks a Class Member worked during
21 the Class and PAGA Period as a non-exempt employee in California. (Haritounian Decl., ¶ 21;
22 Exh. 1, §1.23 and §1.24.)

23 Defendant shall pay its corporate payroll tax obligations on the payouts to Class Members
24 in addition to the Gross Settlement Amount. (Haritounian Decl., ¶ 22; Exh. 1, §3.1.)

25 The settlement amount was a compromise figure, factoring in the inherent risks related to
26 certification, liability and damages. (Haritounian Decl., ¶ 23.) However, taking into account all of
27 the circumstances of the action and the defenses raised by Defendant against certification,
28 liability and damages, Class Counsel believes that the settlement is fair and reasonable. (*Id.*)

1 Attached to the Settlement Agreement as Exhibit A is the Notice of Settlement (“Class
2 Notice”). Class Members shall each receive a Class Notice via First-Class Mail, using the most
3 current, known mailing addresses identified in the Class List. Before mailing, the Settlement
4 Administrator will perform a search based on the National Change of Address Database for
5 information to update and correct for any known or identifiable address changes. (Haritounian
6 Decl., ¶ 24; Exh. 1, §7.4.2.) If the Class Notice is returned as non-deliverable on or before the
7 Response Deadline and a new address is obtained by way of a returned Class Notice, then the
8 Settlement Administrator will promptly forward the original Class Notice to the updated address
9 via first-class regular U.S. mail, indicating on the original packet the date of such re-mailing.
10 (Haritounian Decl., ¶ *Id*; Exh. 1, §7.4.3.)

11 Class Members will have an opportunity to dispute the information provided in their Class
12 Notice and they may produce evidence to support the information is inaccurate. (Haritounian
13 Decl., ¶ 25; Exh. 1, §7.6; *see also* Class Notice, **Exhibit A** attached to the Settlement
14 Agreement.) The Settlement Administrator shall decide the dispute and may ask Defendant to
15 produce the personnel and payroll files of the Class Member disputing their credited workweeks
16 in order to resolve the dispute. (Haritounian Decl., *Id*; Exh. 1, §7.6.) Class Members wishing to
17 opt-out from the Settlement Agreement must sign and postmark a written request for exclusion to
18 the Settlement Administrator within the Response Deadline. (Haritounian Decl., ¶ 26; Exh. 1,
19 §7.8.2.) Class Members will also have the opportunity to object to the Settlement Agreement, by
20 serving a copy of the objection to the Settlement Administrator within the Response Deadline.
21 (Haritounian Decl., ¶ 26; Exh. 1, §7.7.) The Response Deadline will be sixty (60) calendar days
22 from the initial mailing of the Class Notice. (Haritounian Decl., *Id*; Exh. 1, §1.43.)

23 The parties have also agreed that Apex Class Action, LLC., shall handle the notice and
24 settlement administration (Exh. 1, § 7.1), and the parties respectfully request this Court to appoint
25 Apex Class Action, LLC., to handle those procedures. The procedures for mailing notice and
26 processing exclusions and objections as well as distribution of the Net Settlement fund is detailed
27 in the Stipulation. (Exh. 1, §7)

28 ///

1 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

2 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince*
3 *v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.*
4 (1981) 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved
5 in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at
6 473-75.) The decision to certify a class is a procedural one, and should be based on the allegations
7 in the operative complaint, and not in the perceived factual or legal merit of the class claims.
8 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

9 To certify a settlement class, the Court must find the two primary requirements for
10 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
11 defined community of interest in the questions of law and fact involving the parties to be
12 represented. (*See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
13 *Company* (1967) 67 Cal. 2d 695, 704.) These criteria are met here for the reasons set forth below.

14 **A. There Is A Numerous and Ascertainable Class**

15 Whether a class is ascertainable is determined by examining the class definition, the size
16 of the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d
17 at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263,
18 1271.) Class members are “ascertainable” where they may be readily identified without
19 unreasonable expense or time.

