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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

AMANDA VASQUEZ, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiffs,

v.

MICARE CALIFORNIA, P.C., a California
corporation; EMPLOYEE BENEFIT
MANAGEMENT SERVICES, LLC, a
Delaware limited liability company; IMAGINE
360 ADMINISTRATORS, LLC, a Texas
limited liability company; IMAGINE 360 LLC,
a Delaware limited liability company; and
DOES 1-50, Inclusive,

Defendants.

Case No. 22CECG01242

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Date: May 2, 2024

Time: 3:27 p.m.

Judge: Hon. Jeffrey Y. Hamilton, Jr.
Dept.: 503

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I. INTRODUCTION

Plaintiff AMANDA VASQUEZ (“Plaintiff”) seeks preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement” or “Settlement Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 46 Class Members and 28 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class**” or the “**Class Members**” and “**Class Period**” means all persons who are or previously were employed by Defendant MiCare California, P.C., (“Defendant MiCare”) and/or Defendant Employee Benefit Management Services, LLC (“Defendant EBMS”) (collectively, “Defendants”) as a non-exempt employee in California (“Class” or the “Class Members”) at any time during the period from April 3, 2019, through April 3, 2024. Agreement at §§ I(E); I(I).

a. The “**Settlement Class Members**” or “**Settlement Class**” means all Class Members who have not submitted a timely and valid request for exclusion as provided in the Agreement. Agreement at § I(LL).

b. The “**Class Size**” is comprised of 46 individuals who collectively worked approximately 3,548 Workweeks during the Class Period as estimated by Defendants at the time of mediation. Agreement at § III(A)(2).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means all persons who are or previously were employed by Defendant as a non-exempt employee in California at any time during the period beginning March 31, 2022, through April 3, 2024. Agreement at § I(C), (Y). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(L)(8). At the time of mediation, there were approximately 28 Aggrieved Employees who worked approximately 728 pay periods during the PAGA Period.

3. The “**Gross Settlement Amount**” is One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Service Award**” of not more than \$5,000.00 to Plaintiff in recognition of her

¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

efforts and risks in assisting with the prosecution of the Action. Agreement at §§ III(M)(9).

b. A **“Class Counsel Award”** in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$50,000.00 *and* attorneys’ expenses not to exceed \$20,000.00, to be paid to Class Counsel. Agreement at § III(M)(10);

c. A **“PAGA Payment”** of Ten Thousand Dollars (\$10,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five (75%) of the PAGA Settlement (\$7,500) to the Labor and Workforce Development Agency (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Settlement (\$2,500) will be distributed to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at §§ I(Z); III(M)(11).

d. **“Settlement Administration Costs”** not to exceed \$3,990.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Class Notice and Settlement Administration Costs. Agreement at § III(M)(12).

4. The **“Net Settlement Amount”** of approximately \$61,010.00 (Gross Settlement Amount less the requested Class Counsel Award, Service Award, PAGA Payment, and Settlement Administration Costs) which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at § III(M)(1). The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual Settlement Payment of **\$ 1,326.30**. JCL Dec., ¶ 6.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length. The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial. JCL Dec., ¶ 6.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement

1 approval and falls within the range of reasonableness. The average Individual Settlement Payment to
2 the Settlement Class meets awards in similar wage and hour class actions. Moreover, the proposed
3 Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests
4 the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 7.

5 **II. FACTS AND PROCEDURE**

6 **A. Overview of the Litigation**

7 Defendants provide medical services to employees who are covered by health plans
8 administered through Defendant EBMS. Plaintiff was employed by Defendants in California from
9 February 2022 to September 2022 as a non-exempt employee. Throughout her employment, Plaintiff
10 was entitled to legally compliant meal and rest periods, and minimum and regular wages.
11 Additionally, Plaintiff was subject to Defendant’s written policies and procedures contained in, among
12 other documents, the “EBMS Handbook.” JCL Dec., ¶ 8.

13 Generally, Plaintiff claims that Defendants failed to furnish accurate itemized wage statements,
14 failed to provide compliant meal and rest periods, failed to pay for all time worked, and failed to pay
15 all wages when due. Defendant denies liability for each of Plaintiff’s claims. Further, Defendant asserts
16 that they fully complied with all applicable employment laws and raised several other significant
17 defenses to Plaintiff’s claims, including but not limited to, asserting that they furnished accurate
18 itemized wage statements, maintained facially compliant meal and rest period policies, paid their
19 employees for all hours worked, and timely paid all wages due upon separation of employment. JCL
20 Dec., ¶ 9.

