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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

VALERY DO on behalf of herself and all
others similarly situated, and the general
public,

Plaintiffs,

v.

RECOR MEDICAL, INC., a Delaware
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 23CV421926

*[Assigned for all purposes to the Hon. Theodore
C. Zayner, Dept. 19]*

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

*[Filed concurrently with Plaintiff's Notice of
Motion and Motion; Declaration of David
Arakelyan; Declaration of Valery Do; and
[Proposed] Order]*

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2024

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff VALERY DO (“Plaintiff” or “Class Representative”) filed a class action complaint
4 in the Superior Court of the State of California, Santa Clara County, Case No. 23CV421926, against
5 Defendant RECOR MEDICAL, INC. (“Defendant”). (hereinafter, Plaintiff and Defendants
6 collectively referred to as the “Parties”). Plaintiff alleged the following causes of action in his
7 operative complaint (Class Action Complaint): 1) Failure to Provide Meal Periods (Lab. Code §§
8 204, 223, 226.7, 512 and 1198); 2) Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7
9 and 1198); 3) Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2,
10 1197, 1997.1 and 1198); 4) Failure to Pay Proper Vacation Wages (Lab. Code § 227.3); 5) Failure
11 to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a)); 6) Failure to Timely Pay All
12 Final Wages (Lab. Code §§ 201, 202 and 203); 7) Unfair Competition (Bus. & Prof. Code §§ 17200
13 et seq.) and 8) Civil Penalties pursuant to the Private Attorneys General Act (“PAGA”), Labor
14 Code § 2698.

15 Pursuant to the proposed Class and PAGA Action Settlement Agreement (“Settlement” or
16 “Settlement Agreement”),¹ filed concurrently herewith, the Settlement Class Members (or
17 Settlement Class) consist of all persons who worked for Defendant as non-exempt employees in
18 the State of California at any time from June 21, 2020, through January 21, 2025. The Aggrieved
19 Employees are defined as persons employed by Defendant in California and classified as hourly,
20 non-exempt employees who worked for Defendant during the PAGA Period, i.e. from June 21,
21 2023, through January 21, 2025.

22 After engaging in substantial investigation and extensive negotiations with the assistance
23 of a respected third-party neutral, the Michael Mandel, the parties have agreed to settle all claims
24 alleged in Plaintiff’s operative Class and PAGA Action Complaint on a non-reversionary basis for
25 One Hundred and Fifty Thousand Dollars and Zero Cents (\$150,000.00), inclusive of all fees and
26 costs. There are approximately 58 Settlement Class Members, and each Settlement Class Member

27 ¹ To the extent any capitalized term is not defined in this motion, Plaintiff intends for the definition in the parties’
28 Settlement Agreement to be used. To the extent there are any conflicts between the definitions in the parties’
Settlement Agreement and this motion, the definition in the Settlement Agreement controls.

1 shall receive a settlement share unless she/he opts out. It is also estimated that there are a total of
2 49 Aggrieved Employees during the PAGA Period.

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

11 **II. STATUS OF THE LITIGATION**

12 **A. Procedural History**

13 On June 21, 2024, Plaintiff commenced this Class Action by filing a Complaint in the
14 Superior Court of Santa Clara County, Case No. 24CV441617, alleging causes of action against
15 Defendant for various Labor Code and California Business and Professions Code violations,
16 including: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure to
17 Pay Hourly Wages and Overtime; (4) Failure to Pay Proper Vacation Wages; (5) Failure to Provide
18 Accurate Written Wage Statements; (6) Failure to Timely Pay All Final Wages; and (7) Unfair
19 Competition (Business & Professions Code §§ 17200 et seq.) (“Action”). Pursuant to Labor Code
20 section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and California’s Labor
21 and Workforce Development Agency (“LWDA”) by sending the PAGA Notice on June 21, 2024
22 (LWDA-CM-1035804-24). On August 23, 2024, Plaintiff filed a First Amended Complaint adding
23 a cause of action for Civil Penalties under PAGA. (Declaration of David Arakelyan (“Arakelyan
24 Decl.”), filed concurrently herewith, ¶ 4).

25 Plaintiff contends that Defendant failed to pay Settlement Class Members all wages due and
26 owing, including by requiring off the clock work, failing to properly calculate and pay meal and
27 rest break premiums, unlawfully rounding to the detriment of Class Members, failing to provide
28 meal and rest breaks, failing to provide vacation wages, failing to timely pay wages including final

1 wages, and failing to provide accurate wage statements. (*Id.*, ¶ 6.)

2 The First Amended Complaint is the operative complaint in this case as Plaintiff filed a
3 cause of action under the Private Attorneys General Act (“PAGA”). (*Id.*, ¶ 4.)

4 **B. Investigation**

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

12 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
13 claims giving rise to the action, including: (1) conducting informal discovery and meeting and
14 conferring with defense counsel about same; (2) reviewing and analyzing records and data,
15 as well as employment-related policies; (3) reviewing Plaintiff’s personnel file and other
16 documentation; (4) interviewing Plaintiff regarding potential Class Members; (5)
17 researching the applicable law and potential defenses; (6) constructing damage models
18 based on interpretations of California law and the facts and numbers provided by
19 Defendants; and (7) reviewing information provided by Defendants in response to informal
20 discovery and in advance of the mediation.. (Arakelyan Decl., ¶ 10.) The Class enumerated in
21 this action is ascertainable because the Class Members may be readily identified by reference to
22 Defendant’s records. (*Id.* ¶ 20.) Defendant has agreed to share the information from these records
23 with the settlement Administrator in order to identify and contact the Class Members. (*Id.*) There
24 are approximately 58 total Class Members and 49 Aggrieved Employees. ((*Id.* ¶¶ 15, 20.))