20 Plaintiff contends, and Defendant does not dispute for settlement purposes only, this
21 requirement and the requirement of numerosity is met. Class Members are “all persons employed
22 by Defendant in California and classified as non-exempt, hourly employees who worked for
23 Defendant during the period from March 5, 2020, to December 16, 2024, except those employees
24 who negotiated a signed released of claims with Defendant at any time during the period from
25 March 5, 2020, to December 16, 2024.” (Haritoonian Decl., ¶ 71(a).) Documents and information
26 exchanged between the parties reflect a class of approximately 361 Class Members. (Haritoonian
27 Decl., ¶ 71(a).) The Class Members have already been identified by reference to Defendant’s
28 payroll and personnel records. (Haritoonian Decl., ¶ 71(b).)

1 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

2 **B. There Is A Well-Defined Community of Interest**

3 A community of interest is established by the predominance of common issues of law and
4 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

5 [D]oes not depend upon an identical recovery, and the fact that each
6 member of the class must prove his separate claim to a portion of any
7 recovery by the class is only one factor to be considered ... The mere
8 fact that separate transactions are involved does not of itself preclude
9 a finding of the requisite community of interest so long as every
10 member of the alleged class would not be required to litigate
11 numerous and substantial questions to determine his individual right
12 to recover subsequent to the rendering of any class judgment which
13 determined in plaintiff favor whatever questions were common to
14 the class.

15 *Id.* at 809.

16 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
17 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the
18 Class is united in its proof. (Haritounian Decl., ¶ 71(e).) Because Plaintiff has alleged a single
19 scheme, “the relevant proof [does] not vary among class members” and “clearly presents a
20 common question fundamental to all class members.” (*See In Re NASDAQ Market-Makers*
21 *Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers*
22 *Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no hesitancy”
23 in inferring class-wide causation, class-wide injury, and class-wide damages when a common
24 course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This
25 inference “eliminates the need for each class member to prove individually the consequences of
26 the defendants’ actions to him or her.” (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp*
27 (1982) 131 Cal. App. 3d 741, 753 [emphasis added])).)

28 This action involves, *inter alia*, a determination about Defendant’s alleged failure to
provide meal period and rest periods, failure to pay wages and overtime due to allegedly common
and unlawful policies, failure to pay final wages when required, failure to provide accurate
paystubs, failure to pay vacation wages, and largely derivative claims under the Business &
Professions Code and PAGA. Plaintiff contends these practices affected Class Members in the

1 same way. Plaintiff contends these practices resulted in a failure to compensate employees at
2 termination, and incomplete wages displayed on wage statements. The outcome of litigation on
3 this matter depends upon questions that are common to Class Members. (Haritonian Decl., ¶
4 71(e).) While Defendant maintained otherwise, these issues will not be decided on the basis of
5 facts peculiar to each Class Member, but rather on the basis of facts common to them all. It is also
6 true that these issues of liability can be determined on a class-wide basis. (*Id.*)

7 **C. The Named Plaintiff's Claims Are Typical**

8 A class representative's claims are typical when they arise from the same event, practice,
9 or course of conduct that gives rise to the claims of other putative class members, and if their
10 claims rest on the same legal theories. The class representative's claims must be "typical" but not
11 necessarily identical to the claims of other class members. It is sufficient that the representative is
12 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
13 (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
14 (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class
15 representative must have identical interests with the class members.") Thus it is not necessary that
16 the class representative should have personally incurred all of the damages suffered by each of the
17 other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

18 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
19 Plaintiff's claims are typical of Class Members' claims because they arose from the same factual
20 basis and are based on the same legal theories. (Haritonian Decl., ¶ 71(c).) Plaintiff was
21 employed by Defendant during the Class Period, and was subject to the allegedly unlawful meal
22 and rest policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiff is a
23 member of the Class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay all
24 wages, whether Defendant failed to provide meal and rest periods, etc.), which would arise if this
25 was an individual action, applies to the other Class Members as well. The answer to these
26 questions would determine Defendant's liability to the putative class. (*Id.*) Thus, the claims of
27 Plaintiff are typical of the claims of the putative class. (*Id.*) Accordingly, the typicality
28 requirement is satisfied.

1 **D. Adequacy of Class Counsel and Class Representative**

2 Class Counsel are experienced in class actions, has represented its client zealously and
3 have no conflicts of interest. (Haritounian Decl., ¶¶ 3-9, 71(d).) The Class Representative's
4 interests are aligned with those of the Class Members, she has suffered the same injuries as the
5 Class Members, and has no conflicts of interest. (*Id.*) Therefore, Class Counsel and the Class
6 Representative are adequate.