21 On March 31, 2023, Plaintiff served Defendant MiCare, Defendant EBMS, Defendant Imagine
22 360 Administrators, LLC, Defendant Imagine 360 LLC and the Labor and Workforce Development
23 Agency (“LWDA”) with a PAGA Notice. JCL Dec., ¶ 10.

24 On April 3, 2023, Plaintiff filed a class action complaint in the Fresno County Superior Court,
25 Case No. 23CECG01242 (“Action”). The Action alleged eight causes of action against Defendant
26 MiCare, Defendant EBMS, Defendant Imagine 360 Administrators, LLC, and Defendant Imagine 360
27 LLC for: (1) Unfair Competition in violation of Bus. and Prof. Code §§ 17200; (2) Failure to Pay
28 Minimum Wages in Violation of California Labor Code §§ 1194, 1197, and 1197.1.; (3) Failure to Pay

1 Overtime Wages in Violation of California Labor Code §§ 510; (4) Failure to Provide Required Meal
2 Periods in Violation of California Labor Code §§ 226.7 and 512; (5) Failure to Provide Required Rest
3 Periods in Violation of California Labor Code §§ 226.7 and 512; (6) Failure to Reimburse Employees
4 for Required Expenses in Violation of California Labor Code § 2802; (7) Failure to Provide Wages
5 When Due in Violation of California Labor Code §§ 201, 202, and 203; and (8) Failure to Provide
6 Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226. JCL Dec., ¶ 11.

7 On July 26, 2023, the Parties filed a Stipulation and Proposed Order for Leave to File First
8 Amended Complaint to dismiss Defendant Imagine 360 Administrators, LLC and Defendant Imagine
9 360 LLC without prejudice, and to incorporate a ninth cause of action and factual allegations for alleged
10 violations of PAGA. JCL Dec., ¶ 12.

11 After engaging in written discovery, the Parties agreed to mediate this action. To prepare for
12 mediation, the Parties agreed to informally exchange documents and data points subject to the
13 mediation privilege, including but not limited to, the Class Members' time data and certain payroll data
14 points. As discussed *infra*, Plaintiff's counsel retained the forensic consultants at Berger Consulting
15 Group ("BCG") to analyze Defendants' time and payroll data. JCL Dec., ¶ 13.

16 On January 4, 2024, the Parties participated in a full day mediation with Louis Marlin, Esq., an
17 experienced mediator of wage and hour class and PAGA actions. The mediation concluded with a
18 settlement after the Parties agreed to the mediator's settlement proposal, which was subsequently
19 memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and
20 negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶
21 14.

22 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

23 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's
24 complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As
25 part of the interview process, the Plaintiff produced documents related to her employment, including
26 time and payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiff's
27 complaints justified further inquiry. JCL Dec., ¶ 15.

28 Class Counsel subsequently requested Plaintiff's employee file from Defendants. In response,

1 Defendants produced several documents, including but not limited, copies of Plaintiff's hiring
2 documents and payroll and time records. Class Counsel reviewed and analyzed the documents and
3 determined the documents appeared to substantiate Plaintiff's claims that Defendants failed to, among
4 other things, provide accurate itemized wage statements, provide compliant meal and rest periods, and
5 pay for all hours worked. JCL Dec., ¶ 16.

6 To prepare for mediation, Defendants produced time and payroll records for the Class Members,
7 aggregate workweek and pay period data for the Class Members, average hourly rate for the Class
8 Members, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel
9 reviewed nearly 2,000 pages of documents. JCL Dec., ¶ 17.

10 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
11 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services,
12 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
13 and experienced experts in their fields and have provided their expertise on thousands of cases. JCL
14 Dec., ¶ 18.

15 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
16 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of
17 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average
18 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal
19 and rest periods, the amount of unpaid wages, the amount of unpaid overtime, the amount of off-the-
20 clock work, and the amount of missed meal and rest period premiums paid during the Class Period.
21 JCL Dec., ¶ 19.

22 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
23 Plaintiff's suitability as a putative class representative through interviews, background investigations,
24 and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
25 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
26 of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendants'
27 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
28 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants'

liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 20.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 21.

