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20 **SUPERIOR COURT OF CALIFORNIA**
21 **COUNTY OF FRESNO**

22 MARILOU MOYA, an individual, on behalf of
23 herself and all others similarly situated,

24 Plaintiff,

25 v.

26 SAINT AGNES MEDICAL CENTER, a
27 California Corporation, TRINITY HEALTH
28 CORPORATION an Indiana Corporation dba
TRINITY HEALTH, and DOES 1 through 10,
inclusive,

Defendants.

Case No. 20CECG00975

**REPRESENTATIVE AND CLASS
ACTION**

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

Date: May 18, 2021

Time: 3:30 p.m.

Judge: Kristi Culver Kapetan

Dept.: 403

Trial Date: N/A

Complaint Filed: March 16, 2020

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This is a cash settlement and all Class Members who do not opt out will receive a payment, without a requirement to submit a claim form. The Settlement Amount is \$362,500. Plaintiff alleges that during the Class Period she and other class members were not paid all wages owed, including overtime for time worked off-the-clock booting-up programs prior to the start of their shifts, and were not provided with all timely and uninterrupted meal and rest periods.

The \$362,500 Settlement Amount represents approximately 23% of Saint Agnes' maximum potential liability for Plaintiff's direct claims, or over 18% of Saint Agnes' maximum potential liability for all of Plaintiff's claims, including derivative wage statement and waiting time penalties. This is an excellent result, considering Saint Agnes' timekeeping and meal and rest break policies appear facially legal, and class member payroll records evidence Defendants' payment of overtime wages during the Class Period.

Plaintiff seeks an order: (1) preliminarily approving the proposed Settlement; (2) approving the form and content of the Class Notice; (3) directing that Class Notice be given to Class Members; (4) provisionally certifying the Settlement Class and appointing Plaintiff as a Class Representative and Plaintiff's counsel as Class Counsel; (5) preliminarily approving Settlement administration services to be

¹ This memorandum exceeds the 15-page limit set forth in CRC 3.1113, but because it seeks class certification as part of the settlement approval process, Plaintiff requests the Court consider it under the 20-page limit applicable to opening memorandum in support of a motion for class certification under CRC 3.764(c)(2).

provided by the Settlement Administrator, and; (6) scheduling a Fairness Hearing.

II. FACTUAL AND PROCEDURAL BACKGROUND

Saint Agnes Medical Center is a hospital operating in Fresno, California, which provides patients with healthcare services, including specialty medical and clinical services. Trinity Health is the parent company of Saint Agnes. Markham Decl., ¶2. Plaintiff Marilou Moya worked for Defendants as a Patient Access Representative in Fresno from January 2016 to August 2019. Plaintiff's duties included calling patients to schedule and remind of appointments, entering patient data, verifying and authorizing patient insurance, and calculating deductibles and co-pays. *Id.* at ¶3.

Plaintiff filed this class action on March 16, 2020 on behalf of Patient Access Registrants/Representatives who were employed by Defendants during the Class Period. *Id.* at ¶4. Plaintiff alleges that she routinely arrived early to her shift in order to boot-up her computer system to be ready to make calls at the start of her scheduled shift, and that this process would take on average 10 to 15 minutes per day. *Id.* at ¶4. Further, at the end of the day, Plaintiff alleges that she and other class members were often required to perform tasks off-the-clock past the end of their scheduled shifts, such as finishing assisting patients and restocking office equipment for the next day. Plaintiff alleges that she and class members were not permitted to record overtime without preapproval, which was discouraged by supervisors - and near impossible to obtain in advance - as class members' shifts would often unexpectedly run past the end of the pre-scheduled time. *Id.* at ¶4.

Further, Plaintiff alleges that due to the press of business and Defendants' requirements that patients be assisted without delay, she and other class members would often experience late meal breaks taken after the fifth hour worked. *Id.* at ¶5. Plaintiff alleges that she would also experience short meal breaks when required to attend "huddle" meetings, and that she was instructed to record a 30-minute meal break in her time records whether she took it or not. Similarly, Plaintiff was often unable to take uninterrupted rest breaks due to these work demands and staffing shortages. Plaintiff does not recall receiving premium payments for these non-compliant meal and rest breaks. *Id.* at ¶5. Defendants vigorously contest Plaintiff's allegations.

On May 4, 2020, Plaintiff amended her complaint to include violations under the Private Attorneys General Act ("PAGA"). *Id.* at ¶6. Plaintiff submits a second amended complaint concurrent

1 with this filing to include allegations under the Fair Labor Standards Act (“FLSA”), predicated on the
2 same facts and arising from the same claims alleged in the first amended complaint. Settlement
3 Agreement, ¶37; Ex. B.

4 **III. VIGOROUS PROSECUTION OF THIS ACTION**

5 Class Counsel has vigorously advanced Plaintiff’s position and thoroughly investigated Class
6 Members’ claims. Prior to attending the mediation, the Parties engaged in informal discovery. Defendants
7 produced hundreds of pages of documents including Plaintiff’s employment records, its applicable
8 policies and handbooks, a class list including employment start and end dates, as well as start dates in the
9 putative class positions, and a sample of class members’ time records, wage statements and payroll
10 summaries. Markham Decl., ¶7.

11 The parties carefully investigated the claims and facts alleged in this action, and have made a
12 thorough study of the legal principles applicable to the claims asserted against Saint Agnes. Plaintiff
13 engaged an expert to analyze the sample of employee records and prepare a comprehensive damages
14 analysis prior to the mediation. *Id.* at ¶9. As a result of Class Counsel’s investigation of the claims in this
15 action, the expert’s damages analysis, a careful review of the applicable policy and operative documents,
16 and an informal exchange of discovery and information, the parties had a clear understanding of their
17 respective claims and defenses. *Id.*, ¶9.

18 The parties settled this case with the assistance of an experienced mediator, Michael Loeb, Esq.
19 The mediation took place on December 14, 2020. At the conclusion of the mediation session, the parties
20 reached the settlement in principle and executed a Memorandum of Understanding. *Id.*, ¶10. After
21 additional weeks of arms’-length negotiations, the parties finalized the terms of the settlement agreement.
22 *Id.* The executed version of the Settlement Agreement is attached as **Exhibit 1** to Markham Declaration.

