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Samantha LaFrance and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

SAMANTHA LAFRANCE, individually, and on behalf of other members of the general public similarly situated,

Plaintiff,

v.

BLUE CLOUD PEDIATRIC SURGERY CENTER, LLC, a Delaware limited liability company; BLUE CLOUD INVESTMENT HOLDINGS LLC, a Delaware limited liability company; and DOES 1 through 10, inclusive,

Defendants.

Case No. 24CV05452
Assigned to: Hon. James F. Rigali

PLAINTIFF SAMANTHA LAFRANCE'S

(1) NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; AND

(2) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

[*Declaration of Camron Dowlatshahi and Declaration of Samantha LaFrance filed concurrently; (Proposed) Order lodged concurrently*]

Date: June 30, 2026
Time: 8:30 a.m.
Dept: SM 2

Complaint Filed: September 26, 2024
Trial Date: None Set

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

PLEASE TAKE NOTICE that on June 30, 2026 at 8:30 a.m., or as soon thereafter as the case may be heard, in Department SM 2 of the Santa Barbara County Superior Court of the State of California, located at 312 East Cook Street, Building E, Santa Maria, CA 93454, Plaintiff Samantha LaFrance ("Named Plaintiff" or "Plaintiff"), on behalf of herself and all others similarly situated and aggrieved, will and hereby does move for Preliminary Approval of the proposed Class Action Settlement and Representative Action Settlement in this case.

This Motion is unopposed and based on the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement"), which is attached to the concurrently filed Declaration of Camron Dowlatshahi as **Exhibit 1**. Plaintiff further moves for an Order that:

1. Certifies a class for settlement purposes only;

2. For purposes of settlement, designates Plaintiff Samantha LaFrance as the Class Representative, and Camron Dowlatshahi, Arash Sadat, and Mir Raza of the law firm of Mills Sadat Dowlat LLP as Class Counsel;

3. Confirms ILYM Group, Inc. as the Settlement Administrator;

4. Approves, as to form and content, the Class Notice attached as Exhibit A to the Settlement Agreement submitted in support of this Motion;

5. Approves the form and content of the proposed method of participation in the settlement, requesting exclusion from the settlement, or objecting to the settlement;

6. Grants preliminary approval of the Class Action and PAGA Settlement; and

7. Sets a Final Approval and Settlement Fairness Hearing on the first available date on or after June 30, 2026 to provide time for the notice process and preparation of and proper service of the Motion for Final Approval.

This Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the concurrently filed declarations of Samantha LaFrance and Camron Dowlatshahi and exhibits attached thereto, argument of counsel and upon such other material contained in the file and pleadings of this action.

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Dated: April 22, 2026

MILLS SADAT DOWLAT LLP

By: ______________________

Camron Dowlatshahi

Attorneys for Plaintiff Samantha LaFrance and the Putative Class

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 13, 2024, Plaintiff Samantha LaFrance ("Plaintiff," "Named Plaintiff," or "Ms. LaFrance") sent a demand letter to her former employers, Blue Cloud Pediatric Surgery Center, LLC and Blue Cloud Investment Holdings LLC (collectively, "Defendants" or "Blue Cloud"), requesting her personnel file and payroll records in furtherance of putative wage and hour claims, including for unpaid meal and rest break premiums, inaccurate wage statements, and penalties for unpaid wages as well as other related penalties.

On September 23, 2024, counsel for Ms. LaFrance (hereinafter "Plaintiff's Counsel" or "Class Counsel") submitted to the California Labor and Workforce Development Agency ("LWDA") a Private Attorneys General Act ("PAGA") notice pursuant to Labor Code section 2699.3. The notice included allegations against Defendants regarding failure to provide meal and rest breaks, failure to pay premiums, failure to pay overtime at the proper overtime rate, inaccurate wage statements, and unpaid wages. Plaintiff received no indication that the LWDA intended to investigate.

On September 26, 2024, Plaintiff filed in the Superior Court of the State of California, County of Santa Barbara, Case No. 24CV05452 (the "Action"), asserting the following claims against Defendants:

(a) Failed to pay minimum wage for all hours worked in violation of California Labor Code §§ 1182.12, 1194, 1194.2, 1197 and 1197.1; §§ 1194 and 1198;

(b) Failed to pay overtime compensation in violation of California Labor Code §§ 1194 and 1198;

(c) Failed to provide meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;

(d) Failed to provide rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;

(e) Failed to indemnify necessary business expenses in violation of California Labor Code § 2802;

(f) Failed to pay waiting time penalties in violation of California Labor Code §§ 201-203;

(g) Failed to provide accurate wage statements in violation of California Labor Code § 226;

(h) Violated California Business and Professions Code § 17200 *et seq*.; and

(i) Violated the Private Attorney General Act, Cal. Labor Code §§ 2698, *et seq*.

On March 26, 2025, the Parties filed a joint stipulation granting Plaintiff leave to file a first amended complaint to redefine the proposed class. On April 8, 2025, pursuant to the Parties' stipulation, the Court granted Plaintiff leave to file a First Amended Complaint, which corrected the definition of the proposed class. The First Amended Complaint was filed on April 15, 2025.

On July 30, 2025, the Parties participated in an all-day mediation presided over by Michael Mandel, a respected mediator of wage and hour representative and class actions. Following the mediation, each side, represented by its respective counsel, were able to agree to settle the Action based upon a mediator's proposal, which was memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties entered into a long-form settlement agreement.