C. The Parties Settled at Mediation

On January 4, 2024, the Parties conducted a full day of mediation with Louis Marlin, Esq., an experienced mediator of wage and hour class and PAGA actions. Mediator Marlin helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Marlin's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded with a settlement after the Parties agreed to Mediator Marlin's proposal. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 22.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Class

The proposed Settlement Class consists of all persons who are or previously were employed by Defendants as a non-exempt employee in California at any time during the period between April 3, 2019, through April 3, 2024, and who did not submit a timely and valid request for exclusion. Agreement at I(LL). At the time of mediation, Defendants estimated that the Class was comprised of 46 individuals that worked approximately 3,548 workweeks during the Class Period. Agreement at §

1 III(A)(2); JCL Dec., ¶ 23.

2 2. The Settlement Consideration

3 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
4 Amount of \$150,000. The Gross Settlement Amount includes: (1) Individual Settlement Payments to
5 the Settlement Class; (2) a Service Award of not more than \$5,000 to Plaintiff for her services on behalf
6 of the Settlement Class; (3) a PAGA Payment in the amount of \$10,000; (4) Settlement Administration
7 Costs estimated at \$3,990; (5) Class Counsel Award in the amount of \$70,000, comprised of attorneys'
8 fees equal to one-third of the Gross Settlement Amount estimated to be \$50,000 and an estimated
9 \$20,000 for actually incurred litigation expenses. See generally Agreement at § III(M).

10 Subject to the Court approving the Service Award, Class Counsel Award, PAGA Payment, and
11 the Settlement Administration Costs, the Net Settlement Amount will be distributed to each Settlement
12 Class Member. Agreement at § I(P). There is no reversion to Defendants and Defendants must
13 separately pay for its share of the employer payroll taxes. Agreement at § III(A)(1).

14 3. The Funding Date

15 Assuming there are no objectors, and no appeal is filed, Defendants will fund the Gross
16 Settlement Amount within sixty (60) days of the Court's entry of the order granting final approval of
17 this Settlement. Agreement at § I(N).

18 4. Formula for Calculating Individual Settlement Payments

19 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
20 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member
21 worked for Defendants in California during the Class Period. Using the Class Data, the Settlement
22 Administrator shall add up the total number of Workweeks for all Class Members. The respective
23 Workweeks for each Class Member will be divided by the total Workweeks for all Class Members,
24 resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then
25 be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual
26 Settlement Payments. Agreement at § III(M)(1).

27 Each Individual Settlement Payment will be reduced by any legally mandated employee tax
28 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments allocated to Class

Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective Payment Ratios. Agreement at § III(M)(1).

Given that there are approximately 46 Settlement Class Members, the average gross recovery is approximately \$1,326.30 (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 6.

5. Release by Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims. Agreement at § III(B). The Released Class Claims are all class claims alleged in the Operative Complaint, or which could have reasonably been alleged in the Operative Complaint based on the facts alleged, which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Agreement at § I(EE).

6. PAGA Release by the State of California on behalf of the Aggrieved Employees

Generally, as of the Funding Date, Plaintiff, the Aggrieved Employees, the LWDA, and the State of California will release the Released Parties from the Released PAGA Claims. Agreement at § III(C). The Released PAGA Claims are all PAGA claims alleged in the Operative Complaint in the Action and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at § I(FF).

III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement

The proposed Settlement, including a Gross Settlement Amount of \$150,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*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.")) Class action settlement

1 approval requires an early “preliminary” review by the trial court and a subsequent “final” review after
2 notice of the settlement has been distributed to class members for their comments and objections.
3 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
4 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
5 inquire into the fairness of the proposed settlement”).)

6 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
7 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
8 range.” (See *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
9 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
10 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
11 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
12 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
13 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
14 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
15 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
16 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
17 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
18 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
19 action litigation”).)

20 Additionally, in reviewing the fairness of a class action settlement, due regard should be given
21 to what is “otherwise a private consensual agreement between the parties.” (*Cellphone Termination
22 Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) The inquiry “must be limited to the extent necessary
23 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
24 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
25 and adequate to all concerned.” (*Id.*)

26 1. The Parties Reached the Settlement Through Arm’s-Length Bargaining Led by
27 Experienced Counsel.

28 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed

1 settlement's fairness." (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
2 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
3 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
4 § 11.51.)

5 The Parties participated in mediation with Louis Marlin, Esq., an experienced mediator of wage
6 and hour class and PAGA actions. Mediator Marlin managed the Parties' expectations and provided a
7 useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative*
8 *Litig.* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's
9 participation weighs considerably against any inference of a collusive settlement); *D'Amato v.*
10 *Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification
11 settlement negotiations helps to ensure that the proceedings were free of collusion and undue
12 pressure.")) After a full day of mediated negotiations, the Parties reached an agreement via a
13 mediator's proposal, and the mediation session concluded with a settlement. JCL Dec., ¶ 22.