7 **E. Predominance and Superiority**

8 Individual issues do not predominate over those common to the class. (Haritounian Decl.,
9 ¶71(f).) The class action mechanism is superior to individualized actions because Class Members
10 have little incentive to bring claims that are small. (*Id.*)

11 **V. THE TWO-STEP APPROVAL PROCESS**

12 Any settlement of class action litigation must be reviewed and approved by the Court.
13 This is accomplished in two steps: (1) An early (preliminary) review by the trial court, and (2) a
14 detailed review after the notice has been distributed to the class members for their comments or
15 objections. In this regard, the Manual for Complex Litigation (Second) explains:

16 A two-step process is followed when considering class settlements...
17 If the proposed settlement appears to be the product of serious,
18 informed, non-collusive negotiations, has no obvious deficiencies,
19 does not improperly grant preferential treatment to class
20 representative 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.

21 (*Manual for Complex Litigation (Second)* (1985) at § 30.44.) The preliminary approval of the
22 class action settlement by the trial court is simply a conditional finding that the settlement appears
23 to be within the range of acceptable settlements. (*See, e.g., Newberg*, § 11.25; *North County*
24 *Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.)
25 Thus, the preliminary approval of the class action settlement by the trial court is simply a
26 conditional finding that the settlement appears to be within the range of acceptable settlements.

27 Settlements to resolve PAGA claims also require court approval. (Labor Code §
28 2699(1)(2).) There is no articulated standard for approving PAGA settlements. PAGA settlements

1 for as little as \$0 have been approved. (*See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576,
2 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim).) Courts have
3 also approved settlements for \$20,000 or less. (*See, e.g., Hicks v. Toys 'R' Us-Delaware, Inc.*,
4 (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4
5 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645,
6 at *1 (approving PAGA payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson*
7 *Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in
8 \$300,000 settlement).)

9 A review of the preliminary approval criteria demonstrates a substantial basis for granting
10 the instant Motion and proceeding to a full settlement hearing.

11 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

12 As a matter of public policy, courts both encourage the use of the class action device and
13 favor settlement over continued litigation. (*See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th
14 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent
15 a failure of justice in our judicial system.”); *Class Plaintiff v. City of Seattle* (1992) 955 F.2d
16 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class
17 action litigation is concerned.”).)

18 Moreover, courts presume the absence of fraud or collusion in the negotiation of a
19 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
20 negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.*
21 (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir.
22 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents,
23 particularly when settlement has been reached by experienced counsel familiar with the litigation.
24 (*Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp.
25 1087.)

26 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
27 several factors that should be analyzed in determining if a class action settlement should be
28

1 approved. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense,
2 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
3 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
4 stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
5 governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

6 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
7 informal discovery before entering into meaningful settlement negotiations in this matter,
8 including a detailed analysis of Defendant's policies and a considerable sample of Defendant's
9 time and pay records. (Haritounian Decl., ¶¶ 13-14.) This discovery permitted Class Counsel to
10 fairly evaluate the strengths of the case and the risks associated with ongoing litigation. Class
11 Counsel is very experienced in the handling of wage and hour class actions and supports this
12 Settlement. (Haritounian Decl., ¶¶ 3-9.)

13 **A. The Strength of Plaintiff's Case.**

14 Plaintiff alleges that Defendant failed to pay minimum wages and overtime, failed to
15 provide proper meal breaks or provide premium pay in lieu thereof, failed to provide proper rest
16 breaks or provide premium pay in lieu thereof, failed to provide accurate wage statements, failed
17 to timely pay all wages upon termination, failed to reimburse necessary business expenses, and
18 failed to pay vacation wages in violation of California law. (Haritounian Decl., ¶ 28.)

19 Class Counsel felt confident that the claims in this case would be certified given that
20 Defendant's policies were applicable to all Class Members and unlawful on their face.
21 (Haritounian Decl., ¶¶ 28-54.) Defendant contended, however, that that the policies complied with
22 California law.