While finalizing the long-form Settlement Agreement, the Parties agreed that Plaintiff would file an amended complaint and an amended LWDA PAGA notice letter adding Blue Cloud Investment Holdings LLC as a defendant in this Action. Pursuant to the Parties' joint stipulation, the Court granted Plaintiff leave to amend on April 14, 2026. Plaintiff thereafter filed the Second Amended Complaint on April 22, 2026, which is now the operative complaint in this Action (the "Operative Complaint"). Plaintiff also filed the Amended PAGA Notice Letter on April 22, 2026.

Prior to mediation, Plaintiff obtained necessary documents and information to sufficiently investigate the claims such that Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*"). In particular, Plaintiff's Counsel obtained, through informal discovery, meal and rest break policies and overtime policies, as well as the estimated number of pay periods, workweeks, and class members from December 2021 to May 2025. In addition, Plaintiff's Counsel reviewed and analyzed a sampling of time and payroll records for putative class members and aggrieved employees. Plaintiff's Counsel, through Plaintiff's expert statistician, conducted a statistical analysis of the information and presented the information during mediation. Plaintiff's Counsel also investigated the law as applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the potential damages claimed by Plaintiff.

Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.

While Defendants denied, and continue to deny, each of the allegations asserted in the litigation, the Parties tentatively agreed upon terms to settle the litigation on a class and representative basis after considering the sharply disputed factual and legal issues involved in this Action, the risks associated with further prosecution, and the substantial benefits to be received pursuant to the compromise and settlement of the Action.

II. <u>THE SETTLEMENT</u>

Subject to court approval pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.679, *et seq.*, Plaintiff and Defendants have agreed to settle the Action by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached to the concurrently filed Declaration of Camron Dowlatshahi ("Dowlatshahi Decl.") as Exhibit 1. A summary of the terms of the settlement is as follows:

- Defendants will stipulate, for the purposes of this settlement only, to certification of a class defined as: all individuals who were employed by Defendant and/or the Released Parties in California and classified as a non-exempt, hourly W-2 employee at any time from September 26, 2020 through September 30, 2025 (the "Class Period" and each individual in the class a "Class Member") (Dowlatshahi Decl., Exhibit 1, ¶¶ 1.5, 1.9, 1.13);
- Defendants shall pay a total of $945,000.00, which is referred to hereafter as the Gross Settlement Amount (*id.*, ¶ 1.22, 3.1);

- Defendants shall additionally be responsible for payment of the employer portion of payroll taxes due on the wage portion of each Individual Class Payment (*id.*, ¶ 3.1);
- An Individual Class Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks (*id.*, ¶ 3.3(a));
- The Administration Expenses, not to exceed $6,850.00, will be paid out of the Gross Settlement Amount (*id.*, ¶ 3.2(c));
- Class Counsel will apply for, and Defendants will not oppose, attorneys' fees of not more than one-third (1/3) of the Gross Settlement Amount, which fees are currently estimated to be $315,000.00, and Class Counsel Litigation Expenses of not more than $20,000.00, all of which will be paid out of the Gross Settlement Amount (*id.*, ¶ 3.2(b));
- Class Counsel will apply for, and Defendants will not oppose, an enhancement award of not more than $5,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member) to the Plaintiff (the "Class Representative Service Payment"), which will be paid out of the Gross Settlement Amount (*id.*, ¶ 3.2(a));
- All Participating Class Members will release Defendants and all other Released Parties from all claims that were alleged in or reasonably could have been alleged based on the facts occurring during the Class Period as stated in the PAGA Notices or the Operative Complaints. Except as set forth in Exhibit 1 at ¶ 6.3, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside of the Class Period (*id.*, ¶ 6.2);
- Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). Wage Portions

are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 80 percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, expense reimbursement, interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS Forms 1099. Participating Class Members assume full responsibility and liability for any taxes owed on their Individual Class Payment (*id.*, ¶ 3.3(a)i.);

- Defendants have agreed to pay $75,000.00 as PAGA Penalties, with seventy-five percent (75%) or $56,250.00 of which will be paid to the LWDA, and twenty-five percent (25%) or $18,750.00 of which will be allocated to the Individual PAGA Payments (*id.*, ¶ 3.2(d))—all of which shall be paid out of the Gross Settlement Amount;
- The PAGA Period means the period from September 23, 2023 through September 30, 2025 (*id.*, ¶ 1.31); and
- Participating Class Members will have 180 days from the date of mailing of the check to cash their check. The face of each check shall prominently state the "void date." The Administrator will cancel all checks not cashed by the void date. (*Id.*, ¶ 5.2.) For any check uncashed or cancelled after the void date, the Administrator shall transmit the funds represented by such checks to Legal Aid at Work, a Court-approved nonprofit organization or foundation consistent with California Code of Civil Procedure section 384, subdivision (b) ("Cy Pres Recipient"). (*Id.*, ¶ 5.4.)

III. <u>THE TWO-STEP APPROVAL PROCESS</u>

Any settlement of class litigation must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review after notice has been distributed to the class members for their comment or objections. The Manual for Complex Litigation Second states at section 30.44:

> A two-step process is followed when considering class settlements ... if the proposed settlement appears to be the product of serious, 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. (*Id.* at § 10 (1985).)

Thus, the preliminary approval of the trial court is simply a conditional finding that the settlement appears to be within the range of the acceptable settlements. As class action Professor Herbert B. Newberg comments, "The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer or is presumptively valid subject only to any objections that may be raised at a final hearing." (4 Conte & Newberg, Newberg on Class Actions ["Newberg on Class Actions"], § 11.26 (4th Ed. 2002).)

The procedures for submission of a proposed settlement for preliminary approval is discussed at section 11.24 through 11.26 of Newberg on Class Actions. Newberg observes at section 11.24:

> When the parties to an action reach a monetary settlement, they will usually prepare and execute a joint stipulation of settlement, which is submitted to the court for preliminary approval. The stipulation should set forth the central terms of the agreement, including but not limited to, the amount of the settlement, form of payment, manner of determining the effective date of settlement, and any recapture clause.