14 Once the Parties memorialized the settlement in the form of a Memorandum of Understanding,
15 the Parties engaged in negotiations regarding the written terms of the class action settlement. The
16 Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair,
17 adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 24.

18 2. Class Counsel's Thorough Investigation Provided an Objective Measurement of the
19 Settlement's Reasonableness.

20 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
21 the factual and legal issues in dispute. In addition to informal and formal discovery, document review,
22 data analysis and legal research, Class Counsel also researched similar wage and hour actions.
23 Although no two cases are identical, this research provided Class Counsel with a marker to inform
24 settlement discussions and, ultimately, to measure this settlement against. The investigation allowed
25 Class Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense
26 counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL
27 Dec., ¶ 25.

28 Class Counsel only agreed to enter the Settlement following their thorough investigation and

1 evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and marketplace
2 for similar settlements, and considering the risk of significant delay, uncertainty associated with
3 litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this
4 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
5 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 26.

6 3. The Settlement Falls Within the Recognized Range of Reasonableness.

7 The Gross Settlement Amount of \$150,000.00 is within the range of reasonableness. To
8 determine whether a settlement is fair and reasonable, the court should "consider enough information
9 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
10 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
11 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
12 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
13 'ballpark of reasonableness.' " (*Id.* (emphasis added)). For this analysis, courts do "not require any such
14 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
15 is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola*
16 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
17 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
18 have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is
19 reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'" (*Frank*
20 *v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc.*
21 *Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

22 a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness.

23 ² Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a
24 settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
25 necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; see *In re*
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; see also *Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
27 Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to
28 only a fraction of the potential recovery"); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436,
460 ("settlement amount's ratio to the maximum potential recovery need not be the sole, or even dominant, consideration
when assessing settlements fairness"); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 ("the
fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself,
weigh against the settlement; rather the percentage should be considered in light of strength of the claims"); *Officers for*
Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is "the complete package, taken as a whole rather than the
individual component parts, that must be examined for overall fairness").

1 The Gross Settlement Amount of \$150,000.00 is fair and reasonable considering the nature and
2 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
3 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants'
4 liability exposure while accounting for the uncertainties of continued litigation. The various models
5 were informed by Class Counsel's investigation, including the analysis of Class Members' time and
6 payroll data. Class Counsel projected Defendants' liability exposure for *class claims* (excluding PAGA
7 Penalties) at \$937,560.05. Thus, the Gross Settlement Amount of \$150,000 represents approximately
8 16% of Defendants' maximum projected *class-wide* liability exposure. However, after applying
9 discount factors, the \$150,000 recovery represents approximately 32.58% of Defendants' more realistic
10 exposure after applying various risk factor discounts. The following summarizes Defendants'
11 estimated exposure. JCL Dec., ¶ 27.

12 (1) Defendants' Estimated Exposure for Wage Statement Violations

13 One of Plaintiff's primary claims alleged that Defendants issued wage statements to Plaintiff
14 and Class Members that failed to accurately state the total hours worked in violation of Cal Lab. Code
15 § 226(a)(2). Specifically, Defendants issued wage statements that included the categories of "PTO",
16 "Sick", "Holiday", and/or "Bereavement" into the calculation of total hours worked, even though PTO,
17 Sick Pay, Holiday Pay, and Bereavement pay are not considered "hours worked" for purposes of Cal.
18 Lab. Code § 226(a)(2). Conversely, Defendants argued, among other things, that they issued accurate
19 itemized wage statements to Plaintiff and Class Members that correctly calculated the total hours
20 worked. Further, Defendants argued that even if they failed to furnish accurate itemized wage
21 statements, Plaintiff could not establish the injury requirement on a class-wide basis. Considering
22 Defendants' arguments, Plaintiff applied a 10% discount and estimated that Defendants' exposure for
23 this claim ranged from \$64,260.00 to \$71,400.00. JCL Dec., ¶ 28.

24 (2) Estimated Damages for Meal Period Violations

25 Plaintiff also alleged that Defendants failed to provide compliant meal periods, and further
26 failed to provide any meal period premiums. Specifically, Plaintiff alleged that because of rigorous
27 work schedules and Defendants' understaffing, Plaintiff and Class Members were unable to take timely
28 and duty-free meal periods. Conversely, Defendants argued, among other things, that they provided

1 Class Members with the opportunity to take compliant meal periods. Defendants also argued that they
2 maintained facially complaint meal period policies. Further, Defendants argued that any missed meal
3 periods were voluntarily and did not trigger liability for premium payments. Thus, Defendants argued
4 that there was no potential liability for Plaintiff's alleged meal period violations. Consequently, Plaintiff
5 applied a 50% discount and estimated that Defendants' exposure for meal period claims ranged from
6 \$98,294.56 to \$196,589.12. JCL Dec., ¶ 29.