23 **IV. SETTLEMENT TERMS**

24 **A. Settlement Relief**

25 The monetary relief will be provided to the Settlement Class Members who are defined as:
26 All current and former hourly-paid or non-exempt employees employed with the job title
27 Patient Access Representative who worked for Defendants within the State of California at
28 any time during the period from March 16, 2016 to the date of preliminary approval of this
Settlement.

Settlement Agreement, ¶33.

The Settlement Class does not include any person who submits a timely and valid opt-out request. *Id.*, ¶61(a). The Class Period is from March 16, 2016 through the date of preliminary approval of the Settlement. *Id.*, ¶5.

The parties agreed the Settlement Amount shall be \$362,500. *Id.*, ¶43(a). This amount includes payments to Class Members, attorneys' fees and costs, the Class Representative's Service Award, administration costs, and \$10,000 allocated as PAGA penalties, of which 25% (or \$2,500) shall be paid to the class and 75% (or \$7,500) shall be paid to the LWDA. *Id.*, ¶43(i). Notably, Saint Agnes will pay the employer's portion of the payroll taxes in addition to the Total Settlement Amount. *Id.*, ¶43(a).

1. Net Settlement Amount.

From the Settlement Amount, administration costs, PAGA payment to the LWDA, attorneys' fees and costs, and the Service Award to the Class Representative - as the Court awards and in the proposed amount discussed below - will first be deducted, to result in a Net Settlement Amount, which is approximately \$208,666.67. *See* Settlement Agreement, ¶43(c). The Net Settlement Amount will then be distributed as follows:

2. Settlement Formula and Distribution

Class Members who do not opt out of the Settlement will receive Individual Settlement Payments from the Net Settlement Amount based on the number of workweeks they worked as members of the putative class during the Settlement Class Period. *Id.*, ¶43(d). Distribution amounts will be calculated and allocated as follows:

$$\frac{\text{Workweeks Worked by Class Member as Patient Access Representative}}{\text{Total Workweeks Worked by all Class Members}} \times \text{Net Settlement Amount} = \text{Class Member's Payment}$$

Id.

This is a non-reversion cash Settlement and Class Members need not submit a claim form to receive a payment. *Id.*, ¶44. Class Members who do not opt out of the Settlement will release Saint Agnes from all claims that relate to the causes of action asserted in this action – or that those that could have been asserted in this action based on the facts alleged in Plaintiff's Second Amended Complaint. *Id.* ¶24.

Settlement checks will be valid and negotiable for 180 calendar days. *Id.*, ¶44. After that time, the Parties propose that the funds represented by uncashed checks shall be tendered to a *cy-pres* beneficiary,

1 in compliance with Code of Civil Procedure section 384(b), and subject to the Court's approval. *Id.* In
2 no event will any of the funds revert to Defendants. *Id.*

3 All Settlement payments are subject to taxation, and will be reported to the IRS and state tax
4 authorities. One-third (33.33%) of each Class Member's Individual Settlement Payment will be allocated
5 as wages, and the remaining two-thirds (66.66%) will be allocated as penalties and interest, with
6 withholding to apply only to the portion allocated to wages. *Id.*, ¶43(e). Settlement Class Members shall
7 seek their own tax advice regarding this Agreement. *Id.*, ¶43(j).

8 **3. Settlement Amount Calculations**

9 The Settlement Amount of \$362,500.00 derives primarily from Plaintiff's overtime and meal and
10 rest break claims. Markham Decl., ¶13. Saint Agnes produced time records and payroll data for a 14%
11 sample of employees, the class list, timekeeping and meal and rest break policies, and Plaintiff's personnel
12 file. *Id.*, ¶13. The analysis of this data showed a facial meal break violation rate of 61.3% (missed, short
13 and/or late meal break indicated in time records). *Id.*, ¶13. Pre-mediation exchange of data further
14 revealed there were a total of 11,410 workweeks during the class period and a class member's average
15 hourly rate was \$18.64. Plaintiff alleges she worked 15 minutes off-the clock every day. Based on this
16 information, the maximum damages for Plaintiff's overtime claim is \$398,779.50 (\$27.96 overtime rate x
17 1.25 hours (15 minutes per shift) x 11,410 workweeks)², \$638,047.20 for meal break premiums (\$18.64 x
18 3 (based on the expert's analysis of the data indicating on average 3 meal break violations per workweek
19 (or approximately 60% facial violation rate)) x 11,410), \$531,706 for rest break premiums (\$18.64 x 2.5
20 (based upon a 50% violation rate) x 11,410) and \$28,525 for unreimbursed business expenses (\$2.50
21 unreimbursed expenses/workweek x 11,410 workweeks).³ Thus, Saint Agnes' potential maximum liability
22 for Plaintiff's direct claims is \$1,597,058, and an additional \$406,248 for Plaintiff's derivative claims,

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24
25 ² Plaintiff's Second Amended Complaint adds a cause of action under the FLSA. Plaintiff calculates maximum exposure for
26 overtime wages under FLSA is \$199,390 (\$27.96 overtime rate x 1.25 hours unpaid overtime (15 minutes/day) x approximately
27 5,705 workweeks in 2-year statute of limitations period). Markham Decl., ¶14.

28 ³ Plaintiff assigns only minimal value to her unreimbursed business expenses claim, as she only experienced unreimbursed
office expenses every 2 to 3 months. Plaintiff did not seek reimbursement of these expenses, and believes this claim would be
susceptible to summary judgment and she would face hurdles in quantifying and proving commonality for certification
purposes. *See e.g., Hammit v. Lumber Liquidators*, 19 F. Supp. 3d 989, 1001 (S.D. Cal. 2014) (granting summary judgment when
employee failed to request reimbursement).

possible only if Plaintiff prevailed on her underlying claims.⁴ Thus, the Settlement Amount of \$362,500 represents approximately 23% of Saint Agnes' maximum potential liability for Plaintiff's direct claims, and over 18% of Saint Agnes' maximum liability for all of Plaintiff's claims. *Id.*, ¶16.

This is an excellent result, exceeding the range of settlements commonly approved by California state and district courts. *Id.* See also section V(B)(2) below for a detailed explanation.