The Settlement Agreement in this case is fair, reasonable, and in the best interest of the class.

IV. <u>THE PRESUMPTION OF FAIRNESS</u>

A trial court has broad powers to determine whether a proposed settlement in a class action is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) A class action settlement is presumptively fair if it was reached through arm's-length negotiations between experienced counsel after extensive investigation, litigation, and discovery. (*Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California's public policy goal of favoring settlements. (*Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 ["public policy generally favors the compromise of complex class action litigation"].)

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 on Class Actions, § 11.51; *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation* (N.D. Cal. May 17, 2017) No. 16-cv-00295, 2017 WL 2214655 (citing *United States v. Oregon* (9th Cir. 1990) 913 F.2d 576, 580).)[1]

Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. (*Hammon v. Barry* (D.D.C. 1990) 752 F.Supp. 1087, 1093 [citing Newberg on Class Actions, § 11.44, p. 457 and *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F.Supp. 471]; *In re Ikon Office Solutions, Inc. Securities Litigation* (E.D. Pa. 2002) 209 F.R.D. 94, 104 [citing *Sommers v. Abraham Lincoln Federal Savings & Loan Association* (E.D. Pa. 1978) 79 F.R.D. 571, 576].)

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in litigation for some period of time, appear to be competent, have experience with this type of litigation, and have obtained substantial data from the opposing party. (*See* Newberg on Class Actions, § 11.47.) In these Actions, the settlement was reached after extensive factual and legal research, informal discovery disputes, discussions between Class Counsel and the putative class member, preparation of damages analyses, and mediation with experienced employment class action mediator, Michael Mandel.

The settlement that has been reached, subject to this Court's approval, is the product of tremendous effort and a great deal of expense by the Parties and their counsel. It is, of course, a compromise figure. However, counsel for the Parties are satisfied that this figure is reasonable in light of the risks and expense of continued litigation.

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[1] This Motion occasionally cites federal case law and commentaries thereon which construe authority for conditional class certification and settlement approval in California courts. The California Supreme Court has authorized and urged California's trial courts to use federal resources for guidance in considering class issues. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-46.)

V. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON OBJECTIVE EVIDENCE

A. The Circumstances of the Settlement Support Preliminary Approval

A proposed settlement is presumed to be fair when the following factors are present: (1) it is reached through arm's-length negotiations; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk*, 48 Cal.App.4th at p. 1802.) As analyzed above, the first three elements are satisfied here.

The circumstances of the settlement support preliminary approval. The law favors the settlement of lawsuits, particularly in class actions and other complex cases. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ["Voluntary conciliation and settlement are the preferred means of dispute resolution."].) Here, the settlement resolves a putative class and representative action.

In determining whether the settlement is actually within the range of fairness, courts consider additional factors such as the strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status throughout trial, the amount offered in settlement, and the experience and views of counsel. (*Hanlon v. Chrysler Corp.* (1998) 150 F.3d 1011, 1026, *overruled on other grounds by Wal-Mart v. Dukes* (2011) 564 U.S. 338; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128; *Dunk*, 48 Cal.App.4th at p. 1794, 1800-1801; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) Furthermore, courts give "proper deference to the private consensual decision of the parties[.]" (*Hanlon*, 150 F.3d at p. 1027.)

Here, applying a *Dunk/Kullar* analysis, the settlement is fair and reasonable based on objective evidence. The settlement that has been reached, subject to this Court's approval, is the product of substantial effort by the Parties and their counsel. The settlement was reached after extensive factual and legal investigation and research, a review of pleadings, informal discovery, exchanges of documents and information, statistical analysis of Defendants' employee data, review of Defendants' employment policies, discussions with Plaintiff and other witnesses regarding Defendants' wage practices, correspondence and negotiation between counsel, settlement discussions prior to mediation, a full day of mediation, review of evidence and rulings in similar actions litigated elsewhere in the state, and a review of similar cases in the same industry elsewhere in the country. The settlement amount is, of course, a compromise figure. It considered the risks related to class certification, liability, damages, and all the defenses asserted by Defendants.

Plaintiff asserts that the wage and hour claims and the claims for resulting penalties would be certified. On the other hand, Defendants argued that: Plaintiff cannot meet the requirements of class certification as it claims that any wage discrepancies are not the product of an overarching policy or practice that was uniformly applied; and that Defendants' meal and rest period policies are/were compliant. Defendants further contend that class certification would not be warranted because individual liability issues predominate over any class allegations.

While Plaintiff believes in her chances of success in certifying the claims if permitted, Plaintiff also recognized the potential risk, expense, and complexity posed by litigation on a class basis. Plaintiff's claims in this Action—claims that involve numerous Class Members during the Class Period working with Defendants—would require substantial preparation and discovery and ultimately would involve the deposition and presentation of numerous more witnesses (including Class Members and expert witnesses), as well as the consideration, preparation, and analysis of expert reports. Therefore, further class litigation, if permitted, would have carried with it significant expense incurred by each side (above and beyond the tens of thousands of dollars of expense already incurred).

Again, Plaintiff and Defendants have very strong, and opposing, positions on liability in this case. Defendants denies any wrongdoing of any kind associated with the claims alleged in the Action, and further denies that, for any purpose other than that of settling this lawsuit, the allegations in the Action are appropriate for class treatment. In light of the sharply contested legal and factual issues, the risks of continued litigation, and substantial benefits to Class Members under the settlement, the terms and conditions of this class settlement are fair and reasonable to all sides.