25 Defendant, for its part, vigorously contests liability, the amount of claimed damages, and
26 the propriety of class certification. (Arakelyan Decl., ¶ 11.) After Class Counsel analyzed the
27 relevant documents and other gathered data, Class Counsel believed that this case was appropriate
28 for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the parties

1 elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

2 **C. Settlement Efforts**

3 On January 21, 2025, the parties mediated this case with Mike Mandel, a respected and
4 highly experienced mediator in wage and hour class actions. (Arakelyan Decl., ¶ 12.) (*Id.*) During
5 mediation, Plaintiff's and Defendant's counsel discussed all aspects of the case, including the risks
6 of litigation and the risks to both parties of proceeding with a motion for class certification as well
7 as the law relating to unpaid wages, meal periods, rest periods, sick pay, wage statements, and final
8 pay. (*Id.*) As a result of the mediation, the parties agreed to settle the lawsuit according to the terms
9 set forth in the Settlement Agreement. (*Id.*; See **Exhibit A** attached to Arakelyan Decl.,
10 "Settlement" or "Settlement Agreement".)

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

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

22 Under the terms of the proposed Settlement Agreement, the Defendant has agreed to pay
23 One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) ("Gross Settlement Amount")
24 on a non-reversionary basis to settle and release all claims asserted by Plaintiff in the operative
25 First Amended Complaint. (Arakelyan Decl., ¶ 14; **Exhibit A**, page 5, ¶ 3.1.) The Gross Settlement
26 Amount is in exchange for Plaintiff's and the Settlement Class Members' release of all claims. (*Id.*)

27 "Settlement Class Members" are all persons who worked for Defendant as non-exempt
28 employees in the State of California at any time from June 21, 2020, through, through January 21,

2025. (Arakelyan Decl., ¶ 15; **Exh. A**, page 1, ¶ 1.5.) The “Net Settlement Amount,” available for distribution to Class Members, shall be the Gross Settlement Amount, less all Class Counsel’s attorneys’ fees and litigation costs, the Enhancement Award to the Class Representative, the PAGA penalty payment to the Labor and Workplace Development Agency (“LWDA”), the PAGA Settlement Amount paid directly to the PAGA Members (“Net PAGA Settlement Amount”) and Settlement administration expenses. (Arakelyan Decl., ¶ 16; **Exh. A**, page 3, ¶ 1.28.) These amounts are detailed as follows:

- Class Counsel Fees and Costs: Class Counsel’s attorneys’ fees shall not exceed Fifty Thousand Dollars and Zero Cents (\$50,000.00), and actual reasonable litigation costs in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00); (Arakelyan Decl., ¶ 16; **Exh. A**, page 6, ¶¶ 3.2.2.);
- Settlement Administration Costs, shall not exceed Six Thousand Dollars and Zero Cents (\$6,000.00); (Arakelyan Decl., ¶ 16; **Exh. A**, page 6, ¶ 3.2.3; see **Exh. D** for the amount of proposed reimbursement of costs to class counsel and the itemized detail of the costs incurred to date and the estimated future expenses);
- Class Representative Enhancement Payment, shall not exceed Five Thousand Dollars and Zero Cents (\$5,000.00); (Arakelyan Decl., ¶ 16; **Exh. A**, page 6, ¶ 3.2.1.);
- \$6,500.00 to the LWDA of the State of California for settlement of claims for civil penalties under PAGA, which will be paid out of the GSA, leaving \$3,500.00 as the Net PAGA Settlement Amount to be paid to PAGA Members. (Arakelyan Decl., ¶ 16; **Exh. A**, page 7, ¶ 3.2.5.);

The Net Settlement Amount after these deductions is estimated to be \$64,000.00.

The “Individual Class Payment” is each Participating Class Member’s pro rata share of the Net Settlement Amount, which will be calculated and apportioned from the Net Settlement Amount based on the number of workweeks a Participating Class Member worked during the Class Period as a non-exempt employee in California. (Arakelyan Decl., ¶ 17; **Exh. A**, page 3, ¶ 1.2.3.) The individual PAGA payment mean the Aggrieved Employees’ pro rata share of 35% of the PAGA

1 penalties calculated according to the number of Workweeks worked during the PAGA Period. All
2 individual settlements will be allocated 20% to wages and 80% to interest and statutory penalties.
3 (Arakelyan Decl., ¶ 17; **Exh. A**, page 3, ¶ 1.2.4);

4 Defendant shall pay its employer-side payroll tax obligations on the Wage Portion of the
5 Individual Class Payments in addition to the Gross Settlement Amount and shall wire or mail the
6 employer's share of payroll taxes to the Settlement Administrator within thirty (30) calendar days
7 after the Effective Date, as defined in the Settlement Agreement. None of the Gross Settlement
8 Amount will revert to Defendant. (Arakelyan Decl., ¶ 14; **Exh. A**, page 5, ¶ 3.1; page 8, ¶ 4.3; page
9 9, ¶ 5.)