4. Attorneys' Fees and Costs

The parties agreed that, subject to approval by the Court, up to \$120,833.33, or 33.33% of the Settlement Amount, may be allocated to pay attorneys' fees, and up to \$15,000 may be allocated to reimburse Class Counsel for litigation costs. Settlement Agreement, ¶43(g). Courts in California wage and hour cases, where the common fund is under \$10 million, tend to award attorneys' fees in the 30% - 40% range. *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-92 (E.D. Cal. 2010) (citing to five wage and hour class actions where courts approved fee awards ranging from 30 to 33%). The trial court has discretion to award attorneys' fees based on either the lodestar/multiplier calculation or the percentage-of-recovery method. *Laffitte v. Robert Half International Inc.*, 1 Cal.5th 480, 503 (2016). Class Counsel intends to brief the fee application using both methodologies, as cross checks. Defendants agree not to oppose or object to the application for attorneys' fees and costs in the amounts described above. Settlement Agreement, ¶43(g). Any portion of the requested attorneys' fees and costs not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in the Agreement. *Id.*

5. PAGA Payment to Labor Workforce Development Agency

The Parties agreed \$10,000 of the Settlement Amount will be allocated for payment under the PAGA. 75% of this amount (\$7,500) will be paid to the LWDA, and 25% (\$2,500) to the Class. *Id.*, ¶43(i). This amount is well within the range of the PAGA penalties typically awarded as part of class action settlements. See *Franco v. Ruiz Food Products, Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. Nov. 27, 2012) (approving PAGA penalties of \$10,000 and noting that amount was in line with settlement approval of

⁴ Plaintiff's wage statement penalties are \$226,400 based on the \$50 per pay period for an initial violation for 73 class members; and \$100 for each subsequent violation applicable to 2,483 pay periods (and accounting for the \$4,000 cap per employee). For waiting time penalties, Plaintiff calculated daily wages for 39 former class members at \$154.71 times 30 days, to amount to \$179,848. Markham Decl., ¶15.

1 PAGA awards in other cases.); *Schiller v. David's Bridal, Inc.*, 2012 WL 2117001, at *14 (E.D. Cal. June 11,
2 2012) (\$7,500 to LWDA reasonable).

3 For PAGA penalties, although Plaintiff calculates penalties at \$100 per employee per pay period
4 for the initial violation, and \$200 for each employee per pay period for each subsequent violation,
5 Defendants will contend that for plaintiff to recover for a “subsequent violation,” an employer must have
6 notice that it has violated the Labor Code. *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207–09
7 (2008); *see also Trang v. Turbine Engine Components Technologies Corp.*, 2012 WL 6618854 (C.D. Cal. Dec. 19,
8 2012) (“courts have held that employers are not subject to heightened penalties for subsequent violations
9 unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code”);
10 *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, 2009 WL 2448430 (S.D.
11 Cal. 2009) (finding that California law imposes the “subsequent violation penalty” only after an employer
12 has been notified its conduct violates the Labor Code).

13 Further, here, Defendants would likely argue that under Labor Code section 558, penalties should
14 be \$50 per violation, because although Plaintiff seeks penalties through PAGA, PAGA provides the
15 applicable civil penalty only if a particular Labor Code provision does not specify one. *Villacres v. ABM*
16 *Indus. Inc.*, 189 Cal. App. 4th 562, 580 (2010). Here, meal and rest break premiums are not penalties, but
17 wages, so section 226.7 premiums should not be treated as penalties, and the penalty under section 558
18 should be applied instead, as 558 penalties apply to unpaid wages. *Culley v. Lincare, Inc.*, 236 F.Supp.3d
19 1184, 1195 (E.D. Cal. 2017). Failure to pay overtime is also subject to the \$50 civil penalty provided in
20 section 558, because section 558 applies to the penalties contained in the same chapter as section 510.
21 *Villacres, supra*, 189 Cal.App. at 580.

22 Defendants will also likely raise that PAGA gives the Court wide latitude to reduce the amount
23 of civil penalties “based on the facts and circumstances of a particular case” when “to do otherwise would
24 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In
25 reducing PAGA penalties, courts have considered issues including whether the employees suffered actual
26 injury from the violations, whether the defendant was aware of the violations, and the employer’s
27 willingness to fix the violation.

28 Further, it is unclear the Court would award such penalties as there is little guidance as to the

1 standard for determining the amount of appropriate penalties under PAGA:

2 [S]ection 2699, subdivision (e)(2) describes the conditions under which a trial court
3 may exercise its discretion to *reduce* penalties. It does not specify guidelines for
4 exercising discretion in general with regard to the amount of penalties, because the
amount is fixed by statute....A court can only exercise its discretion *to award lesser*
penalties based on the enumerated considerations.

5 *Amaral, supra*, 163 Cal. App. 4th at 1213 (internal quotations omitted); *see also Fleming v. Covidien Inc.*,
6 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

7 Here, there are approximately 2,621 pay periods worked by 73 PAGA Settlement Members during
8 the PAGA Period, and the maximum amount of penalties Plaintiffs could recover at trial for Plaintiff's
9 direct claims is \$851,825 (2,621 pay periods x \$100 penalty times 3 for overtime, meal premiums and rest
10 premiums (assuming at least one violation in *every* pay period) and 2,621 pay periods x 0.25 x \$100 penalty
11 for unreimbursed business expenses, assuming one violation every other month) = \$851,825).⁵ Markham
12 Decl., ¶17. As such, the PAGA Settlement Amount of \$10,000 represents approximately 1.2% of the
13 total potential PAGA penalties for Plaintiffs' direct claims. This result falls within the range of other
14 approved PAGA settlements, as courts frequently approve PAGA awards between 0.2% to 2.2% of the
15 total potential penalties. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA
16 penalties of 0.2% of the maximum, or \$5 per pay period); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451,
17 at *2, 7 (N.D. Cal. Sept. 28, 2016) (settlement allocating \$10,000 to PAGA penalties where potential value
18 was over \$5.2 million, resulting in 0.2 percent PAGA recovery approved); *Van Kempen v. Matheson Tri-*
19 *Gas, Inc.*, 2017 WL 3670787, at *10 (N.D. Cal. Aug. 25, 2017) (granting final approval of \$5,000 PAGA
20 penalty from \$370,000 settlement, or 1.4 percent); *Slavkov v. Fast Water Heater Partners I, LP*, 2017 WL