B. <u>The Settlement Amount Is Well Within the Range of Reasonableness</u>

To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar,* 168 Cal.App.4th at pp. 116, 133.) The Court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Ibid.*) In making this determination, courts require "a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 [internal citation omitted].) The settlement amount reached in this case provides significant recovery to participating Class Members, based on the circumstances, and easily falls within the range of reasonableness.

Based on payroll and employee data produced by Defendants prior to mediation, approximately 215 individuals were employed by Defendants during the class period, including roughly 130 former employees. The average hourly rate for employees during this period was $33.88, and the data reflected approximately 21,505 total workweeks. For PAGA purposes, there were an estimated 3,724 pay periods at issue since September 26, 2023.

Plaintiff contends that Defendants are liable for numerous violations of California wage and hour laws. Plaintiff contends that she and other Class Members were rarely able to take rest breaks, often took lunch breaks late, and were frequently working or interrupted during their lunch breaks. Defendants' employees routinely worked around the clock and were not provided with premium pay or proper overtime pay for all hours worked.

The financial remedies available to the Class stem from damages and/or penalties for the claims for unpaid wages and meal and rest break violations. The following outlines Class Counsel's estimation of the maximum potential value of these claims and any basis for the discounting thereof.

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1. Failure to Provide Rest Breaks

Plaintiff contends that by failing to provide her and other Class Members rest breaks altogether, Defendants will be liable for premium pay of at least one hour of pay per weekday for every employee. The average hourly rate of all Class Members during the Class Period was approximately $33.88. Assuming a rest period violation occurred during 100% of shifts, Defendants would be liable for approximately $2,668,016 in damages. At a 50% violation rate, damages would be approximately $1,334,008. Even at a conservative 25% violation rate, damages would still total well into the six figures at $667,004. Therefore, for the Class, Defendants conservatively owes approximately $667,004 in unpaid premium pay for rest breaks alone.

2. Failure to Provide Uninterrupted Off-Duty Meal Breaks

Plaintiff alleges that Defendants failed to ensure that Class Members received timely, uninterrupted off-duty meal breaks. Defendants routinely failed to provide adequate staffing or shift coverage, making it impossible for employees to take full and timely meal and rest breaks. Even when employees did clock out, their meal breaks were frequently delayed, interrupted, or cut short due to ongoing work responsibilities.

Further, Defendants failed to pay any premium pay for missed meal and rest breaks for two full years during the class period. When Defendants began paying premium pay in 2024, it failed to do so accurately.

Assuming no meal breaks were waived, Defendants would be liable for approximately $2,591,481 in premium pay at a 100% violation rate. Defendants contend that they have paid at least 3,368 meal period premiums during the class period. Even taking these payments into account, Plaintiff argued that Defendants would still owe approximately $1,708,568 in premium pay for non-compliant meal breaks.

3. Inaccurate Wage Statements

Plaintiff asserts that Defendants failed to provide accurate wage statements to Class Members. As a result, it is liable for penalties up to the statutory maximum of $4,000 per employee (*i.e.*, 215 employees), totaling approximately $860,000.

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4. Waiting Time Penalties

Plaintiff argues that because Defendants failed to pay premium pay and overtime, it owes waiting time penalties equivalent to a day's wages to each former employee for 30 days. For approximately 130 former employees, Defendants owe an estimated $1,057,056 in waiting time penalties.

5. PAGA Penalties

Plaintiff contends that based on the fact that there are 130 aggrieved employees, Defendants will be liable for significant PAGA penalties and class damages. With respect to PAGA, there is a reasonable dispute as to whether PAGA penalties stack. Numerous cases have held that under PAGA more than one civil penalty may be imposed per employee, per pay period for different Labor Code violations. These cases include:

- *Schiller v. David's Bridal, Inc*. (E.D. Cal. Jul. 14, 2010) No. 1:10-cv-00616-AWI-SKO, 2010 U.S. Dist. LEXIS 81128 [PAGA penalties aggregate for the purpose of determining amount in controversy];
- *Pulera v. F&B, Inc*. (E.D. Cal. Aug. 18, 2008) No. 2:08-cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, at *2–3 [same]; and
- *Smith v. Brinker Int'l, Inc.* (N.D. Cal. May 5, 2010) No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS 54110 [stacking PAGA claims for the purpose of calculating the amount in controversy].

The California Court of Appeal has reached a similar conclusion. (*See Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330 [holding that plaintiff alleging Labor Code violations can recover both PAGA penalties and statutory penalties under governing Labor Code provisions]; *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365 [same].)

Here, Plaintiff asserts that Defendants committed at least five separate Labor Code violations per employee, per pay period, as set forth in the First Amended Complaint—failure to provide uninterrupted off-duty meal periods, failure to provide rest periods, failure to provide accurate wage statements, and failure to pay wages upon termination. Plaintiff argues that given the 3,724 PAGA pay periods and assuming $100 for initial and subsequent violations, Defendants will be liable for $2,398,853 if penalties stacked.

Despite this potential recovery, given that PAGA penalties would likely be deemed duplicative of other penalties awardable here, given the extreme "haircuts" many courts are giving to PAGA penalties, and given the presence here of class-action allegations (the absence of which often being the reason so-called "Plan B" PAGA penalties are sought to begin with), PAGA penalties were discounted.

Nevertheless, the amount of PAGA civil penalties to be paid from the Gross Settlement Amount is fair to those affected (*see Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77) and is allocated at twenty-five percent (25%) to the Aggrieved Employees ($18,750.000) and seventy-five percent (75%) to LWDA ($56,250.00).