10 The settlement amount was a compromise figure, factoring in the inherent risks related to
11 certification, liability and damages. (Arakelyan Decl., ¶ 13.) However, taking into account all of
12 the circumstances of the action and the defenses raised by Defendant against certification, liability
13 and damages, Class Counsel believes that the settlement is fair and reasonable. (*Id.* ¶ 13, 19)

14 Attached to the Settlement Agreement as **Exhibit 1** is the Notice of Class Action Settlement
15 ("Class Notice"). Class Members shall each receive a Class Notice via first class mail (after the
16 settlement Administrator conducts a national change of address search). (Arakelyan Decl., ¶ 69;
17 **Exh. A**, page 8, ¶¶ 4.4.1, 4.4.2, and page 12, ¶ 7.4.3.) Class Members will have an opportunity to
18 dispute the information provided in their Class Notice and they may produce evidence to support
19 the information is inaccurate. (Arakelyan Decl., ¶ 18; **Exh. A**, page 13, ¶ 7.6; *see also* Class Notice,
20 **Exhibit 1** attached to the Settlement Agreement.) The Settlement Administrator shall decide the
21 dispute and may ask the challenging Class Member to produce documentation in support of their
22 challenge. (*Id.*)

23 The Class Notice adequately informs the Class Members about the claims, the terms of the
24 settlement, the release of claims, their anticipated distribution, the amount of fees and expenses
25 being requested by class counsel, the amount of any incentive award to the class representatives,
26 the opportunity to object and the requirements for objections, the date and place of the final
27 approval hearing, and the opportunity to opt out of the settlement and the procedure for requesting
28 exclusion. The Class Notice is consistent with the terms of the settlement. Class Members wishing

1 to opt-out from the Settlement Agreement must sign and postmark a written request for exclusion
2 to the settlement Administrator within the Response Deadline (sixty (60) calendar days from the
3 initial mailing of the Class Notice). (*Id.*, ¶ 18; **Exh. A**, page 13, ¶ 7.5.1.) Participating Class
4 Members will also have the opportunity to object to the Settlement Agreement, by serving a copy
5 of the objection to the Settlement Administrator within the Response Deadline. (*Id.*, ¶ 18; **Exh. A**,
6 page 14, ¶ 7.7.2; Only Participating Class Members may object to the class action settlement. (*Id.*,
7 ¶ 18; **Exh. A**, page 18, ¶ 7.7.2.)

8 The parties have also agreed that Phoenix Class Action Administration Solutions shall
9 handle the notice and settlement administration, including objections and opt-outs, and the parties
10 respectfully request this Court to appoint Phoenix Class Action Administration Solutions to handle
11 those procedures. (**Exh. A**, page 11, ¶ 7.1.) The procedures for mailing notice and processing
12 exclusions and objections as well as distribution of the Net Settlement Amount is detailed in the
13 Settlement Agreement. (**Exh. A**, pages 11 – 17.)

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

15 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince*
16 *v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981)
17 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved in favor
18 of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at 473-75.)
19 The decision to certify a class is a procedural one, and should be based on the allegations in the
20 operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v.*
21 *Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

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

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

28 Whether a class is ascertainable is determined by examining the class definition, the size of

1 the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d at
2 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271.)
3 Class members are “ascertainable” where they may be readily identified without unreasonable
4 expense or time. *See Rose v. City of Hayward*, 126 Cal. App. 3d 926, 932 (1981) (finding that
5 “class members are ‘ascertainable’ where they may be readily identified without unreasonable
6 expense or time by reference to official records). Plaintiff contends, and Defendant does not dispute
7 for settlement purposes only, this requirement and the requirement of numerosity is met. Class
8 Members are all persons who worked for Defendant as non-exempt employees in the State of
9 California at any time from June 21, 2020, through January 21, 2025. (Arakelyan Decl., ¶ 20.)
10 Documents and information exchanged between the parties reflect a class of approximately 58
11 Class Members. (*Id.*, ¶ 20.) The Class Members have already been identified by reference to
12 Defendant’s payroll and personnel records. (*Id.*)

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

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

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

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

23 *Id.* at 809.

24 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
25 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the
26 Class is united in its proof. (Arakelyan Decl., ¶ 21.) Because Plaintiff has alleged a single scheme,
27 “the relevant proof [does] not vary among class members” and “clearly presents a common question
28 fundamental to all class members.” (*See In Re NASDAQ Market-Makers Antitrust Litigation*

1 (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*,
2 (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no hesitancy” in inferring class-wide
3 causation, class-wide injury, and class-wide damages when a common course of action has been
4 shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This inference ““eliminates the need
5 for each class member to prove individually the consequences of the defendants’ actions to him or
6 her.”” (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753
7 [emphasis added])).)

8 This action involves, *inter alia*, a determination about Defendant’s alleged failure to provide
9 meal period and rest periods, failure to pay hourly wages and overtime due to allegedly common
10 and unlawful policies, failure to pay vacation wages, failure to pay final wages when required, and
11 largely derivative claims under the Business & Professions Code. Plaintiff contends these practices
12 affected Class Members in the same way. Plaintiff contends these practices resulted in a failure to
13 compensate employees at termination, and incomplete wages displayed on wage statements. The
14 outcome of litigation on this matter depends upon questions that are common to Class Members.
15 (Arakelyan Decl., ¶ 21).) While Defendant maintains otherwise, these issues will not be decided on
16 the basis of facts peculiar to each Class Member, but rather on the basis of facts common to them
17 all. It is also true that these issues of liability can be determined on a class-wide basis. (*Id.*)

18 C. The Named Plaintiff’s Claims Are Typical

19 A class representative’s claims are typical when they arise from the same event, practice,
20 or course of conduct that gives rise to the claims of other putative class members, and if their claims
21 rest on the same legal theories. The class representative’s claims must be “typical” but not
22 necessarily identical to the claims of other class members. It is sufficient that the representative is
23 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
24 (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
25 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class
26 representative must have identical interests with the class members.”) Thus, it is not necessary that
27 the class representative should have personally incurred all of the damages suffered by each of the
28 other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

1 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
2 Plaintiff's claims are typical of Class Members' claims because they arose from the same factual
3 basis and are based on the same legal theories. (Arakelyan Decl., ¶ 22.) Plaintiff was employed by
4 Defendant during the Class Period, and was subject to the allegedly unlawful wage and hour
5 policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiff is a member of the
6 Class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay all wages, whether
7 Defendant failed to provide meal and rest periods, etc.), which would arise if this was an individual
8 action, applies to the other Class Members as well. The answer to these questions would determine
9 Defendant's liability to the putative class. (*Id.*) Thus, the claims of Plaintiff are typical of the claims
10 of the putative class. (*Id.*) Accordingly, the typicality requirement is satisfied.