7 (3) Defendants' Estimated Exposure of Rest Period Violations

8 Plaintiff also alleged that Defendants failed to provide any rest periods and had in place an
9 unlawful rest period policy throughout the Class Period. Further, Defendant never paid a single rest
10 period premium during the Class Period. Consequently, Plaintiff alleged that she and other Class
11 Members are owed rest period premiums for rest period violations that occurred during the Class
12 Period. JCL Dec., ¶ 30.

13 Again, Defendants denied liability and asserted that they maintained legally compliant rest
14 period policies and practices throughout the Class Period. Defendants argued that some evidence of a
15 uniform unlawful policy does not show that Defendants had a *practice* of denying rest breaks. (*See*
16 *Cacho v. Eurostar, Inc.* (2019) 256 Cal.Rptr.3d 547 at 569 (providing that "the existence of a uniform
17 unlawful policy does not necessarily mean the employer has liability for violations that can be
18 demonstrated with common proof."). Moreover, Plaintiff recognizes the evidentiary burdens
19 establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class
20 Member testimony, making it a riskier claim at class certification and liability stages. Certification
21 likely would have required depositions of Class Members who provided declarations, and Defendants
22 surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks
23 were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL
24 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that
25 Defendants may have an illegal, written rest break policy is insufficient for this Court to find that
26 common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012)
27 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not
28 generate uniform practices."). Consequently, Plaintiff applied a 50% discount and estimated that

1 Defendants' exposure for rest period claims ranged from \$108,141.60 to \$216,283.20. JCL Dec., ¶ 30.

2 (4) Defendants' Estimated Exposure for Waiting Time Penalties

3 Plaintiff also alleged that the Defendants' labor code violations resulted in derivative liability for
4 waiting time penalties. Although these *penalties* represented one of Defendants' largest dollar amount
5 of exposure, this is Plaintiff's most uncertain claim. Specifically, Defendants argued that Plaintiff could
6 not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203.
7 Consequently, Plaintiff applied a 50% discount and estimated that Defendants' exposure for this claim
8 ranged from \$156,492.00 to \$312,984.00. JCL Dec., ¶ 31.

9 (5) Defendants' Exposure for Unreimbursed Business Expenses

10 Plaintiff further alleged that Defendants failed to reimburse its employees for mandatory business
11 expenses. Specifically, Plaintiff alleges that she and other Class Members were required to use their own
12 personal cellular phones as a result of and in furtherance of their job duties but were not reimbursed for
13 the cost associated with the use of their personal cellular phones. Plaintiff alleges she and other Class
14 Members were required to use their personal cell phones in order to, among other things, communicate
15 with supervisors, other employees, and patients. Defendants deny these claims, and also note that the
16 Class is comprised of all non-exempt employees, and even if these claims were true, they would affect
17 only a small subset of that Class. Cal. Labor Code § 2802, provides that "[a]n employer shall indemnify
18 his or her employee for all necessary expenditures or losses incurred by the employee in direct
19 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
20 employer..." Taking into account Defendants' defenses, Plaintiff applied an 85% discount to this claim.
21 Plaintiff estimated Defendants' exposure for this claim ranged from \$2,736.00 to \$18,240.00. JCL Dec.,
22 ¶ 32.

23 (6) Exposure for Unpaid Minimum Wages (Off-the-Clock)

24 Plaintiff further alleges that Defendants failed to pay for all hours worked at the minimum wage
25 as She and other Class Members were required to work off-the-clock and were not compensated for that
26 time. Defendants vigorously denied liability for this claim. Collectively, Defendants asserted, among
27 other things, that its written policies and procedures directed its employees to perform work only while
28 on-the-clock. Defendants asserted that any deviation from these written policies was individual-specific

1 and thus, created individualized issues of liability unsuitable for class treatment. JCL Dec., ¶ 33.

2 Based on Defendants’ practices requiring employees to work off-the-clock, Plaintiff assumed ten
3 (10) minutes of unpaid compensable time per shift by the Class Members during the Class Period.
4 Taking into account Defendants’ defenses, Plaintiff applied 90% discount to this claim. Plaintiff
5 estimated Defendants’ exposure for this claim ranged between approximately \$30,515.93 and
6 \$122,063.73. JCL Dec., ¶ 33.