6. Gross Settlement Amount

Class Counsel obtained a Gross Settlement Amount of $945,000.00. This Gross Settlement Amount represents a significant recovery. Class Counsel considers this to be a fair, reasonable and adequate settlement for Class Members, when considering all issues and risks related to liability, the hurdles to class certification, and considering the case law regarding fair, reasonable, and adequate settlements. (*See, e.g.*, *Officers for Justice v. Civil Service Comm'n* (9th Cir. 1992) 688 F.2d 615, 628 ["It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not . . . render the settlement inadequate or unfair."])

VI. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Class Counsel seeks an attorneys' fees award of not more than one-third (1/3) of the Gross Settlement Amount, which fees are currently estimated to be $315,000.00, and Class Counsel Litigation Expenses of not more than $20,000.00. The requested fee falls well within the historical range of attorneys' fee awards under the common fund theory, which is generally from 25 to 50 percent. The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis. Indeed, this case was litigated with conflict between counsel, including whether penalties could be obtained for aggrieved employees in the form of unpaid wages, and the approximate number of class members and violations.

Moreover, when information was obtained through formal and informal means, extensive work was performed by Class Counsel, including the review of voluminous records and analyses regarding the certifiability and merits of Plaintiff's claims, the merits of those claims, and what damages would be recoverable. Additionally, thousands of dollars were expended, including in filing fees, retainer fees for expert statisticians to analyze Defendants' data, and to attend mediation to try to resolve this Action.

The California Supreme Court has expressly recognized that the awarding of a percentage of the "common fund" created as a result of the settlement is an appropriate method for the calculation of an attorneys' fees award in a class action. (*Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503-504.) The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *see also Laffitte*, 1 Cal.5th at p. 489.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California Supreme Court stated that "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.*, p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*Id.*, p. 110.) The reasons for applying the common fund doctrine further include:

> . . . fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." (*Ibid.*)

The "lodestar method," which focuses on the amount of work done, is the alternative method for determining attorney fee awards. (*Lafitte*, 1 Cal.5th at p. 489.) Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re: Activision Securities Litigation* (N.D. Cal 1989) 723 F.Supp. 1373:

> This court is compelled to ask, 'Is this process necessary?' Under a cost-benefit analysis, the answer would be a resounding, 'No!' Not only do the Lindy Kerr Johnson analyses consume an undue amount of court time with little resulting advantage to anyone, but in fact, it may be to the detriment of the class members. They are forced to wait until the court has done a thorough, conscientious analysis of the attorneys' fee petition. Or, class members may suffer a further diminution of their fund when a special master is retained and paid from the fund. Most important, however, is the effect the process has on the litigation and the timing of settlement. Where attorneys must depend on a lodestar approach, there is little incentive to arrive at an early settlement."

(*Id*., p. 1375.) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Id.*, pp. 1378-79.)

This was reaffirmed in 2016 by the California Supreme Court. The California Supreme Court noted that "[c]urrently, all the circuit courts either mandate or allow their district courts to use the percentage method in common fund cases; none require sole use of the lodestar method." (*Lafitte*, 1 Cal.5th at p. 493 [citations omitted].) It further noted that "the Third Circuit itself holds that while both methods of calculating a fee may be used, the percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure." (*Ibid.* [citing *In re: Rite Aid Corp. Securities Litigation* (3rd Cir. 2005) 396 F.3d 294, 300].) And, as the California Supreme Court stated, "[m]ost state courts to consider the question in recent decades have also concluded the percentage method of calculating a fee award is either preferred or within the trial court's discretion in a common fund case." (*Lafitte*, 1 Cal.5th at p. 494.)

The California Supreme Court noted that even "[t]he American Law Institute has also endorsed the percentage method's use in common fund cases, with the lodestar method reserved mainly for awards under fee shifting statutes where the percentage method cannot be applied or would be unfair due to specific circumstances of the case. (*Ibid.* [citing ALI, Principles of the Law of Aggregate Litigation (2010) § 3.13].) It continued:

> Although many courts in common-fund cases permit use of either a percentage of-the-fund approach or a lodestar (number of hours multiplied by a reasonable hourly rate), most courts and commentators now believe that the percentage method is superior. Critics of the lodestar method note, for example, the difficulty in applying the method and cite the undesirable incentives created by that approach-i.e., a financial incentive to extend the litigation so that the attorneys can accrue additional hours (and thus, additional fees). Moreover, some courts and commentators have criticized the lodestar method because it gives counsel less of an incentive to maximize the recovery of the class.

(*Ibid.* [citing ALI, Principles of the Law of Aggregate Litigation (2010) § 3.13, com. b].)

"While the percentage method has been generally approved in common fund cases, courts have sought to ensure the percentage fee is reasonable . . . ." (*Id*., p. 495 [citations omitted].) Class Counsel's request for fees of approximately one-third (1/3) or approximately 33.33% of the Gross Settlement Amount is within the range of reasonableness. Notably, one-third of the common fund was the exact amount requested by class counsel in *Lafitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480. In that case, the trial court rejected the one-third common fund award and was reversed by the California Supreme Court, which determined that the trial court erred by not approving one-third of the common fund as class counsel's attorneys' fees award. (*Laffitte*, 1 Cal.5th at pp. 485-486, 506.)

This is also in line with attorney fee awards historically awarded in common fund cases. Indeed, historically, courts have awarded percentage fees in the range of 20 to 50 percent, depending on the circumstances of the case. (Newberg on Class Actions, § 14.03; *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1378.) According to Newberg on Class Actions, "No general rule can be articulated on what is a reasonable percentage of a common fund." Usually 50 percent of the fund is the upper limit on a reasonable fee award from a common fund in order to ensure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (Newberg on Class Actions, § 14.03.) Newberg on Class Actions further notes: "achievement of a substantial recovery with modest hours expended should not be penalized but should be rewarded for considerations of time saved by superior services performed." (*Id.*, § 14.01, p. 14-10:1411.)