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

12 Class Counsel are experienced in class actions, have represented their clients zealously and
13 have no conflicts of interest. (Arakelyan Decl., ¶¶ 1 – 2, 71 – 81.) The Class Representative's
14 interests are aligned with those of the Class Members, he has suffered the same injuries as the Class
15 Members and has no conflicts of interest. (*Id.* ¶ 23.) Therefore Class Counsel and the Class
16 Representative are adequate.

17 **E. Predominance and Superiority**

18 Individual issues do not predominate over those common to the class. (Arakelyan Decl., ¶
19 24.) The class action mechanism is superior to individualized actions because Class Members have
20 little incentive to bring claims that are small. (*Id.*)

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

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

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

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

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

VI. THE SETTLEMENT IS FAIR AND ADEQUATE

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

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

In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out several factors that should be analyzed in determining if a class action settlement should be approved. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status

1 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
2 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
3 participant; and (8) the reaction of the Class Members to the proposed settlement.

4 The settlement here satisfies each of these factors. Class Counsel conducted extensive
5 informal discovery before entering into meaningful settlement negotiations in this matter, including
6 a detailed analysis of Defendant's policies and a considerable sample of Defendant's time and pay
7 records. (Arakelyan Decl., ¶¶ 10-11.) This discovery permitted Class Counsel to fairly evaluate the
8 strengths of the case and the risks associated with ongoing litigation. Class Counsel is very
9 experienced in the handling of wage and hour class actions and supports this Settlement. (*Id.*,
10 Arakelyan Decl., ¶¶ 1 – 2, 71 – 81.)

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

12 Plaintiff alleges that Defendant failed pay Class Members all wages due and owing,
13 including by requiring off the clock work, failed to properly calculate and pay meal and rest break
14 premiums, failed to provide vacation wages, wages upon termination, compliant wage statements,
15 and had an unlawful rounding policy detrimental to Class Members. Plaintiff further alleges that
16 Defendant failed to provide proper meal and rest breaks or provide premium pay in lieu thereof,
17 failed to timely pay wages including final wages. (Arakelyan Decl., ¶ 34.)

18 Class Counsel felt confident that the claims in this case would be certified given that
19 Defendant's policies were applicable to all Class Members and its practices were unlawful. (*Id.*, ¶¶
20 26 – 62.) Defendant contends, however, that its policies complied with California law and denies
21 Plaintiff's allegations.

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

23 As with all litigation, there are risks that a party will not prevail on the merits. In this case,
24 Plaintiff contends that they and other Class Members were not properly provided meal periods.
25 (Arakelyan Decl., ¶¶ 42 – 43.) Defendant contends that Class Members were given a reasonable
26 opportunity to take their meal periods, and in fact received their meal periods most of the time (*Id.*,
27 ¶ 44.) If Defendant's contentions are proven true and prevail in trial, the likely outcome of this
28 claim would be no recovery for the Class Members. Plaintiff also contends that Defendant did not

1 provide Class Members with paid 10-minute rest breaks for every four hours or major fraction
2 thereof. (Arakelyan Decl., ¶ 45.) Class Members consistently worked in excess of consecutive four-
3 hour shifts and were entitled to paid rest breaks of not less than ten minutes for each consecutive
4 four-hour shift which they were denied. (*Id.*) The Class Members were systematically denied the
5 opportunity to take rest periods since they were not relieved of their duties and were consistently
6 required to work through their rest breaks due to the excessive workloads. Additionally, Class
7 Members' second rest period was either delayed due to Defendant's failure to schedule it on time,
8 or was altogether skipped because Defendant combined it with the meal period. Despite the policy
9 of prohibiting such combination of meal and rest breaks, it was common practice for Defendant to
10 do so, particularly on Thursdays, when the company provided lunch for employees. Lastly, the
11 inaccurate recordkeeping practices described above, and the off-the-clock work done by Class
12 Members resulted in the rest periods falling outside of the timeline authorized under California law.
13 (*Id.*)

14 Defendant maintains that it did provide the reasonable opportunity for Class Members to
15 take duty-free rest breaks. (Arakelyan Decl., ¶ 46.) Defendant also pointed out that, unlike meal
16 periods, rest breaks need not be recorded and Defendant disputes all allegations that breaks were
17 not received. As these considerations would likely depress the damages *vel non* ultimately awarded,
18 Class Counsel applied significant and appropriate discounts to the rest-break claim. (*Id.*)

19 Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members minimum wages
20 for all hours worked, in violation of minimum wage laws. (Arakelyan Decl., ¶¶ 38 – 39.)
21 Specifically, Plaintiff alleges Defendant unlawfully rounded down the hours Class Members
22 worked. (*Id.*) Plaintiff contends the time punches Class Members were required to input were
23 rounded and reduced to reflect the scheduled work time rather than the actual hours worked.
24 Consequently, the wage payments Defendant made to Plaintiff and Class Members did not reflect
25 the actual hours worked but rather rounded time, inputted by Defendant. (*Id.*)

26 Moreover, Plaintiff alleges Class Members were consistently required to perform work, off-
27 the-clock, for which they were not paid wages. (*Id.*, ¶ 38.) Specifically, Plaintiff and Class
28 Members were systemically required to perform pre-shift work related tasks, prior to the official

1 start of her shift, including having to arrive to work at least ten minutes before the start of the shift
2 to prepare her workstation and get ready for the day. Additionally, Plaintiff and Class Members
3 were regularly required to stay at work, after clocking out, and attend mandatory meetings, which
4 were held by the Human Resources Department and/or Defendant's owner. (*Id.*)

5 Defendant contends that it paid for all reported hours worked, that Class Members were
6 trained to record all hours worked, and that they paid proper minimum wages. (*Id.*, ¶ 40.) Defendant
7 also maintains that the allegations regarding failure to pay wages for hours worked in excess of
8 eight hours in a day did not constitute a basis for violation of Labor Code § 510. Defendant argues
9 that given their written policies and practices, any unrecorded hours were likely subject to
10 individualized inquiry and unlikely to be certified. Given the difficulty in certifying this claim,
11 Class Counsel had to apply a significant discount to damages based on this theory.