7 (7) Defendants’ PAGA Exposure

8 Class Counsel’s damage model also estimated Defendants’ exposure for PAGA violations. At
9 the time of mediation, Plaintiff estimated Defendants’ PAGA exposure to be \$139,950.00 if successful
10 at trial. JCL Dec., ¶ 34. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and
11 reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements “negotiate a
12 good faith amount” for PAGA Settlement and “there is no indication that this amount was the result of
13 self-interest at the expense of class members,” such amounts are generally considered reasonable.
14 *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).
15 Courts routinely approve of amounts for PAGA Settlement in the range of zero to two percent of the
16 settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No.
17 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA
18 payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
19 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
20 in the range of zero to two percent of the total settlement).

21 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$10,000 which is
22 approximately 6.67% of the Gross Settlement Amount. This amount falls well within the range of
23 approved PAGA Payments. Seventy-Five percent (75%) of the PAGA Payment (\$7,500.00) will be
24 paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA
25 Payment (\$2,500.00) will be distributed to the Aggrieved Employees, which is within the range of
26 PAGA Payments approved by courts and should be approved. JCL Dec., ¶ 35.

27 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
28 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties

1 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
2 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
3 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
4 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
5 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
6 6, 2016) (PAGA penalties denied after trial).

7 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims.
8 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
9 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with
10 the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.
11 Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA
12 penalties were reduced by 90%. Moreover, in *Carrington*, the Court of Appeal affirmed a judgment after
13 trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA
14 penalties awarded in this case could be less than Plaintiff's calculation, even had Plaintiff prevailed on
15 the PAGA claim. Here, multiplying the number of pay periods (approximately 728) by \$5 results in a
16 total potential liability of \$3,640.00. JCL Dec., ¶ 36. For the aforementioned reasons, the PAGA
17 allocation of the Gross Settlement Amount is fair, just, and reasonable.

18 **B. Inherent Risks of Continued Litigation Support Preliminary Approval.**

19 "It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot
20 and need not determine the merits of the contested facts and legal issues at this stage, [Citation], and to
21 the extent courts assess this factor, it is to 'determine whether the decision to settle is a good value for a
22 relatively weak case or a sell-out of an extraordinary strong case.'" (*Misra v. Decision One Mortg. Co.*
23 (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

24 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
25 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
26 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and remanded a \$110
27 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
28 trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.*

(9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also* *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 37.

“The Settlement eliminates these and other risks of continued litigation, including the very real risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal. 2008) 2008 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through trial is inherently perilous regardless of the strengths of merits of the claims:

[N]othing is assured when litigating against commercial giants with vast litigative resources, particular in such complex litigation as this, which would strain the cognitive capacities of any jury. Defense judgments were hardly beyond the realm of possibility. Accordingly, this factor weighs in favor of preliminary approval.

(*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June 18, 1990).)

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at

trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 38. “Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of \$150,000.00 that is approximately 16% of Defendants’ *class-wide* liability exposure for damages and statutory penalties, and approximately 13.92% of Defendants’ maximum class wide liability exposure for damages and penalties, including PAGA Penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 39.

C. The Proposed Notice Informs the Class about the Case and Settlement

The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal. App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then

³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod* (7th Cir. 1987) 826 F.2d 729, 732.

1 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
2 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
3 procedure, and time period within which to requests for exclusions or objections to the Settlement, the
4 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
5 and scope of the Released Claims. *See* Class Notice, attached as Exhibit A to the Agreement. The
6 Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class
7 Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 40.

8 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
9 satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
10 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
11 of the options open to dissenting class members.”). JCL Dec., ¶ 41.

12 **D. The Court Should Preliminarily Approve the Service Award**

13 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
14 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
15 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
16 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
17 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
18 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
19 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
20 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
21 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
22 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
23 (2009) 175 Cal.App.4th 785.)

24 The Settlement provides for a Service Award of \$5,000 for Plaintiff. The service award is fair
25 and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel with
26 the litigation and settlement, regularly conferring with Class Counsel on the status of her case and the
27 strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure that its terms are
28 fair and provide adequate relief for the Settlement Class. JCL Dec., ¶ 42.

1 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award
2 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
3 showing is sufficient for preliminary approval of the negotiated Service Award. JCL Dec., ¶ 43.