23 **B. The Risks Associated with the Merits.**

24 As with all litigation, there are risks that a party will not prevail on the merits. In this case,
25 Plaintiff contends that she and other Class Members were not properly provided meal periods.
26 (Haritounian Decl., ¶¶ 34-40.) Defendant contended that Class Members were given a reasonable
27 opportunity to take their meal periods, and in fact received their meal periods most of the time
28 (*Id.*) If Defendant's contentions are proven true and prevail in trial, the likely outcome of this

1 claim would be no recovery for the Class Members. (*Id.*) Plaintiff also contended that Defendant
2 did not provide Class Members with paid 10-minute rest breaks for every four hours or major
3 fraction thereof. (*Id.*) Class Members consistently worked in excess of consecutive four-hour
4 shifts and were entitled to paid rest breaks of not less than ten minutes for each consecutive four
5 hour shift which they were denied. Class Members were required to work through their rest
6 breaks, and through their entire shifts. Defendant maintained that they did provide the reasonable
7 opportunity for Class Members to take duty-free rest breaks. (*Id.*) Defendant also pointed out that,
8 unlike meal periods, rest breaks need not be recorded and Defendant disputes all allegations that
9 breaks were not received. As these considerations would likely depress the damages *vel non*
10 ultimately awarded, Class Counsel applied significant and appropriate discounts to the rest-break
11 claim. (*Id.*)

12 Plaintiff alleged that Defendant failed to pay Plaintiff and Class Members minimum
13 wages for all hours worked, in violation of minimum wage laws. (Haritounian Decl., ¶ 31-33.)
14 Plaintiff contended that Class Members were not paid all wages they were owed including for all
15 work performed and for all overtime hours worked. (*Id.*) Specifically, Plaintiff contended Class
16 Members had to wait in line to access a time clock to be able to clock in. (*Id.*) Additionally,
17 Plaintiff alleged Plaintiff and Class Members were frequently interrupted with work demands by
18 managers and colleagues during their meal period. Moreover, Plaintiff alleged Defendant
19 unlawfully rounded down the hours Class Members worked. (*Id.*)

20 Defendant contended that they paid for all reported hours worked, that Class Members
21 were trained to record all hours worked, and that they paid proper minimum wages. Defendant
22 also maintained that the allegations regarding failure to pay wages for hours worked in excess of
23 eight hours in a day did not constitute a basis for violation of Labor Code § 510. Defendant
24 argued that given their written policies and practices, any unrecorded hours were likely subject to
25 individualized inquiry and unlikely to be certified. Given the difficulty in certifying this claim,
26 Class Counsel had to apply a significant discount to damages based on this theory. (*Id.*)

27 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties.**

28 In order to establish liability for these penalties, Plaintiff would first have to establish

1 liability for the underlying claims. Plaintiff would then have to establish that Defendant's conduct
2 was willful and knowing. (Labor Code §§ 203, 226(e).)

3 With waiting time penalties, there is always the risk that the trier of fact would not have
4 held that Defendant's actions were done "willfully." A good faith belief in a legal defense can
5 preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36,
6 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleges that Defendant failed to pay for all
7 hours worked and premiums for non-compliant meal breaks due to unlawful rounding and
8 underreporting of hours and off the clock work. Plaintiff contends the Class Members are entitled
9 to these wages and premiums, which they allege were not paid at the time of their termination or
10 resignation. If Plaintiff is successful on her claims, the penalties pursuant to Labor Code § 203
11 shall attach. Defendant, however, contends it provided employees with the reasonable opportunity
12 to take meal breaks, asked Class Members to confirm the accuracy of their time records, and
13 therefore had good-faith defenses under *Brinker* and its progeny. Defendant likewise contends
14 that it properly paid all hours worked by its employees. Based upon Defendant's potential success
15 in establishing both that a good faith dispute existed with regard to unpaid wages, and Defendant
16 endeavored in good faith to supply accurate wage statements, Defendant argues the claims for
17 paystub violations and waiting time penalties have little or no value. *See Maldonado v. Epsilon*
18 *Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage statements that accurately report
19 wages paid to employees do not violate Labor Code § 226, even if it is later determined that
20 employer did not properly pay all wages due). As such, there was risk associated with wage
21 statement and waiting time penalties that Class Counsel had to consider. (Haritounian Decl., ¶¶
22 41-47.)