12 Plaintiff alleged Defendants issued wage statements to Plaintiff and Class Members that did
13 not accurately list all hours worked by omitting off-the-clock work and inaccurately listing
14 applicable hourly rates. (*Id.*, ¶ 48.) Defendants challenged Plaintiff's claim for Labor Code § 226(e)
15 penalties, including by arguing they were merely derivative of the other claims that lacked merit,
16 and Plaintiff's failure to prove the underlying claims could result in the dismissal of these derivative
17 claims. (*Id.*, ¶ 49.)

18 Class Counsel's expert's damages analysis revealed that Defendants had a common policy
19 and practice of systemically failing to pay Class Members the requisite vacation pay in accordance
20 with California Law, at the employees' applicable regular rates of pay. Specifically, Defendant's
21 handbook contains a vacation/Paid Time Off (PTO) policy, which delineates accrual and
22 calculation of the vacation pay. The policy failed to contain any language stating that the vacation
23 balance must be paid out to the employee at termination or at the end of employment, in general.
24 Plaintiff's and Class Members wage statements also demonstrated Defendants' failure to make such
25 payments.

26 Defendants challenged this claim, maintaining that not all employees were eligible to accrue
27 vacation pay, and even those who were eligible, did not accrue nearly as much as Plaintiff, who
28 was not like other employees for purposes of vacation pay estimates. Defendants also contended

1 that they adequately paid out all accrued vacation to employees who were eligible during the Class
2 Period.

3 **C. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

4 Given the risks outlined above, the issues in this case were complex and the risk for Plaintiff
5 and the Class Members associated with this litigation was high. (Arakelyan Decl., ¶¶ 29 – 31.)
6 Should the Parties have failed to reach a settlement, discovery disputes would have been in the
7 offing. Additionally, a class trial would have required the retention of expensive expert witnesses,
8 the accrual of extensive litigation costs, and the parties would have had to spend a substantial
9 amount of time on prepare the case for trial. (*Id.*)

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

13 **D. The Risk of Maintaining Class Action Status Through Trial.**

14 In class actions, decertification is always a possibility. There is always a risk that a trial of
15 this magnitude can become unmanageable. Given cases like *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.
16 4th 1, 34 (2014) that deal with the complexity of using statistical samples in class actions,
17 decertification is a real risk that Class Counsel must take into account.

18 **E. The Amount Offered in Settlement Is Fair and Reasonable Given the**
19 **Potential Value of Settlement.**

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

26 There are approximately 58 total Class Members who worked an estimated 3,861
27 workweeks during the class period, with an average hourly pay rate of \$39.60. Based on the data
28 provided, Class Counsel estimated the following exposures:

- \$152,895.60: for meal and rest period liability [one violation per week x 3,861 weeks x \$39.60];
- \$229,343.40: for unpaid wages and overtime [one hour of unpaid time per week x 3,861 weeks x \$59.40 (1.5 times the average rate of pay)];
- \$247,104.00: for waiting time penalties under Section 203 [8 hours x 30 days x 26 terminated employees x \$39.60];
- \$75,400: for wage statement penalties [(\$50 x 1,508 wage statements issued to class members during the one-year statutory period)];
- \$4,593.60: for unpaid vacation wages [58 class members x \$39.60 x 2 hours];

Class Counsel estimates the maximum exposure of damages and penalties at \$780,986.60. (Arakelyan Decl., ¶ 36.)

Class Counsel estimated Defendants' maximum total exposure on PAGA claims at approximately \$144,600.00 (1,446 PAGA Pay Periods x \$100). However, Class Counsel also estimated any PAGA recovery would be substantially reduced, and applied discounts in light of the countervailing arguments with regard to the other causes of action and the Court's power to award "a lesser amount than the maximum civil liability." The PAGA allocation agreed upon by the Parties therefore was \$10,000.00, subject to the Court's final approval. In addition, the Parties believes that the bulk of the recovery in this settlement should go to the employees, who suffered the harm from the violations of the Labor Code, rather than the State of California. As the Courts have discretion over the amount of PAGA penalties awarded, the Parties felt that allocating a bigger portion to the Class Settlement would be more beneficial to all employees, including the Aggrieved Employees. Also, Defendant conducted an audit of its records and corrected many of its practices after the filing of this matter, which warrants a further discount on the PAGA settlement allocation. (*Id.*, ¶ 60.)

However, taking into account the difficulties of proof, the Defendant's defenses, and other attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or other relief that the class could reasonably expect to be awarded at trial is significantly less than the maximum exposure. (*Id.*, ¶ 37.)