4 **E. The Court Should Preliminarily Approve the Class Counsel Award**

5 The purpose of a Class Counsel Award in class action litigation is to reward counsel who took
6 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
7 California courts routinely award attorneys' fees equaling one-third or more of the potential value of
8 the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008) 162
9 Cal.App.4th 43, 66 n.11 ("Empirical studies show that regardless whether the percentage method or the
10 lodestar method is used, fee awards in class actions average around one-third of the recovery.");
11 Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical*
12 *Study, J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of
13 class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent
14 with market rates).) Courts have long recognized that when class counsel's efforts result in the creation
15 of a common fund that benefits plaintiffs and unnamed class members, class counsel have an equitable
16 right to be compensated from that fund. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)
17 ("recogniz[ing] consistently that a litigant or a lawyer who recovers a common fund...is entitled to a
18 reasonable attorney's fee from the fund as a whole"); *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th
19 480, 488-89 ("Laffitte") (common fund doctrine "long recognized" under California law). In *Laffitte*,
20 the California Supreme Court upheld the trial court's award of 33.33% of the settlement amount of \$19
21 million with a 2.13 multiplier and affirmed that "empirical studies show the percentage method with a
22 lodestar cross-check is the most prevalent form of fee method in practice." *Id.* at 497.

23 Here, Class Counsel requests attorneys' fees in the amount of \$50,000.00, representing one-third
24 of the Gross Settlement Amount. Class Counsel's request is consistent with many fee awards in similar
25 wage and hour class actions that Class Counsel has received in California Superior Courts, over the
26 past five years. Moreover, the requested one-third attorneys' fee award is in the middle of historically
27 recognized range of attorneys' fees awarded in common fund class action settlements. The attorneys'
28 fees request should be awarded based upon the Gross Settlement Amount in accordance with *Laffitte*,

1 i.e., percentage of the fund with a lodestar cross check. As further explained below, the reasonableness
2 of the requested \$50,000.00 attorneys' fees award is further supported by the lodestar cross-check. JCL
3 Dec., ¶ 44.

4 Class Counsel's lodestar to date is \$70,752.5, *exclusive of costs*, with significant work
5 remaining. JCL Dec., ¶¶ 45-48; Declaration of Shani Zakay ("Zakay Dec.") ¶ 4. Thus, Class Counsel's
6 fee request at this time is equal to Class Counsel's lodestar with a 0.71 multiplier – well below the 2.13
7 multiplier approved in *Laffitte*. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202
8 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of
9 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal.
10 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

11 Because the Settlement in this case is a pure common fund case, and the percentage of the fund
12 is the comparable marketplace for fee awards in common fund cases, *Laffitte* supports an award based
13 upon the percentage of the common fund. Further, as noted above, the one-third fee request is in the
14 middle of comparable awards for common fund cases, which establishes the requested award as
15 reasonable. Moreover, Class Counsel's lodestar supports the requested attorneys' fees with a multiplier
16 well within the recognized range reasonableness, and in fact, below what the California Supreme Court
17 approved in *Laffitte*.

18 Regarding costs, the appropriate analysis in deciding if costs are compensable is whether the costs
19 are of the type typically billed by attorneys to paying clients in the marketplace. See *Harris v. Marhoefer*,
20 24 F.3d 16, 19 (9th Cir. 1994); see also *Hartless*, 273 F.R.D. at 645-46 (common fund class action
21 settlement where court awarded litigation costs for consultants, online legal research, copying, postage,
22 long distance charges, travel expenses, filing fees, mediation fees and investigation fees). Collectively,
23 Class Counsel expended \$17,217.15 prosecuting this action, with additional costs remaining. JCL Dec.
24 ¶ 49; Zakay Dec., ¶¶ 7-8. All of Class Counsel's out-of-pocket expenses are the types of expenses
25 normally charged to paying clients including the following: filing fees; copying; postage; factual and
26 legal research charges; mediation fees; and expert costs, which were all incurred during, and were
27 necessary for the successful prosecution of the litigation and, thus, should be reimbursed. JCL Dec., ¶
28 50; Zakay Dec., ¶ 8.

1 In light of the above, Class Counsel respectfully requests this Court approve a Class Counsel
2 Award in the amount of \$70,000.00 comprised of \$50,000.00 for attorneys' fees and up to \$20,000.00
3 for reimbursable litigation costs. Plaintiff will file a formal motion for the negotiated Class Counsel
4 Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the
5 above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 51.

6 **F. Provisional Certification for Settlement Purposes Is Appropriate**

7 For Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification
8 of the Class is appropriate. JCL Dec., ¶ 53.

9 a. The Standard for Class Certification

10 Class actions are statutorily authorized "when the question is one of common or general interest,
11 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
12 court" (*Cal.Civ.Proc.* Code § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332". Class
13 certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined
14 community of interest, and (3) that certification will provide substantial benefits to litigants and the
15 courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest
16 requirement embodies three factors: (1) predominant common questions of law or fact; (2) class
17 representatives with claims or defenses typical of the class; and (3) class representatives who can
18 adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 313.) Class treatment
19 is appropriate even if class members at some point may be required to make an individual showing as
20 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
21 *Sav-On*, 34 Cal.4th at 333.)