21 ⁵ The PAGA penalties exposure does not include penalties based upon Plaintiffs' derivative claims. Under *Maldonado v. Epsilon*
22 *Plastics, Inc.*, 22 Cal.App.5th 1308 (2018), wage statement penalties are not warranted when a pay stub correctly shows the
23 amounts *actually paid* to the employee. *Id.* at 1337. Plaintiff does not dispute that her wage statements accurately reflect the
24 wages actually paid to her during the corresponding pay period in which she earned them. Markham Decl., ¶17. Unfortunately,
25 *Maldonado* precludes wage statement penalties in such circumstances. *Id.* Further, under *Naranjo v. Spectrum Security Services, Inc.*,
26 40 Cal.App.5th 444 (2019), an employer's failure to pay meal and rest break premiums does not form the basis for waiting
27 time penalty and wage statement claims because section 226.7 payments are not "wages earned" and therefore not subject to
28 any reporting obligation under section 226 (and payment obligation under section 201). *See also Sherman v. Schneider*, 2019 WL
3220585 (C.D. Cal. March 9, 2019) (dismissing plaintiff's wage statement claim with prejudice because the plaintiff had not
alleged that his wage statements failed to accurately report the wages actually paid to him in the corresponding pay period
(quoting *Maldonado*)); *see also Betancourt v. OS Rest. Servs., LLC*, 49 Cal. App. 5th 240, 248 (2020), *reh'g denied* (May 18, 2020),
review filed (June 23, 2020) (Agreeing with "Naranjo that a plaintiff is not entitled to recover penalties for waiting time and wage
statement violations based on claims of nonprovision of rest or meal periods, and likewise cannot obtain attorney fees based
on those claims.")

1 3834873, at *2 (N.D. Cal. July 25, 2017) (finding that “\$7,500 PAGA payment is reasonable when
2 measured against the total overall settlement [of \$345,000] and the possible weaknesses in Plaintiffs' case,”
3 or 2.2 percent); *see also Bravo v. Gale Triangle, Inc.*, 2017 WL 708766, at *19 (C.D. Cal. Feb. 16, 2017)
4 (\$10,000 as PAGA penalties found reasonable).

5 These PAGA penalties conform to the courts’ reasoning that “[t]he remedy sought in a PAGA
6 suit consists of civil penalties, not individual or class damages” [*Mendez v. Tween Brands, Inc.*, 2010 WL
7 2650571, at *4 (E.D. Cal. June 30, 2010)], and in PAGA “[u]nlike class actions, these civil penalties are
8 not to compensate unnamed employees because the action is fundamentally a law enforcement action.”
9 *See Ochoa-Hernandez v. CJADERS Foods, Inc.*, 2010 WL 1340777, at *4 (N.D. Cal. Apr. 2, 2010).

10 **6. Settlement Administration Costs**

11 The parties selected Simpluris, Inc. as the Settlement Administrator in this action. Settlement
12 Agreement, ¶53. The costs of the Administrator, estimated at \$4,500, will be deducted from the Gross
13 Settlement Amount. *Id.*, ¶31.

14 **7. Service Award**

15 Saint Agnes agreed, subject to Court approval, to pay up to \$6,000 from the Gross Settlement
16 Amount to Ms. Moya for her services as a Class Representative. Settlement Agreement, ¶29; Section
17 V(B)(3) below. Any portion of the requested Service Award not awarded to the Class Representative shall
18 be part of the Net Settlement Amount, to be distributed to Settlement Class Members. *Id.*, ¶43(c).

19 **B. Settlement Administration**

20 Among the customary duties of the Settlement Administrator, Simpluris, Inc. will send the Class
21 Notice to each Class Member as provided in this Settlement, determine the eligibility for, and the amounts
22 of, any Individual Settlement Payments under the terms of this Agreement, process and distribute Class
23 Members’ payments, and process and mail tax payments to the appropriate state and federal taxing
24 authorities. *Id.*, ¶53. Further, Class Members will also be able to contact the Settlement Administrator by
25 telephone or e-mail, or access the settlement website,⁶ if they have any Settlement questions or need
26 assistance. *See* Class Notice, attached as **Exhibit A** to the Settlement Agreement. Also, opt-outs from the
27 Settlement must be delivered to the Settlement Administrator. Settlement Agreement, ¶61(a).

28 _____
⁶ The website will contain settlement-related documents, including notice of final judgment. C.R.C., Rule 3.771(b).

1 **C. Proposed Notice Plan**

2 Within 21 calendar days after the preliminary approval of the Settlement, the Settlement
3 Administrator will send the Class Notice to Settlement Class Members via first class mail. *Id.*, ¶55. Before
4 mailing the Notice, the Settlement Administrator will run a check of the Class Members' addresses against
5 those contained in the USPS's National Change of Address database, and take any other appropriate steps
6 to validate the correctness of the addresses provided by the Defendants. *Id.* If the Notice is returned with
7 a forwarding address, the Settlement Administrator will use the forwarding addresses to locate the missing
8 Class Members, and re-mail the Notice to the correct address. *Id.*, ¶¶56-57. Class Members will have their
9 deadline to opt out from or object to the Settlement extended by 14 calendar days if their notice is re-
10 mailed after being returned as non-deliverable. *Id.* The Settlement Administrator will use all appropriate
11 tracing methods to ensure that the Class Notice is received by all Settlement Class Members. *Id.*

12 The Class Notice will summarize the terms of the Settlement Agreement, advise the Class
13 Members of their estimated individual settlement payment, and inform Class Members of their right to
14 object to or exclude themselves from the Settlement within 45 days after the Notice mailing. Ex. A.
15 Because this is the California-only class, and the mailing will occur only in California, 45 days to opt out
16 from or object to the Settlement is sufficient. Class Members will also be able to opt out of the Settlement
17 via facsimile or e-mail. Markham Decl., ¶19. Further, because Class Members worked as Patient
18 Representatives in California, communicating with clients on a daily basis in English, and speaking
19 English was a job requirement, English-only notice is sufficient. *Id.*

20 **V. THE SETTLEMENT SATISFIES THE PRELIMINARY APPROVAL CRITERIA**

21 There is a strong judicial preference for pre-trial settlement of complex class actions. *Officers for*
22 *Justice v. Civil Serv. Comm'n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). The trial judge exercises
23 discretion in deciding whether to grant preliminary approval of a class action settlement and "great weight
24 is accorded to [the] judge's views." *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th
25 1135, 1145 (2000).