1 Once Class Counsel was able to determine the maximum potential damages, it was able to
2 determine a fair and reasonable settlement for the Class. (*Id.* at ¶¶ 27, 33 – 37) Class Counsel
3 analyzed the likelihood of success on the merits. (*Id.*) It believes that the Class had a reasonable
4 likelihood of success on the core claims. (*Id.*) However, Defendant disputes this contention, denies
5 all wrongdoing in this matter and is confident it has strong legal and factual defenses to Plaintiff's
6 claims. Moreover, Class Counsel determined that the likelihood of success on the claims for unpaid
7 wages, and waiting time penalties were not as strong, because various defenses including issues not
8 suitable for class treatment, no detriment to the class members over time, and *de minimis* defenses.
9 Defendant may have the opportunity to establish that it had a good faith belief that it was complying
10 with law. (*Id.* ¶ 50.) After taking into account the likelihood of success on each claim and the
11 challenges faced with certifying these claims, Class Counsel determined that the settlement amount
12 of \$150,000.00 was fair and reasonable.

13 Each of the approximately 58 Class Members will receive on average, assuming they
14 worked throughout the class period, \$1,163.79 after expenses. Since there are 3,861 workweeks at
15 issue in this settlement, each class member will receive \$17.48 per workweek after expenses (and
16 \$38.85 per workweek before expenses). Plaintiff feels that this Settlement is fair, reasonable, and
17 advantageous to the class.

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

22 As detailed at length in the accompanying Declaration of David Arakelyan, the settlement
23 is the result of extensive settlement negotiations between the parties, conducted at arm's length,
24 and informed by substantial factual and legal investigations. (Arakelyan Decl., *passim*.) Throughout
25 this case, Class Members have been represented by experienced counsel with many years of
26 experience in employment class action litigation. (Arakelyan Decl., ¶¶ 71 – 81.)

27 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
28 including but not limited to, interviewing Plaintiff on repeated occasions; drafting pleadings;

1 conducting considerable informal discovery, and meeting and conferring with defense counsel
2 about the same; reviewing and analyzing time records and various handbooks and policies,
3 Plaintiff's personnel file, and other documentation; researching California law; preparing for and
4 attending mediation; and negotiating and finalizing the Settlement Agreement and related
5 documents. (Arakelyan Decl., ¶¶ 10-11.)

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

13 These factors each indicated that the interests of Class Members are best served by a
14 settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.
15 The Settlement Agreement confers a substantial benefit on the class of up to \$150,000.00.
16 Moreover, the settlement awards for each Class Member will be tailored to their workweeks during
17 the class period. (*Id.* at ¶ 17) In addition Class Counsel secured prospective relief for the class in
18 that Defendant will ensure its policies comply with California law.

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

25 **F. The Scope of the Release**

26 The scope of the release provided by Class Members is fairly tailored to the claims that
27 were or could be asserted in the lawsuit based on the facts alleged in the complaint. (See *Amaro v.*
28 *Anaheim Arena Management, LLC* (2021) 69 Cal.App. 5th 529, 538 – 539). The Settlement

1 Agreement states that “[a]ll participating Class Members, on behalf of themselves and their
2 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
3 and assigns, release the Released Parties from (i) all claims that were alleged, or reasonably could
4 have been alleged, based on the Class Period facts stated in the Operative Complaint and
5 ascertained in the course of the Action, including any and all claims involving any alleged (1)
6 failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay hourly wages
7 and overtime; (4) failure to pay proper vacation wages; (5) failure to provide accurate written wage
8 statements; (6) failure to timely pay all final wages; (7) unfair competition; and (8) PAGA Penalties
9 during the PAG Period.” (the “Released Class Claims”). (**Exh. A**, page 10, ¶ 5.2.) Participating
10 Class Members do not release any other claims, including claims for vested benefits, wrongful
11 termination, violation of Fair Employment and Housing Act, unemployment insurance, disability,
12 social security, workers’ compensation, or claims based on facts occurring outside the Class
13 Period.” (*Id.*, ¶ 5.3.) The effective date of the release is the date when Defendant fully funds the
14 Gross Settlement Amount, and all employer payroll taxes owed on the Wage Portion of the
15 Individual Class Payments. (*Id.* at ¶ 5)

16 **G. Plaintiff’s Release**

17 Plaintiff and her respective former and present spouses, representatives, agents,
18 attorneys, heirs, administrators, successors, and assigns generally, releases and discharges Released
19 Parties from all claims, transactions, or occurrences that occurred during the Class Period,
20 including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based
21 on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably
22 could have been, alleged based on facts contained in the Operative Complaint, Plaintiff’s PAGA
23 Notice, or ascertained during the Action and released under paragraph 6.2, below. (“Plaintiff’s
24 Release.”) Plaintiff’s Release does not extend to any claims or actions to enforce this Agreement,
25 or to any claims for vested benefits, unemployment benefits, disability benefits, social security
26 benefits, workers’ compensation benefits that arose at any time, or based on occurrences outside
27 the Class Period. (Arakelyan Decl., **Exh. A**, page 9, ¶ 5.1.)

28 The Parties agree that the Settlement excludes a release of any claims or relief sought by

1 Plaintiff in the worker's compensation matter entitled Do v. Recor Medical Inc, EAMS Case
2 Number ADJ19141657, filed on April 17, 2024, with the Worker's Compensation Appeals Board,
3 San Jose (SJO-ADJ). *Id.* Additionally, the Parties agree that Plaintiff's Release does not release
4 any claims Plaintiff has for wrongful termination or disability discrimination, which have been
5 addressed separately pursuant to an individual settlement agreement addressing those claims. (*Id.*)

6 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition
7 to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that
8 Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or
9 additional facts or Plaintiff's discovery of them. *Id.*

10 For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the
11 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

12 A general release does not extend to claims that the creditor or releasing party does not
13 know or suspect to exist in his or her favor at the time of executing the release, and that if
14 known by him or her would have materially affected his or her settlement with the debtor
or Released Party.