Class Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with this class action on a pure contingency basis. The factual and legal issues posed in this case were evolving and difficult, particularly in light of the disputes between the Parties regarding discovery, violation rates, and other legal matters.

Class Counsel have already expended significant hours on this matter, including through:

- the initial investigation of the matter, including extensive client interviews;
- seeking informal discovery from Defendants, including written policies, time records, and pay records;
- meeting and conferring regarding mediation, and negotiating with opposing counsel regarding the parameters thereof;
- analyzing written policies (including meal and rest break policies and other related wage-and-hour polices) produced by Defendants;
- analyzing time and payroll records (in conjunction with Plaintiff and retained experts) produced by Defendants;
- analyzing other employee data produced by Defendants;
- conducting witness interviews;
- preparing for and attending mediation;
- negotiating a Memorandum of Understanding;
- negotiating and finalizing a long form settlement agreement;
- preparing a draft class notice and obtaining bids for administration;
- filing Class and Representative Action Complaints in this Action; and
- preparing this Motion for Preliminary Approval.

Moreover, further efforts will be necessary for preliminary and final approval. Based on Class Counsel's past experience in wage and hour class action litigation, Class Counsel is very likely to be called upon, after the Class Notice has been sent, to expend substantial amounts of additional time to help Class Members understand the terms of the proposed settlement, and to assist Class Members in the preparation and documentation of their claims.

It is also likely that, even after final approval of the settlement has been granted, Class Counsel will be called upon to expend additional amounts of time in the presentation and resolution of contests and disputes relating to Class Members' claims under the terms of the proposed settlement, as to the amounts of individual claims and perhaps other individual issues.

Finally, Class Counsel will have to work with the Settlement Administrator to submit a report to this Court regarding the distribution plan pursuant to Code of Civil Procedure section 384, along with a proposed amended judgment, which will require further time and cost.

Class Counsel's experience, qualifications, and reputation support the requested fee award. Courts commonly assess fees in light of the skill and experience of counsel, and here, Class Counsel possess extensive experience handling class and representative actions on behalf of employees. Class Counsel has served as lead counsel in numerous wage-and-hour class and PAGA actions in California state courts. Through this work, Class Counsel have developed significant familiarity with the complex and evolving legal issues unique to this area of law, making them well-equipped to prosecute claims on a representative basis.

Thus, the Court should preliminarily approve the requested attorneys' fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case, the time expended, and the great risk undertaken by Class Counsel. The requested attorneys' fees will not be opposed by Defendants and are well within established guidelines.

VII. THE REQUESTED ENHANCEMENT AWARD TO THE NAMED PLAINTIFF AS CLASS REPRESENTATIVE IS REASONABLE

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they incur in conferring a benefit on other members of the class. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399.) Plaintiff, who served as Named Plaintiff, is entitled to an enhancement award for her service as class representative, for answering extensive questions by Class Counsel, for being available by phone during mediation, and the risk in being the Named Plaintiff. Furthermore, Plaintiff will be providing Defendants a general release of all claims in exchange for the enhancement award.

Class Counsel can attest that Plaintiff devoted a great deal of time assisting counsel in this case, communicated with counsel frequently, and was a valuable participant in the strategy for and success of the mediation. Plaintiff risked intrusive discovery and the payment of employer costs. In the experience of Class Counsel, the typical enhancement award in wage and hour class actions ranges from approximately $10,000 to $40,000, although some awards are higher. (*See Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 [approving $50,000 participation award to a single class representative].) Here, Class Counsel seeks an enhancement of not more than $5,000.00 to Plaintiff as a Class Representative Service Payment for her service. Defendants do not oppose the requested enhancement to Plaintiff. The Declaration of Samantha LaFrance in support of the requested enhancement award is concurrently filed with this Motion.

VIII. <u>THE PROPOSED CLASS NOTICE IS ADEQUATE</u>

Trial courts have wide discretion in fashioning an appropriate class notice. (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74.) "In regard to the contents of the notice, the notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members. . . . As a general rule, [the] class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251-52 [citation omitted].) Apart from case law, the California Rules of Court provide further guidance on the contents of a class notice. (Rules of Court, rule 3.766(d) and rule 3.769(f).)

Here, the proposed Class Notice approved by the Parties is attached as Exhibit A to the Settlement Agreement and meets all of the necessary criteria. The proposed Class Notice provides Class Members with an explanation of the case, how their individual settlement payments will be calculated, their option to participate in the Settlement, object to it, or exclude themselves along with the corresponding deadlines, their option to hire an attorney if they desire or appear without an attorney, the date of the final fairness hearing (which will be inserted in the materials once the date is set by the Court), and the binding effect of final approval for those individuals who do not exclude themselves from the Settlement. The proposed Class Notice also provides contact information for Class Counsel and the Settlement Administrator should Class Members have any questions. The proposed Class Notice meets all the requirements specified in the California Rules of Court, provides "sufficient information" about the Settlement and Class Member options, and therefore, merits Court approval.

IX. NOTICE OF SETTLEMENT AGREEMENT AND APPOINTMENT OF SETTLEMENT ADMINISTRATOR

A notice of settlement of a class action "must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." Rules of Court, rule 3.769(f). Attached to the Declaration of Camron Dowlatshahi as Exhibit 1 is the Settlement Agreement between the Parties. Attached to the Settlement Agreement as Exhibit A is the proposed Notice of Proposed Settlement of Class Action and Hearing Date for Final Court Approval ("Class Notice") to be distributed to the Class Members in English. The proposed Class Notice satisfies these requirements.