26 Preliminary approval is the first of three steps of the settlement approval process. Second is the
27 dissemination of a settlement notice to all class members. Third is a final approval hearing, where the
28 evidence concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and

1 class members may be heard regarding the Settlement. *See* Manual for Complex Litigation, Second, ¶
2 30A4 (1993). The court does not need to perform a final analysis of the settlement’s fairness to
3 preliminarily approve a proposed settlement. Rather, a more detailed assessment is reserved for the final
4 approval hearing, after class notice has been sent and class members have had the opportunity to object
5 to or opt-out of the settlement. *See* Moore’s Federal Practice, 23.165[3] (3d ed. 2005). Generally, there is
6 an initial presumption of fairness when a proposed settlement, which was negotiated at arms’-length by
7 Class counsel, is presented for court approval. 4 Newberg on Class Actions (4th ed. 2002), ¶11.41, p. 90.
8 In approving a settlement where the class has not yet been certified, the court must first determine that
9 a class exists. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613, 619-20 (1997) (commonality must be shown
10 at a preliminary approval stage, although not necessarily manageability). Then, the Court should examine
11 the settlement as a whole to determine if it is fair, adequate and reasonable. *Id.*

12 **A. The Proposed Class Meets the Qualifications for Certification for Settlement
Purposes.⁷**

13 In California, to prevail on a motion for class certification, plaintiffs need to show that “the
14 question is one of a common or general interest, of many persons, or...the parties are numerous, and it
15 is impracticable to bring them all before the court.” Cal. Code of Civ. Proc. § 382. The party seeking
16 certification needs to prove that the class is both ascertainable and that there is a well-defined community
17 of interest among class members. *See Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal.4th 319, 326 (2004). In
18 *Sav-On Drug Store*, the court adopted a test for “community of interest,” which consists of the following
19 prongs: (1) there are predominant common questions of law or fact; (2) class representatives have claims
20 typical to those of the class; and (3) class representatives can adequately represent the interests of the
21 class. *Id.*

22 **1. An Ascertainable and Numerous Class Exists that can be Determined from Payroll Records**

23 A class is generally considered ascertainable when: (i) under the class definition the members are
24 clearly identifiable, and (ii) the members can be located and notified through a reasonable expenditure of
25 time and money. *See Reyes v. San Diego County Board of Supervisors*, 196 Cal.App.3d 1263, 1274-75 (1987);
26 *Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 919-20 (2010). Typically, class members are ascertainable when
27 they can be easily identified by reference to official or business records. *Archer v. United Rentals, Inc.*, 195

28 ⁷ Defendants agree to certify a class for settlement purposes only, and their agreement to do so shall not be construed as an admission of the propriety of class certification outside of the settlement context. Settlement Agreement, ¶42.

1 Cal.App.4th 807, 828 (2011); *Sevidal*, 189 Cal.App.4th at 919.

2 Here, the Class is composed of approximately 97 current and former Patient Representatives who
3 worked for Defendants in California, who can be identified and located from Defendants' personnel and
4 payroll records. In California, as few as ten (10) or twenty-eight (28) members satisfied numerosity. *Bowles*
5 *v. Super. Ct.*, 44 Cal.2d 574 (1955); *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Saint Agnes will
6 provide the Settlement Administrator with a database with all Class Members' names and contact
7 information, and further steps will be taken to locate the Class Members for whom the addresses are not
8 current. Settlement Agreement, ¶55; *see also* Section IV(C). Numerosity is satisfied.

9 2. Common Issues of Law and Fact Predominate over any Individual Issues

10 "As a general rule if the defendant's liability can be determined by facts common to all members of
11 the class, a class will be certified even if the members must individually prove their damages." *Brinker Rest.*
12 *Corp. v. Super. Ct.*, 53 Cal.4th 1004, 1022 (2012). The court only determines whether or not "the theory
13 of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove
14 amenable to class treatment." *Sav-On Drug Stores, supra*, 34 Cal.4th at 327.

15 Here, as Class Counsel and Class Representative's concurrently filed declarations further show,
16 there are common questions of law and fact that apply to Class Members across the board, because all
17 Class Members were subject to Saint Agnes' rules and policies regarding timekeeping, including overtime
18 pre-approval requirements, and meal and rest break policies. See Moya Decl., ¶¶4-6. Those common
19 questions predominate over any individual inquiries, in that "determination of [their] truth or falsity will
20 resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores,*
21 *Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011). Those questions include: (i) Whether or not Class Members
22 were paid for all hours worked and were provided with meal and rest breaks; (ii) Whether or not Class
23 Members were reimbursed all necessarily incurred business expenses; (iii) Whether or not Class Members
24 were provided with all wages due and owing upon termination and/or separation under Labor Code
25 section 203; (iv) Whether or not Class Members were provided with accurate wage statements as required
26 by Labor Code section 226; (v) Whether or not Saint Agnes engaged in unfair business practices affecting
27 Class Members in violation of Business and Professions Code section 17200, *et seq.*

28 Because several issues are common to all Class Members, a class action is superior to numerous

1 individual actions, and the maintenance of this action as a class action will save judicial resources, and
2 help avoid inconsistent judgments. *See Savon Drugs, supra*, 34 Cal.4th at 326. Class Members’ interests are
3 relatively small, so they are unlikely to prosecute separate actions. Plaintiff’s claims arise from their
4 employment with Saint Agnes in California.

5 3. Plaintiff’s Claims are Typical of the Claims of Class Members

6 Typicality does not mean that the interests of representative plaintiffs must be identical to those of
7 the absent class members. *Classen v. Weller*, 145 Cal.App.3d 27, 46 (1983); *Staton v. Boeing Co.*, 327 F.3d
8 938, 957 (9th Cir. 2003). They only need to be “reasonably co-extensive with those of absent class
9 members.” *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014). Further, the representative plaintiff must be
10 a member of the class she seeks to represent. *La Sala v. American Sav. & Loan Assn.*, 5 Cal.3d 864, 875
11 (1971). “Typicality refers to the nature of the claims or defense of the class representative, and not to the
12 specific facts from which it arose or the relief sought.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th
13 Cir. 1992).

14 Here, Plaintiff’s claims arise from the same facts and legal theories as the Class Members’ claims.
15 Plaintiff was subject to the same Saint Agnes policies and practices with respect to timekeeping, overtime
16 pre-approval requirements, and meal and rest breaks. See Moya Decl., ¶¶ 4-6. Thus, typicality is met.

17 4. Plaintiff and Class Counsel will Adequately Protect the Interests of the Class

18 The adequacy of representation involves two conditions: the named plaintiff must be represented
19 by counsel qualified to prosecute class actions of this type; and the named plaintiff’s interests cannot be
20 antagonistic to those of the class. *See McGhee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976).