23 **D. The Risks Associated with the PAGA Penalties.**

24 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
25 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
26 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
27 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
28 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount

1 by the Labor Code section relating to the underlying alleged Labor Code violation, that amount
2 shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
3 maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil
4 penalty amount specified by this part if, based on the facts and circumstances of the particular
5 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
6 confiscatory.”]); *See, e.g., Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev.*
7 *denied* (2018), (recognizing court’s ability to reduce PAGA penalties). Courts have held that
8 situations similar to the current one (e.g. injuryless violations, technical errors, and substantial
9 compliance) should lead to reductions in penalties. *See Thurman v. Bayshore Transit*
10 *Management, Inc.*, 203 Cal. App. 4th 1112, 1134-1135 (2012) (holding that reduction was
11 justified when employer “attempted to comply with the law”); *Fleming v. Covdien, Inc.*, No. ED
12 CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011)
13 (reducing PAGA penalties more than 80% – from \$2.8 million to \$500,000 – when “employees
14 suffered no injury” employers were “not aware” of the violation and “took prompt steps to correct
15 all violations once notified”).

16 Plaintiff discounted potential penalties under this claim given this authority, and for other
17 reasons. The PAGA claims are premised on the same underlying unpaid wages, meal and rest
18 break, wage statement, and waiting time claims, and thus subject to the same disputes and
19 defenses. There is also a dispute as to whether violations in later pay periods trigger the \$200
20 penalty under PAGA as a “subsequent violation.” (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App.
21 4th 1157, 1203 (2008).) As such, there is a fair amount of risk associated with PAGA claims.
22 (Haritonian Decl., ¶¶ 48-51.) The parties also considered that the purpose of PAGA is to
23 “achieve maximum compliance with state labor laws,” and that through the proposed settlement,
24 Defendant has agreed to ensure policies comply with California law. (*Iskanian v. CLS Transp.*
25 *Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379.) This makes the settlement’s contemplated PAGA
26 payment of \$40,000 appropriate. (*Id.*)

27 Based on this analysis, Class Counsel believes that this settlement is fair and reasonable
28 and in the best interest of the Class. (Haritonian Decl., *passim.*)

1 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

2 Given the risks outlined above, the issues in this case were complex and the risk for
3 Plaintiff and the Class Members associated with this litigation was high. (Haritounian Decl., ¶¶
4 55-58.) A class trial would have required the retention of expensive expert witnesses, the accrual
5 of extensive litigation costs, and the parties would have had to spend a substantial amount of time
6 litigating this matter. (Haritounian Decl., ¶¶ 17, 58.)

7 Finally, given the complexity and unsettled nature of the issues, it is likely that any
8 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
9 further delay for the Class Members who have already waited years for resolution in this matter.

10 **F. The Risk of Maintaining Class Action Status Through Trial.**

11 In class actions, decertification is always a possibility. There is always a risk that a trial of
12 this magnitude can become unmanageable. (*Id.*) Given cases like *Duran v. U.S. Bank Nat. Assn.*,
13 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples in class actions,
14 decertification is a real risk that Class Counsel must take into account.

15 **G. The Amount Offered in Settlement.**

16 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-
17 collusive, and arms-length negotiations between the parties with an experienced mediator. In
18 order to determine the approximate potential damages which would be owed to each of the Class
19 Members, Class Counsel analyzed the time records for Plaintiff and Defendant provided Class
20 Counsel with records for a sampling of the class members. By analyzing this information, Class
21 Counsel was able to estimate the full value of the case if Plaintiff was to prevail at trial.

22 There are approximately 361 total Class Members. Based on the data provided, Class
23 Counsel estimated the following maximum exposures: unpaid wage claim at \$232,661, meal
24 period claim at \$267,123, rest period claim at \$267,123, wage statement claim at \$531,200,
25 waiting time penalties at \$797,487, reimbursement of business expenses claim at \$18,050, and on
26 PAGA, Plaintiff estimated the maximum exposure at \$542,100. (Haritounian Decl., ¶ 29.)

27 However, taking into account the difficulties of proof, the Defendant's defenses, and other
28 attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or other

1 relief that the class could reasonably expect to be awarded at trial is significantly less than the
2 maximum exposure. (Haritounian Decl., ¶ 30.)