15 (Arakelyan Decl., **Exh. A**, page 10, ¶ 5.1.1)

16 **H. Release by Aggrieved Employees**

17 All Non-Participating Class Members who are Aggrieved Employees are deemed to
18 release, on behalf of themselves and their respective former and present representatives, agents,
19 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
20 PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA
21 Period facts stated in the Operative Complaint, and the PAGA Notice and ascertained in the
22 course of the Action. (Arakelyan Decl., **Exh. A**, page 10, ¶ 5.3)

23 **I. The Presence of a Governmental Participant**

24 On June 13, 2025, Plaintiff submitted the Class Action and PAGA Settlement Agreement
25 and Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement and
26 supporting documents to the LWDA. A true and correct copy of the confirmatory email from the
27 LWDA is attached hereto as **Exhibit C**. (Arakelyan Decl., ¶ 32)

1 **J. Allocation of the Settlement for Tax Purposes**

2 20% of each Class Member’s Individual Class Payment, about \$232.75 of the \$1,163.79
3 average individual Settlement Award to each Class Member will be allocated to settlement of wage
4 claims (the “Wage Portion.”) (Arakelyan Decl., **Exh. A**, ¶ 3.2.4.1). The Wage Portions are subject
5 to tax withholding and will be reported on an IRS W-2 Form. *Id.* The remaining 80% of the average
6 gross individual Settlement Award to each Class Member will be allocated to will be allocated to
7 settlement of claims for interest and penalties (the “Non-Wage Portion.”) *Id.* The Non-Wage
8 Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. *Id.* The
9 Class Notice provides this information to Participating Class Members. Class Notice, Pg. 5,
10 Paragraph 4.

11 Defendant will separately pay employer payroll taxes it owes on the Wage Portion.
12 (Arakelyan Decl., ¶ 14; **Exh. A**, page 5, ¶ 3.1; page 8, ¶ 4.3; page 9, ¶ 5.). Moreover, the Individual
13 PAGA Payments are counted as penalties rather than wages for tax purposes. **Exh. 1**, Pg. 5,
14 Paragraph 4.

15 **K. Unclaimed Funds**

16 The Settlement Agreement does not provide for a *cy pres*. Instead, for any Class Member
17 whose Individual Class Payment check is uncashed and canceled after the void date, the
18 Administrator shall transmit the funds represented by such checks to Legal Aid At Work thereby
19 leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure
20 Section 384, subd. (b). (**Exh. A**, page 9, ¶ 4.4.3)

21 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT IS FAIR AND**
22 **REASONABLE**

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

26 Plaintiff is entitled to reasonable service payments for her efforts and initiative in bringing
27 and helping to prosecute this class action. Plaintiff spent significant time better apprising herself of
28 her rights, deciding whether remedial action should be taken, how it should be taken, searching for
///

1 attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing their case
2 and the law. (Arakelyan Decl., ¶¶ 66 – 67; Do Declaration (Patterson Decl.) ¶¶ 1 – 18.) In the end,
3 Plaintiff decided to vindicate not only his own rights but also those of his co-workers by filing a
4 class action lawsuit. (Arakelyan Decl., ¶ 66.)

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

12 But Plaintiff did not allow her fear of the potential repercussions of being a class
13 representative deter her from acting for the benefit of Class Members. (Arakelyan Decl., ¶ 64;
14 Patterson Decl. ¶ 14.) To the contrary, Plaintiff has been intimately involved in this case since its
15 inception. (Arakelyan Decl., ¶ 67.) She has devoted a substantial amount of time to helping Class
16 Counsel effectively develop and prosecute this action at every stage of the litigation. (*Id.*; Do Decl.,
17 ¶ 11.) Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel to
18 discuss every aspect of this case; Plaintiff has provided Class Counsel with information about
19 Defendant and about the industry generally, reviewed documents, consulted Class Counsel
20 throughout the litigation, participated in the mediation process, monitored the progress of the
21 litigation with Class Counsel, and reviewed and signed the settlement agreement. (Arakelyan Decl.,
22 ¶ 64; Do Decl., ¶ 11 – 12.)

23 Plaintiff has spent a significant amount of time with Class Counsel detailing her knowledge
24 of Defendant's practices. (*Id.*, ¶¶ 66 – 67.) She has diligently, adequately, and fairly represented
25 Class Members, and has not placed his interests above any member of the putative class. (*Id.*) This
26 sort of payment to a class representative has been a common feature of settlements negotiated by
27 Class Counsel and has been routinely approved by trial courts. (*Id.*)

28 In light of the foregoing, Class Counsel believes that the incentive award in the amount of

1 \$5,000.00 to the Class Representative is fair and reasonable. (Arakelyan Decl., ¶ 68; Do Decl., ¶
2 18.)

3 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE**
4 **CLASS MEMBERS.**

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

12 The Class Notice (**Exhibit 1** to the Settlement "Class Notice") meets constitutional
13 standards because it provides all the information a reasonable person would need to make a fully
14 informed decision about the settlement. It will notify all class members of the terms of the
15 settlement, of its effect on their rights, of their options as class members (i.e., participate, object,
16 opt out, do nothing), and of the consequences of exercising those options. (Arakelyan Decl., ¶¶ 69
17 – 70, Ex 1, "Class Notice".) Moreover, the Class Notice will specifically direct any class members
18 who have questions or concerns to contact the Settlement Administrator, Phoenix Class Action
19 Administration Solutions, or Class Counsel. (*Id.*)

20 The Parties have jointly agreed to the language of the Class Notice and have also agreed
21 that a Spanish translation of the notice does not need to be provided to Class Members due to
22 Defendant's representations that all Class Members speak English (*Id.*). The Parties will also
23 maintain a settlement website. Plaintiff solicited a bid for settlement administration costs. The
24 Parties jointly chose Phoenix Class Action Administration Solutions ("Phoenix") as the
25 administrator based on the quote that was fair and reasonable in light of the class size as well as the
26 experience of the administrator. Both Parties have worked with Phoenix Class Action
27 Administration Solutions in the past, and believe that it can competently and properly administer
28 the notice to class members. Phoenix provided a bid, which estimates the cost of administering the
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1 notice to Class Members to be \$5,000, which includes the costs of printing the Notice, mailing and
2 remailing, handling telephone calls from Class Members, and other functions generally performed
3 by administrators. (See Declaration of Jodey Lawrence, on file herein)

4 The standard for determining the adequacy of notice is whether the notice has “a reasonable
5 chance of reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975)
6 50 Cal.App.3d 960, 974.) The Judicial Council of California’s Deskbook on the Management of
7 Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual notice by mail is
8 preferred when possible and dissemination of combined certification/settlement notice is a common
9 and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.)