21 Here, Plaintiff retained counsel with extensive experience in prosecuting wage and hour class
22 actions. Markham Decl., ¶¶ 27-33. In addition, Plaintiff has the same interests as the rest of the Settlement
23 Class, because she has allegedly been injured in substantially the same manner. *See id.* ¶¶ 8, 34; Moya Decl.,
24 ¶¶ 4-6, 9. Thus, the Court should certify Plaintiff’s class claims for the purposes of this Settlement.

25 **B. The Proposed Settlement is Fair, Adequate, and Reasonable**

26 The court must determine whether the settlement is fair, adequate, and reasonable. *See Dunk v.*
27 *Ford Motor Co.*, 48 Cal.App.4th at 1801, *citing Officers for Justice, supra*, 688 F.2d. at 625. The “fair, reasonable
28 and adequate” test stems from Rule 23 of the Federal Rules of Civil Procedure. *Consumer Advocacy Group,*

1 *Inc. v. Kintetsu Enters. of Am.*, 141 Cal.App.4th 46, 61 (2006). In the absence of California law, the court
2 might follow the federal authority. However, California courts have never adopted Rule 23 as "a
3 procedural strait jacket;" to the contrary, trial courts have been urged to be flexible in dealing with class
4 actions. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 240 (2001), *citing Cartt v. Super. Ct.*, 50
5 Cal.App.3d 960, 970, n.16 (1975). Generally, the opinions of counsel should be given considerable weight
6 because of counsel's familiarity with the litigation, and previous experience with cases such as this one.
7 *Officers for Justice, supra*, 688 F.2d at 625. "We note that... settlement [is] the preferred means of dispute
8 resolution...especially in complex class action litigation." *7-Eleven Owners, supra*, 85 Cal.App.4th at 1151.

9 At the preliminary approval stage, the Court considers if:

10 (1) the proposed settlement appears to be the product of serious, informed, noncollusive
11 negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential
treatment to class representatives or segments of the class, and (4) falls with the range of
possible approval.

12 *In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079 (N.D. Cal. 2007) (citing Manual for Complex
13 Litigation, ¶ 30.44 (2d ed.1985)). This Settlement meets all of these criteria.

14 1. The Settlement is the Product of Serious, Informed and Noncollusive Negotiations

15 This Settlement is the result of extensive and hard-fought negotiations. Markham Decl., ¶¶10-11.
16 Plaintiff's law firm specializes in class action litigation representing their interests and the interests of the
17 putative class, and Saint Agnes was represented by seasoned attorneys at Littler Mendelson, P.C.

18 Prior to the mediation, Class Counsel thoroughly analyzed and investigated Class Members' claims and
19 potential damages. Markham Decl., ¶¶7-9. The parties engaged in an exchange of data for mediation purposes.
20 Class Counsel engaged an expert to review and analyze a sample of class members' electronic data and reviewed
21 hundreds of pages of documents. *Id.*

22 The investigation of the claims in this case gave both parties a clear view of the strengths and
23 weaknesses of their respective positions. *See Adams v. Inter-Con Sec. Sys., Inc.*, 2007 WL 3225466, at *3
24 (N.D. Cal. Oct. 30, 2007) (preliminarily approving the settlement agreement after finding it was reached
25 through extensive negotiations and plaintiff's counsel's thorough investigation of the claims); *Kullar v.*
26 *Footlocker*, 168 Cal.App.4th 116, 129-130 (2008) (trial court should have sufficient information about the
27 potential value of the case and litigation issues to independently review the reasonableness of the
28 settlement.)

1 Based on their knowledge of this action, Plaintiff determined that the Settlement would constitute
2 the best outcome for the Class Members. Markham Decl., ¶12. Likewise, Defendants concluded that this
3 action should be settled in the manner and upon the terms and conditions set forth in the Settlement
4 Agreement in order to avoid the expense, inconvenience, and burden of further legal proceedings, and
5 the uncertainties of trial and appeals.

6 The parties participated in a mediation before a private neutral with extensive experience in wage
7 and hour class actions. Markham Decl., ¶10. That indicates the settlement was free of collusion. “The
8 assistance of a well-respected mediator with substantial experience in employment litigation...supports
9 approval of the settlement.” *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 479 (E.D. Cal. 2010); *Dunk*,
10 *supra*, 48 Cal.App.4th at 1802-03.

11 The parties have been cooperative, yet aggressive, and displayed capable and experienced
12 advocacy on both sides. Accordingly, “[t]here is ... every reason to conclude that settlement negotiations
13 were vigorously conducted at arms’ length and without any suggestion of undue influence.” *In re Wash.*
14 *Public Power Supply Sys. Sec. Litig.*, 720 F.Supp. 1379, 1392 (D. Ariz. 1989).

15 2. The Settlement has no “Obvious Deficiencies” and Falls within the Approval Range

16 “[T]he very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of
17 highest hopes.’” *Officers for Justice*, 688 F.2d at 624 (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir.
18 1977)). Thus, when evaluating the amount offered in settlement, the Court should consider “the complete
19 package taken as a whole,” and the amount should “not be judged against a hypothetical or speculative
20 measure of what might have been achieved by the negotiators.” *Id.* at 625-28.

21 Courts routinely approve class action settlements where the settlement amount is a lower
22 percentage of the claimed amount of damages. In *Glass v. UBS Financial Services*, 2007 WL 221862 (N.D.
23 Cal. Jan. 26, 2007), the court approved a settlement of unpaid overtime wages where the settlement
24 amount constituted only approximately 25 to 35% of the estimated actual loss to the class. *Id.* at *4; *see*
25 *also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (finding recovery of 16.67% of the
26 potential recovery adequate in light of the plaintiff’s risks); *Bellinghausen v. Tractor Supply Co.*, 303 F.R.D.
27 611, 623-24 (N.D. Cal. 2014) (finding settlement amount of a wage and hour class action that equaled
28 between 9% and 27% of the total potential liability to be fair, adequate and reasonable given the

1 uncertainty of continued litigation). *Villegas v. J.P Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal.
2 Nov. 21, 2012); *Nichols v. Smithkline Beecham Corp.*, 2005 WL 950616, at *16 (E.D. Pa. April 22, 2005)
3 (approving settlement that represented between 9.3% and 13.9% of the claimed damages); Simply put,
4 “the fact that a proposed settlement may only amount to a fraction of the potential recovery does not
5 mean that [it] should be disapproved.” *7-Eleven Owners, supra*, 85 Cal.App.4th at 1150, citing *Linney v.*
6 *Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