The Parties respectfully request that this Court approve the above-referenced Class Notice and dissemination of the Class Notice to the Class Members, consistent with the manner and timing as set forth in the Settlement Agreement. The Parties have agreed to use ILYM Group, Inc., an experienced settlement administrator, to administer the settlement. The Parties have further agreed that the administration costs will be paid out of the Gross Settlement Amount. It is requested that the Court appoint ILYM Group, Inc. to serve as the Administrator. The Parties and their counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

X. THE PROPOSED CY PRES RECIPIENT IS APPROPRIATE

For any portion of the Net Settlement Sum or PAGA Payment allocated to Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their respective settlement checks within 180 days, the remaining amount shall be paid to Legal Aid at Work under the doctrine of *cy pres*. Utilizing a *cy pres* beneficiary is reasonable and appropriate in this case pursuant to California Code of Civil Procedure section 384 subdivision (b), to ensure any unclaimed funds are distributed to the fullest extent possible in a manner that furthers the purposes of this wage and hour class action and PAGA case.

The proposed *cy pres* beneficiary, Legal Aid at Work, is a nonprofit organization that partners with low-wage and marginalized workers in California to help them understand and assert their workplace rights through free legal clinics, individual representation, and policy advocacy. These services promote the same goals as this lawsuit, namely, ensuring that workers are paid properly and treated lawfully. The Parties, Class Counsel, and Defense Counsel have no financial or other relationship or any involvement in the governance or work of the proposed *cy pres* recipient, and the organization qualifies as an appropriate *cy pres* beneficiary under California law.

In the event the Court does not approve of the proposed *cy pres* recipient, Class Counsel and Defendants' Counsel agree that any uncashed settlement checks shall instead be transmitted to the California State Controller's Office as unclaimed property in the name of the respective Class Member, in accordance with applicable law and Code of Civil Procedure section 384.

XI. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES

A. The Class Should Be Preliminarily Certified

In California, there are two certification prerequisites: (1) the existence of an "ascertainable class" and; (2) "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." (*Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th 639, 647.) In addition, as set forth above, California courts utilize the procedures prescribed by the Federal Rules of Civil Procedure in class actions filed in California. (*Schneider v. Vennard* (1986) 183 Cal.App.3d 1340, 1345-46; *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 695; *Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800.)

Indeed, to certify a class, the party advocating class treatment must demonstrate: (1) a numerous class; (2) predominant common questions of law or fact; (3) class representatives with claims or defenses typical of the class; and (4) class representatives who can adequately represent the class. (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, 1360 (citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Each criteria is satisfied here:

1. Numerosity – According to the California Supreme Court, a putative class is sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable, and thus, substantial benefits accrue both to litigants and the courts if the action proceeds as a class action. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) While no set number is required as a matter of law for the maintenance of a class action, the California Supreme Court has upheld a class size as low as ten (10) members. (*See Hendershot v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1222.)

While as few as ten (10) class members can be sufficiently numerous, Defendants identified far more putative Class Members (*i.e.*, an estimated class size of 215). This number exceeds the minimum number of individuals required to meet the numerosity requirement. In short, this number is sufficiently numerous to establish the numerosity requirement; in fact, it is nearly enough for numerosity to be *presumed* satisfied.

2. Identifiable – Here, the class is identifiable because its definition is precise and comprised of objective criteria rendering the Class Members discernable. The objective criteria includes the nature of the position held by the Class Member (*i.e.*, non-exempt); the time period during which the Class Member held the position (*i.e.*, from September 26, 2020 through September 30, 2025); the state in which the Class Member worked (*i.e.*, California); and the employer of the Class Member (*i.e.*, Defendants). Such objective terms are sufficient for finding a class identifiable. (*See e.g., Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959-60.)

3. Commonality – California law also requires that "questions of law or fact common to the class [be] substantially similar and predominate over the questions affecting the individual members." (*In re Steroid Hormone Product Cases* (2010) 181 Cal.App.4th 145, 153.) Common issues predominate when they would be "the principal issues in any individual action, both in terms of time to be expended in their proof and of their importance." (*Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800,810; *see also Hatashi v. First American Home Buyers Protection Corp.*

(2014) 223 Cal.App.4th 1454, 1462-1463.) Common questions need only be "sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of suits." (*Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800, 810.) Commonality is easily satisfied if there is one issue common to class members. (*Hanlon v. Chrysler Corp.* (9th Cir. 1988) 150 F.3d 1011, 1019.)

Here, common issues include, without limitation, whether Defendants violated applicable wage and hour laws, *i.e.*, failed to provide uninterrupted meal and rest periods or compensation in lieu thereof, failed to provide timely final paychecks, failed to provide accurate itemized wage statements, and failed to pay overtime wages due. Because there are numerous common issues, this requirement is satisfied for purposes of settlement.

4. Typicality – Typicality requires only that the named plaintiff's interests in the action be significantly similar to those of other class members. (*Williams*, 221 Cal.App.4th at 1360 (citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021).) A representative plaintiff's claims are typical if they arise from the same event, practice, or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theories. (*Miller v. Woods* (1983) 16 Cal.App.3d 862,874; *accord In re Broadwing, Inc. ERISA Litigation* (S.D. OH. 2006) 252 F.R.D. 369, 377 [citing *In re Am. Med. Sys.* (6th Cir. 1996) 75 F.3d 1069, 1079) quot. Newberg on Class Actions, § 3-13 at 3-76].) Indeed, when the same underlying conduct affects the named plaintiff and the class sought to be represented, the typicality requirement is met irrespective of any varying fact patterns that may underlie individual claims. (*See Daniels v. Centennial Group, Inc.* (1993) 16 Cal.App.4th 467, 473.)