3 Once Class Counsel was able to determine the maximum potential damages, it was able to
4 determine a fair and reasonable settlement for the Class. (Haritounian Decl., at ¶¶ 53) Class
5 Counsel analyzed the likelihood of success on the merits. (*Id.*) It believes that the Class had a
6 reasonable likelihood of success on the core claims. (*Id.*) However, Defendant disputes this
7 contention, denies all wrongdoing in this matter and are confident they have strong legal and
8 factual defenses to Plaintiff's claims. Moreover, Class Counsel determined that the likelihood of
9 success on the claims for unpaid wages and waiting time penalties were not as strong, because
10 various defenses including issues not suitable for class treatment, no detriment to the class
11 members over time, and *de minimis* defenses. Defendant may have had the opportunity to
12 establish that they had a good faith belief that they were complying with law. (*Id.*) After taking
13 into account the likelihood of success on each claim and the challenges faced with certifying
14 these claims, Class Counsel determined that the settlement amount of \$599,500 was fair and
15 reasonable.

16 Under the Settlement, each of the approximately 361 Class Members will receive on
17 average, assuming they worked throughout the class period, \$895.20 after expenses. (Haritounian
18 Decl., at ¶ 54) Plaintiff feels that this Settlement is fair, reasonable, and advantageous to the class.
19 (*Id.*)

20 To summarize, the Settlement here is fair because it provides a substantial payment to
21 each Class Member for releasing his or her claims; extinguishes the risk of litigation; and
22 provides a fair and adequate distribution of the settlement proceeds whereby the funds are
23 allocated to Class Members proportionally based on their Payout Ratio.

24 As detailed at length in the accompanying Declaration of Natalie Haritounian, the
25 settlement is the result of extensive settlement negotiations between the parties, conducted at
26 arm's length, and informed by substantial factual and legal investigations. (Haritounian Decl.,
27 *passim.*) Throughout this case, Class Members have been represented by experienced counsel
28 with many years of experience in employment class action litigation. (Haritounian Decl., ¶¶ 3-9.)

1 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
2 including but not limited to, interviewing Plaintiff on repeated occasions; drafting pleadings;
3 conducting informal discovery, and meeting and conferring with defense counsel about same;
4 reviewing and analyzing time records and various handbooks and policies, Plaintiff's personnel
5 file, and other documentation; researching California law; preparing for and attending mediation;
6 and negotiating and finalizing the Settlement Agreement and related documents. (Haritounian
7 Decl., ¶¶ 13-14.)

8 Among those matters considered during the course of settlement negotiations were the
9 strength of Plaintiff's case versus the amounts offered in settlement; the risks, expenses, and
10 length of further litigation, including class certification and the appeals process; the present state
11 of the law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present
12 value of a settlement versus the long wait necessitated by any potential judgment in class
13 members' favor; the burdens of proof necessary to establish liability against Defendant; and
14 Defendant's defenses to the action. (Haritounian Decl., *passim*.)

15 These factors each indicated that the interests of Class Members are best served by a
16 settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.
17 The Settlement Agreement confers a substantial benefit on the class of up to \$599,500. Moreover,
18 the settlement awards for each Class Member will be tailored to their workweeks during the class
19 period. (Haritounian Decl., ¶ 19) In addition, Class Counsel secured prospective relief for the
20 class in that Defendant will ensure their policies comply with California law.

21 Class Counsel believes that the settlement is fair and reasonable and serves the best
22 interests of the Class Members. Although the recommendations of counsel proposing the class
23 settlement are not conclusive, the Court can properly take the recommendations into account,
24 particularly if counsel has been involved in litigation for some period of time, appear to be
25 competent, and have experience with this type of litigation, and significant discovery has been
26 completed. *See Newberg*, §11.47.

27 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND**
28 **REASONABLE**

1 It is appropriate to provide a relatively modest additional incentive payment to the class
2 representative. See *Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901
3 F.Supp. 294.

4 Plaintiff is entitled to a reasonable service payment for her efforts and initiative in
5 bringing and helping to prosecute this class action. Plaintiff spent significant time better apprising
6 herself of her rights, deciding whether remedial action should be taken, how it should be taken,
7 searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff
8 discussing the case and the law. In the end, Plaintiff decided to vindicate not only her own rights
9 but also those of her co-workers by filing a class action lawsuit. (Haritounian Decl., ¶ 66)

10 The courage it took to do this should not be underestimated. By suing Defendant, Plaintiff
11 contends she increased the risk of retaliation by prospective employers. Plaintiff's lawsuit has
12 now cost Defendant considerable resources, and Plaintiff contends such conduct will not be lost
13 on a prospective employer who has to choose between an applicant who has never sued a prior
14 employer and one who has. Plaintiff contends this risk is particularly real in the information age,
15 where employers can, more easily than ever, perform background checks of prospective
16 employees, sometimes with the stroke of a key. (Haritounian Decl., ¶ 67)