22 i. Numerosity and Ascertainability

23 "Ascertainability is achieved by defining the class in terms of objective characteristics and
24 common transactional facts making the ultimate identification of class members possible when that
25 identification becomes necessary. While often it is said that class members are ascertainable where they
26 may be readily identified without unreasonable expense or time by reference to official records, that
27 statement must be considered in light of the purpose of the ascertainability requirement.
28 Ascertainability is required in order to give notice to putative class members as to whom the judgment

1 in the action will be res judicata.” (*Nicodemus v. Saint Francis Memorial Hospital* (2016) 3 Cal.App.5th
2 1200, 1212, internal citations and quote marks omitted.)

3 Here, Plaintiff seeks to certify a class consisting of all persons who are or previously were
4 employed by Defendants as a non-exempt employee in California at any time during the period from
5 April 3, 2019, through April 3, 2024. Plaintiff estimates that the Class has 46 members. Therefore, the
6 Class is sufficiently numerous to warrant certification. Moreover, the class is readily ascertainable by
7 reference to Defendant’s payroll records and other personnel information. Therefore, the proposed class
8 is sufficiently numerous and ascertainable to be certified for the purpose of settlement. JCL Dec., ¶ 53.

9 ii. Community of Interest

10 “[T]he ‘community of interest requirement embodies three factors: (1) predominant common
11 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
12 class representatives who can adequately represent the class.’” (*Brinker Restaurant Corp. v. Superior*
13 *Court* (2012) 53 Cal.4th 1004, 1021, internal citations omitted.) “The focus of the typicality
14 requirement entails inquiry as to whether the plaintiff’s individual circumstances are markedly different
15 or whether the legal theory upon which the claims are based differ from that upon which the claims of
16 the other class members will be based.” (*Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46.) “[T]he
17 adequacy inquiry should focus on the abilities of the class representative’s counsel and the existence of
18 conflicts between the representative and other class members.” (*Caro v. Procter & Gamble Co.* (1993)
19 18 Cal. App. 4th 644, 669.)

20 Here, there are common questions of law and fact. The statutes relating to each of Plaintiff’s
21 claims apply with equal force and effect to the entire Settlement Class. Factually, Defendants’ policies
22 and practices apply class-wide and Defendants’ liability can be determined by facts common to all
23 members of the class. Plaintiff’s wage and hour claims are typical of the proposed Settlement Class
24 because they arise from the same factual basis and are based on the same legal theories applicable to
25 the other Class Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of
26 the Settlement Class. Plaintiff alleges that she was injured by the same company-wide practices to
27 which the proposed Class Members were subject to and seeks the same relief. Plaintiff has already
28 demonstrated her ability to advocate for the interests of the Class Members by initiating this litigation,

1 undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair.
2 Accordingly, Plaintiff will be able to adequately represent the class, and does not have any conflicts
3 that would make her unable to represent the class. JCL Dec., ¶ 54.

4 Additionally, Plaintiff is represented by competent Class Counsel who have extensive
5 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
6 certified, and gained state court settlement approval of the same class-wide causes of action that are at
7 issue in this case. Class Counsel's wage and hour class action experience establishes that they are well
8 qualified to represent the interests of this Class. JCL Dec., ¶¶ 56-59, Zakay Dec., ¶ 3. Accordingly, the
9 community of interest requirement has been met.

10 iii. Superiority of Class Certification

11 Certifying the class would be superior to any other available means of resolving the disputes
12 between the Parties. Absent class certification, the employees would have to litigate their claims
13 individually, which would result in wasted time and resources relitigating the same issues and
14 presenting the same testimony and evidence. Moreover, given the size and amount of each individual
15 claim, the Class Members likely have little incentive to litigate their claims on an individual basis
16 because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs
17 any potential recovery. JCL Dec., ¶ 55. Class certification will allow the employees' claims to be
18 resolved in a relatively efficient and fair manner. (*Sav-On Drugs Stores, Inc. v. Superior Court* (2004)
19 34 Cal.4th 319, 340.) Also, class certification is frequently granted in employee wage and hour claims,
20 as class litigation eliminates the possibility of repetitious litigation and provides small claimants with
21 a method of obtaining redress for claims which would otherwise be too small to warrant individual
22 litigation. *Id.*

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Dated: April 9, 2024

By: 
Jean-Claude Lapuyade
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