7 Here, the Settlement represents approximately 23% of the realistic gross recovery for Plaintiff’s
8 overtime, meal and rest break and unreimbursed business expenses claims, without any risks, costs, and
9 uncertainty of prolonged litigation. Under the Settlement, each class member will receive approximately
10 \$18.29 per workweek (\$208,666.67 net divided by 11,410 workweeks). Without accounting for the length
11 of each class member’s employment with Saint Agnes, this will amount to an approximate recovery of
12 over \$2,150 per class member. Markham Decl., ¶26. At an average hourly rate of \$18.64, that equates to
13 over 40 hours of overtime pay, 25 meal break and rest break premiums each (50 total premium payments),
14 plus approximately \$100 in reimbursement for unpaid business expenses. This is an excellent result, when
15 considering that Plaintiff could face difficulties to establish liability and prevail at certification and trial.

16 First, in support of her overtime and off-the-clock claim, Plaintiff would argue, based on *Williams*
17 *v. Superior Court*, 221 Cal.App.4th 1353 (2013) that an off the clock/overtime class can be certified when
18 an employer has a *de facto* practice of not paying employees for all hours worked, even if the employer’s
19 official written policy forbids off the clock work. *Id.* at 1365, 1369. Plaintiff would also argue, that as
20 confirmed by the California Supreme Court in *Troester v. Starbucks Corp.*, 5 Cal. 5th 829 (2018), there is no
21 *de minimis* doctrine in California, and employers must compensate employees for the minutes routinely
22 worked off-the-clock. *Id.* at 848. However, Defendants would likely distinguish these cases. *Williams*
23 would likely be distinguished on the basis that in *Williams* the employer’s policy specifically excluded from
24 payment employee hours that were indisputably worked every day, whereas here, Saint Agnes’s overtime
25 and timekeeping policy advised Class Members that they would be paid for all hours worked. Markham
26 Decl., ¶21. Additionally, Defendants would likely distinguish *Starbucks* by arguing that here, in contrast to
27 the facts at issue in *Starbucks*, Plaintiff and class members could report overtime for pre- and post-shift
28 boot-up time and time spent performing other necessary tasks as shown by evidence of overtime

1 payments in Plaintiff's and other class members' payroll records. *Id.*, ¶21.

2 Second, with respect to Plaintiff's meal and rest break claims, it is settled in California that "the
3 employer's liability arises by adopting a uniform policy that violates the wage and hour laws." *Faulkinbury*
4 *v. Boyd & Associates, Inc.*, 216 Cal.App.4th 220, 235 (2013). However, here, Saint Agnes' employment
5 policies appear facially valid. Markham Decl., ¶22.

6 Further, Saint Agnes will likely rely on the California authority which holds that time records
7 showing late meal breaks alone are not sufficient to create a presumption of violations, because they do
8 not answer the question if a meal break was waived voluntarily or involuntarily. *See Serrano v. Aerotek, Inc.*,
9 21 Cal.App.5th 773, 781-82 (2018); *Lampe v. Queen of the Valley Medical Center*, 19 Cal.App.5th 832, 850-51
10 (2018).

11 Third, in support of their meal and rest break claims, Plaintiff would argue, based on *Brinker*, that
12 Saint Agnes undermined its formal policies "by pressuring employees to perform their duties in ways that
13 omit breaks." *Brinker*, 53 Cal.4th at 1040. However, Saint Agnes would likely respond that Class
14 Members might have been able to take uninterrupted meal and rest breaks, while some might not have
15 been able to (on different occasions and for different reasons). This could create individualized issues
16 defeating commonality and predominance, and manageability. Lastly, even if the rest break class were
17 certified, damages and penalties calculations could present complicated issues as Saint Agnes employees
18 did not have to clock out to take rest breaks, or otherwise record them. *Id.*

19 Fourth, regarding Plaintiff's unreimbursed business expenses claim, Defendants will assert that
20 Plaintiff and other class members did not work in a position which required them to incur business
21 expenses. Further, Defendants would assert that to the extent Plaintiff and class members did not submit
22 business expense reimbursement forms, Defendants were not on sufficient notice of the expenses
23 incurred. *See fn. 3, supra.*

24 Fifth, regarding Plaintiff's wage statement and waiting time penalties claims, under *Maldonado*,
25 *supra*, 22 Cal.App.5th meal and rest break premiums cannot form the basis of wage statement and waiting
26 penalties claims. *Id.* at 1336-37. *Naranjo v. Spectrum*, 40 Cal.App.5th 444 (2019) also holds that Plaintiff
27 cannot recover waiting time penalties for unpaid meal and rest break premiums, which would substantially
28 lower or preclude Plaintiff's recovery for 226 and 201-203 claims. *See also fn. 5, supra.*

1 The court should therefore compare the uncertainties of the prolonged litigation with the
2 immediate benefits that the settlement provides to the Class Members. Here, the Settlement amount of
3 \$362,500.00 was reached with the aid of an experienced mediator. Markham Decl., ¶10. Class Members
4 will receive a portion of the Settlement Amount based on the number of workweeks they worked for
5 Saint Agnes during the Class Period. This formula is realistic because Class Members' individual recovery
6 is proportionate to the amount of time the Class Members were employed at Saint Agnes.

7 When considering the probability of lengthy litigation in the absence of a settlement, the risk that
8 Plaintiff and the Class Members might not have been able to succeed at trial, and the risk that a jury could
9 award damages less than \$362,500.00, the settlement amount is reasonable. *In re Mego Fin. Corp. Sec. Litig.*,
10 213 F.3d at 458; *Sandoval*, 2010 WL 2486346, at *7.

11 3. The Settlement does not Improperly Grant Preferential Treatment to Class
12 Representative or Segments of the Class

13 The Settlement payout amount is based on the number of workweeks each Settlement Class
14 Member worked during the relevant time period. Settlement Agreement, ¶43(d).