17 But Plaintiff did not allow the fear of the potential repercussions of being a class
18 representative deter her from acting for the benefit of Class Members. To the contrary, Plaintiff
19 has been intimately involved in this case since its inception. She has devoted a substantial amount
20 of time to helping Class Counsel effectively develop and prosecute this action at every stage of
21 the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with Class
22 Counsel to discuss every aspect of this case; Plaintiff has provided Class Counsel with
23 information about Defendant and about the industry generally, reviewed documents, identified
24 witnesses, consulted Class Counsel throughout the litigation, participated in the mediation
25 process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the
26 settlement agreement. (Haritounian Decl., ¶ 68)

27 Plaintiff has spent a significant amount of time with Class Counsel detailing her
28 knowledge of Defendant's practices. She has diligently, adequately, and fairly represented Class

1 Members, and has not placed her interests above any member of the putative class. This sort of
2 payment to a class representative has been a common feature of settlements negotiated by Class
3 Counsel and has been routinely approved by trial courts. (Haritounian Decl., ¶ 69)

4 In light of the foregoing, Class Counsel believes that the incentive award in the amount of
5 \$5,000.00 to the Class Representative is fair and reasonable. (Haritounian Decl., ¶ 70)

6 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE**
7 **CLASS MEMBERS.**

8 Constitutional due process requires that class members be provided with notice sufficient
9 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
10 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
11 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*
12 at 314.) The notice must apprise the class members of the pendency of the action; reasonably
13 convey information regarding the settlement and the class members' rights, entitlements, and
14 obligations; and afford class members the opportunity to present their objections. (*Id.*)

15 The Class Notice meets constitutional standards because it provides all the information a
16 reasonable person would need to make a fully informed decision about the settlement. It will
17 notify all class members of the terms of the settlement, of its effect on their rights, of their options
18 as class members (i.e., participate, object, opt out, do nothing), and of the consequences of
19 exercising those options. (Haritounian Decl., ¶¶ 59-61.) Moreover, the Class Notice will
20 specifically direct any class members who have questions or concerns to contact the Settlement
21 Administrator, Apex Class Action, LLC., or Class Counsel. (*Id.*)

22 The standard for determining the adequacy of notice is whether the notice has "a
23 reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior*
24 *Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California's Deskbook on the
25 Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual
26 notice by mail is preferred when possible and dissemination of combined certification/settlement
27 notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820,
28 828.)

1 Here, the Class Notice will be sent via first-class mail to each class member. (Haritounian
2 Decl., ¶ 59.) If any Class Notices are returned undeliverable without a forwarding address, the
3 Settlement Administrator will use the national change of address database and perform a skip
4 trace to locate the class member and mail a new Class Notice to him or her at the correct address.
5 (*Id.*) Thus, most, if not all, class members will likely receive the Class Notice.

6 Pursuant to controlling authority, the proposed Class Notice and method of distribution
7 fully comport with due process requirements. Therefore, the Court should approve the Class
8 Notice and direct that it be distributed as proposed herein.

9 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

10 Non-settling parties and third parties periodically may attempt to object to proposed class
11 action settlements, but the right of non-settling parties to object at the final settlement approval
12 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
13 members have standing to object to a proposed settlement. “Beginning from the unassailable
14 premise that settlements are to be encouraged, it follows that to routinely allow non-class
15 members to inject their concerns via objection at the settlement stage would tend to frustrate this
16 goal.” (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being
17 filed to obtain a good faith determination, no persons other than class members have standing to
18 object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d
19 1330.)

20 **X. THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS** 21 **REASONABLE AND SHOULD BE APPROVED.**

22 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will
23 seek an award of fees of no more than One Hundred Ninety-Nine Thousand Eight Hundred
24 Thirty-Three Dollars and Thirty-Three Cents (\$199,833.33) approximately one-third of the Gross
25 Settlement Amount, and not more than Twenty Five Thousand Dollars and Zero Cents
26 (\$25,000.00) in costs. The requested fees are fair compensation for a law firm involved in
27 undertaking complex, risky, expensive, and time-consuming litigation solely on a contingent
28 basis. (Haritounian Decl. ¶¶ 63-65.) Defendant will not oppose Class Counsel’s fees and cost

1 request.