As the court in *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341 explained: "[I]t has never been the law in California that the class representative must have ***identical*** interests with the class members. The only requirements are that common questions of law and fact ***predominate*** and that the class representative be ***similarly*** situated." (*Id.* at 1347 [citations omitted, emphasis in original].)

In this case, Plaintiff's claims are precisely the same as those of the class she seeks to represent: like other members of the Class, Ms. LaFrance was employed by Defendants during the relevant time period as a non-exempt employee, and Plaintiff contends that Defendants' wage policies were uniformly applied to current and former non-exempt employees. Accordingly, Plaintiff's claims are typical of those of the Class Members.

5. Adequacy of Representation – To maintain a class action, the representative plaintiff must adequately protect the interests of the class. (*Williams*, 221 Cal.App.4th at 1360.) Adequacy of representation consists of two components. First, there must be no disabling conflicts of interest between the class representatives and the class. Second, the class representative must be represented by counsel who are competent and experienced in the kind of litigation to be undertaken. (*See McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450; *In re Juniper Networks, Inc. Securities Litigation* (N.D. Cal. 2009) 264 F.R.D. 584, 590.)

Both criteria are met in this instance:

i. *No Disabling Conflict of Interest Exists Between Class Representatives and the Class*

No conflicts, disabling or otherwise, exist between Plaintiff and Class Members because Plaintiff and Class Members have allegedly been damaged by the same purported conduct (*i.e.*, they were classified as non-exempt employees, not paid premium pay, not paid proper overtime wages due, etc.), and thus, Plaintiff has the incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery.

ii. *Class Counsel Are Experienced Attorneys, Especially in the Realm of Wage and Hour Cases*

Class Counsel are experienced employment litigation attorneys with a successful track record litigating wage-and-hour matters. They currently serve as lead counsel in multiple pending wage-and-hour class and representative actions across California jurisdictions, including several that have already obtained preliminary approval of class and PAGA settlements. After a thorough investigation and settlement discussions, the Parties arrived at terms that they viewed as in the best interest of the Class Members and the Parties.

Plaintiff's goals have been realized via redress for the employees whose wage and hour rights were violated. While Defendants deny liability, they have nonetheless agreed to settle the matter to avoid any potential expense. Should the Court refuse to grant preliminary approval of this Settlement, many of the Class Members may be denied any recourse for Defendants' alleged violations.

6. Superiority of Class Action – Also relevant to the Court's certification decision is whether a class action is the superior method of adjudication. (*Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) In that vein, "[t]his state has a public policy which encourages the use of the class action device." (*ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 299 [citing *Sav-On Drug Stores, Inc. v. Sup. Ct.* (2004) 34 Cal.4th 319, 240].) Indeed, "with respect to the superiority of the class action mechanism . . . courts regularly certify class actions to resolve wage and hour claims." (*Id.*, p. 300.) "In this arena the class action mechanism allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation." (*Ibid.*)

This wage and hour class action is no exception and meets all the criteria to establish that it is a superior vehicle for resolution of the issues it seeks to resolve. First, it pertains to purported uniform practices, including Defendants allegedly: not paying their non-exempt employees for all time under Defendants' control, not making meal and rest breaks available to non-exempt employees, and not paying meal and rest break premiums for missed meal and rest breaks. This allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation, and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation. Further, a class action would eradicate the concern of inconsistent rulings regarding the wage and hour issues brought as part of this class action.

Importantly, a lesser standard of scrutiny applies when evaluating these criteria for settlement purposes. (*Dunk*, 48 Cal.App.4th at p. 1807 n.19 [there is a "lesser standard of scrutiny for settlement cases" (citations omitted)].)

Accordingly, the Class meets all criteria for certification and should be certified for purposes of effectuating this settlement. (*Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th

664, 654 ["[i]f the statutory criteria are satisfied, a trial court is under a duty to certify the class and is vested with no discretion to deny certification based upon other considerations"].)

XII. CONCLUSION

The proposed Class and PAGA Settlement is fair, adequate, and reasonable. It will result in substantial payments to Class Members and Aggrieved Employees. It is non-collusive and it was achieved as the result of informed, extensive, and arm's-length negotiations conducted by counsel for respective Parties, who are experienced in wage and hour class action litigation.

For the foregoing reasons, the Parties respectfully request that the Court grant preliminary approval of the proposed settlement as set forth in the attached Settlement Agreement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice submitted herewith, and set a date for the final approval hearing.

Dated: April 22, 2026

MILLS SADAT DOWLAT LLP

By: ______________________

Camron Dowlatshahi

Attorneys for Plaintiff Samantha LaFrance and the Putative Class

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 333 South Hope Street, 40th Floor, Los Angeles, CA 90071. I made service at the direction of a member of the Bar of this Court.

On April 22, 2026, I served the foregoing document(s) described as **PLAINTIFF SAMANTHA LAFRANCE'S (1) NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; AND (2) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on the person(s) below, as follows:

Ryan L. Eddings Hanson Bridgett LLP 500 Capitol Mall, Suite 1500 Sacramento, CA 95814 REddings@hansonbridgett.com MGutierrez@hansonbridgett.com	Attorneys for Defendants Blue Cloud Pediatric Surgery Center, LLC and Blue Cloud Investment Holdings LLC

☑ **(BY E-MAIL OR ELECTRONIC TRANSMISSION)** Pursuant to Code of Civil Procedure section 1010.6, subdivision (e), I transmitted the document(s) electronically to the person(s) at the e-mail address(es) listed above. The transmission was reported as complete and without error.

Executed April 22, 2026 at Los Angeles, California

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Isabella Fiorentino