15 In addition, Plaintiff Moya will receive \$6,000 for her time and efforts in representing the Class.
16 *Id.*, ¶29. "Incentive awards [for class representatives] are fairly typical in class actions." *Cellphone*
17 *Termination Fee Cases*, 186 Cal.App.4th 1380, 1393 (2010), citing *Rodriguez v. West Publ'g*, 563 F.3d 948, 958
18 (9th Cir. 2009). California courts agree that a class representative is entitled to such an award. *Cellphone*
19 *Termination, supra*, 186 Cal.App.4th at 1394. "Since without a named plaintiff there can be no class action,
20 such compensation as may be necessary to induce him to participate in the suit could be thought the
21 equivalent of the lawyers' nonlegal but essential case-specific expenses, such as long-distance phone calls,
22 which are reimbursable." *Clark v. Am. Residential Servs.*, 175 Cal.App.4th 785, 804 (2009), citing *Matter of*
23 *Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 571 (7th Cir. 1992).

24 Here, the incentive award to Plaintiff is based on the extent of Plaintiff's participation in this action,
25 and not conditioned upon Plaintiff's support of the settlement. *Cf. Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d
26 1157, 1165 (2013). Throughout this action, Plaintiff assisted in investigation of the claims, participated in
27 multiple call conferences with counsel, provided and reviewed documents and pleadings, and was on
28 standby during the mediation session. See Declaration of Marilou Moya, ¶¶11-13.

The approved incentive awards in California range from a few to several thousand dollars. *Covillo*

1 *v. Specialty's Café*, 2014 WL 954516, at * 8 (N.D. Cal. Mar. 6, 2014) (\$8,000 incentive award approved);
2 *Spann v. J.C. Penney Corp.*, 211 F.Supp.3d 1244, 1265 (C.D. Cal. 2016) (\$10,000 awarded). Courts frequently
3 approve much higher incentive awards. *Glass v. UBS Fin. Servs.*, 2007 WL 221862 at *17 (\$25,000 for each
4 class representative in wage and hour action); *Cellphone Termination, supra*, 186 Cal.App4th at 1393, 1396
5 (\$10,000 incentive award). Thus, the proposed service award is reasonable.

6 4. The Stage of the Proceedings is Sufficiently Advanced to Permit Preliminary
7 Approval of the Settlement

8 “A court is more likely to approve a settlement if most of the discovery is completed because it
9 suggests that the parties arrived at a compromise based on a full understanding of the legal and factual
10 issues surrounding the case.” *Nat’l Rural Telecomms. Corp., supra*, 221 F.R.D. at 527. However, the
11 settlement can be approved even in the absence of any discovery, if other factors are satisfied. *In re TD*
12 *Ameritrade Account Holder Litig.*, 2011 WL 4079226, at *6 (N.D. Cal. Sept. 13, 2011). The bottom line is
13 that “the parties have sufficient information to make an informed decision about the settlement.” *Durham*
14 *v. Cont’l Cent. Credit, Inc.*, 2011 WL 90253, at *3 (S.D. Cal. Jan. 10, 2011), citing *Linney v. Cellular Alaska*
15 *P’ship*, 151 F.3d at 1239.

16 Here, before settling this action, the parties had a sufficient understanding of their respective
17 claims and defenses. The parties engaged in informal discovery prior to the mediation session.
18 Defendants produced hundreds of pages of documents, including policies and handbooks, the class list,
19 employee start and end dates and, a sample of class electronic timekeeping and payroll data. *See* section
20 II, *supra*. Markham Decl., ¶7. Before mediation, Class Counsel had investigated Plaintiff’s claims,
21 examined documents and data, and engaged an expert to perform damages calculations. *Id.*, ¶9. At the
22 time the parties engaged in mediation, they knew and understood their respective positions. As a result
23 of the work performed in this case, the real value of the class’ claims was well known, and Class Counsel
24 determined that the Settlement with Saint Agnes is fair, reasonable, adequate, and in the best interest of
the Class. *Young v. Polo Retail, LLC*, 2007 WL 951821, at *4 (N.D. Cal. Mar. 28, 2007).

25 **VI. THE PROPOSED NOTICE TO THE CLASS SHOULD BE APPROVED**

26 If the Court concludes after a preliminary evaluation of the settlement that the relief offered and
27 notice provided are fair and adequate, the Court should order that the class notice be provided. Manual
28 for Complex Litig., Second, § 21.632 at 321. The threshold requirement regarding the sufficiency of the

1 class notice is whether the means proposed for distributing the notice are reasonably calculated to apprise
2 the class of the pendency of the action, the proposed settlement, and the right to opt out or object to the
3 settlement. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974); *Mullane v. Cent. Hanover Bank & Trust*
4 *Co.*, 339 U.S. 306, 315 (1950); *see also* Cal. Rules of Court, Rule 3.766.

5 Here, the Notice is more than sufficient, because it gives Class Members, in easy to understand
6 and clear language: (1) basic information about the action and the Settlement; (2) an estimate of the weeks
7 Class Members worked during the Class Period, and an explanation how Class Members can dispute this
8 calculation; (3) an explanation how the payout from the Settlement will be calculated for each Class
9 Member, and an estimate of Class Member's Individual Payment; (4) an explanation how Class Members
10 can exercise their right to opt-out from, or object to, the Settlement; (5) an explanation that any claims
11 against the Defendants that could have been litigated in this Action will be released if the Class Member
12 does not opt out; (6) name of Class Counsel and information regarding attorneys' fees and costs; (7) the
13 date of the Fairness Hearing and an explanation of eligibility to appear at the Fairness Hearing; and (8)
14 the telephone number, e-mail address, and website address, where Class Members can obtain additional
15 information. *See* Ex. A (proposed Class Notice).

16 Thus, the Notice plan is fair and adequate, and complies with the California Rules of Court, Rules
17 3.766 and 3.769(f).

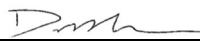
18 VII. CONCLUSION

19 Counsel for the parties thoroughly investigated Plaintiff's claims before settling this case. In the
20 judgment of both parties, the proposed Settlement is a fair and reasonable compromise of the issues in
21 dispute in light of the strengths and weaknesses of each party's case. After weighing the substantial, certain
22 and immediate benefits of this Settlement against the uncertainty of further litigation, the parties believe
23 the proposed Settlement is fair, reasonable and adequate. Plaintiff's motion should, respectfully, be
24 granted.

25 Dated: February 8, 2021

Respectfully submitted,

26 THE MARKHAM LAW FIRM

27 
28 David Markham, Maggie Realin, Lisa Brevard
Attorneys for Plaintiff