2 California courts routinely look to the federal courts on class action approvals. The Ninth
3 Circuit has recognized that an appropriate method for awarding attorneys' fees in class actions is
4 to award a percentage of the "common fund" created as a result of the settlement. (*Vincent v.*
5 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common
6 fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries
7 so that the active beneficiary does not bear the entire burden alone." (*Id.*) Accordingly, courts
8 have discretion to choose either the percentage-of-the-fund method or the lodestar method. (*In re*
9 *Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.)

10 Several courts have, however, expressed frustration with the "lodestar" approach for
11 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
12 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns
13 the interests of class counsel and absent class members; (2) it encourages efficient resolution of
14 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
15 demands on judicial resources. (*In re Activision Securities Litigation*, (N.D. Cal. 1989) 723
16 F.Supp. 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach
17 to determine the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir.
18 1994) 47 F.3d 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).)

19 Class Counsel's application for attorneys' fees in light of the facts and circumstances
20 surrounding this case is well within the range of reasonableness. Historically, courts have
21 awarded percentage fees in the range of 20% to 50% of the common fund, depending on the
22 circumstances of the case. (*Newberg*, at §14.03; *see also In re Activision Securities Litigation*,
23 723 F. Supp. at 1378.) *Newberg* further notes: "[A]chievement of a substantial recovery with
24 modest hours expended should not be penalized but should be rewarded for considerations of
25 time saved by superior services performed." (*Id.* at §§ 14-10:14-11.)

26 The attorneys' fees request provided for in the Settlement Agreement is commensurate
27 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or
28 greater than the percentage requested in this case. (*See, e.g., In re Pacific Enterprises Securities*

1 *Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common
2 fund); *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding
3 plaintiff counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin*
4 *Antitrust Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement
5 fund); *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to
6 counsel of one-third (1/3) of recovery achieved).)

7 In wage and hour class actions in particular, California trial courts have customarily
8 approved attorney's fees consistent with or greater than the percentage of the common fund
9 requested in this case. (*See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC
10 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at least
11 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
12 Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
13 Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*
14 *Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon.
15 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County
16 Super.Ct. Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper*
17 *Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).)

18 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive
19 any compensation until recovery is obtained. (Haritounian Decl., ¶¶ 63-65.) The Court should also
20 consider the benefit obtained by Class Counsel on behalf of Class Members. Thus, the requested
21 award for Class Counsel is reasonable.

22 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY** 23 **APPROVAL**

24 The parties respectfully request this Court, as part of the preliminary approval process, to
25 grant the following relief and make the following orders:

- 26 1. Review and approve the Settlement Agreement;
- 27 2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit

28 A;

1 3. Consider and determine that the proposed class action settlement as set forth in the
2 Settlement Agreement preliminarily appears fair, reasonable, and adequate;

3 4. Enter an order conditionally certifying the action as a class action for settlement
4 purposes only and preliminarily approving the proposed class action settlement and the
5 Settlement Agreement;

6 5. Approve and appoint Emil Davtyan, David Yeremian, and Natalie Haritoonian of
7 D.Law, Inc. to serve as Class Counsel for settlement purposes;

8 6. Approve and appoint Apex Class Action, LLC, as the Settlement Administrator to
9 handle the notice and claims procedures as set forth in the Settlement Agreement;

10 7. Approve the proposed settlement's allocation of funds to claims made under PAGA;

11 8. Order Defendant to disclose to Apex Class Action, LLC, the names, last-known
12 addresses, telephone numbers, dates of employment, and social security numbers of class
13 members as set forth in the Settlement Agreement;

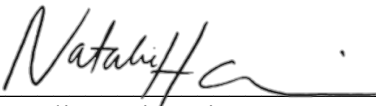
14 9. Order that Apex Class Action, LLC, mail the Class Notices to class members; and

15 10. Set a date for the Final Approval Hearing.

16 Dated: January 14, 2025

Respectfully submitted,

17 D.LAW, INC.

18
19 By 
20 Natalie Haritoonian
21 Attorneys for Plaintiff AMBER LYNN BOCK
22 on behalf of herself and others similarly situated
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