10 Here, the Class Notice will be sent via first-class mail to each class member. (Arakelyan
11 Decl., ¶ 18.) The Class Notice shall be mailed to Class Member not later than 14 (fourteen) days
12 after the Settlement Administrator receives the Class Data/Class List from Defendant. (*Id.*) The
13 Class List has not been delivered to the Settlement Administrator by Defendant at this time, but
14 must be delivered within fifteen (15) days after the Court Grants Preliminary Approval of
15 Settlement. (**Exh. A**, page 7, ¶ 4.2.) If any Class Notices are returned undeliverable without a
16 forwarding address, the Settlement Administrator will use the national change of address database
17 and perform a skip trace to locate the class member and mail a new Class Notice to him or her at
18 the correct address. (Arakelyan Decl., ¶¶ 69.) Thus, most, if not all, class members will likely
19 receive the Class Notice.

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

23 Within fourteen (14) days after Defendant fully funds the GSA, the Administrator will mail
24 checks for all payments, as described in the Settlement Agreement (Arakelyan Decl., **Exh. A**, page
25 8, ¶ 4.4.). The Administrator will issue checks for the Individual Class Payments and send them to
26 the Class Members via First Class U.S. Mail. The face of each check shall prominently state the
27 date (180 days after the date of mailing) when the check will be voided (“Void Date”). The
28 Administrator will cancel all checks not cashed by the Void Date. The Administrator will send

1 checks for Individual Settlement Payments to all Participating Class Members (including those for
2 whom the Class Notice was returned undelivered). Before mailing any checks, the Settlement
3 Administrator must update the recipients' mailing addresses using the National Change of Address
4 Database. (**Exh. A**, page 8, ¶ 4.4.1) For any Class Member whose Individual Class Payment check
5 is uncashed and canceled after the void date, the Administrator shall transmit the funds represented
6 by such checks to Legal Aid At Work, thereby leaving no "unpaid residue" subject to the
7 requirements of California Code of Civil Procedure Section 384, subd. (b). (**Exh. A**, page 9, ¶
8 4.4.3)

9 The Notice also properly informs Class Members that settlement payment is conditioned on
10 the entry of judgement in this matter as to all settlement class members. (See **Exhibit 1**, p. 1. ¶ 5;
11 and p. 4, ¶ 1.)

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

13 Non-settling parties and third parties periodically may attempt to object to proposed class
14 action settlements, but the right of non-settling parties to object at the final settlement approval
15 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
16 members have standing to object to a proposed settlement. "Beginning from the unassailable
17 premise that settlements are to be encouraged, it follows that to routinely allow non-class members
18 to inject their concerns via objection at the settlement stage would tend to frustrate this goal."
19 (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.)

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 seek
23 an award of fees of no more than Fifty Thousand Dollars and Zero Cents (\$50,000.00),
24 approximately one-third of the Gross Settlement Amount, and actual reasonable litigation costs in
25 an amount not to exceed Fifteen Thousand Dollars (\$15,000.00). The requested fees are fair
26 compensation for a law firm involved in undertaking complex, risky, expensive, and time-
27 consuming litigation solely on a contingent basis. (Arakelyan Decl. ¶¶ 64 – 65.) Defendant will not
28 oppose Class Counsel's above fees and cost request.

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

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

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

25 The attorneys' fees request provided for in the Settlement Agreement is commensurate with
26 judicial precedent. Both state and federal courts regularly approve fee awards equal to or greater
27 than the percentage requested in this case. (*See, e.g., In re Pacific Enterprises Securities Litigation*
28 (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re*

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

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

17 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive any
18 compensation until recovery is obtained. (See Arakelyan Decl., ¶¶ 13, 30 – 31, 65.) The Court
19 should also consider the benefit obtained by Class Counsel on behalf of class members. Thus, the
20 requested award for Class Counsel is reasonable.

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

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

- 25 1. Review and approve the Settlement Agreement;
- 26 2. Review and approve the Class Notice, attached as **Exhibit 1** to the Settlement Agreement;
- 27 3. Consider and determine that the proposed class action settlement as set forth in the
28 Settlement Agreement preliminarily appears fair, reasonable, and adequate;

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

4 5. Approve and appoint D.Law, Inc. to serve as Class Counsel for settlement purposes;

5 6. Approve and appoint Phoenix as the Administrator to handle the notice and claims
6 procedures as set forth in the Settlement Agreement;

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

8 8. Order Defendant to disclose to Phoenix the names, last-known mailing addresses, last
9 known telephone numbers, Social Security numbers, and the number of Class Period workweeks
10 and PAGA Period workweeks as set forth in the Settlement Agreement;

11 9. Order Phoenix to mail the Class Notice to Class Members; and

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

13
14 Dated: June 13, 2025

Respectfully submitted,

15 D.LAW, INC.

16 By: /s/ David Arakelyan

17 David Yeremian

18 David Keledjian

David Arakelyan

Attorneys for Plaintiff VALERY DO on behalf
19 of himself and others similarly situated
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