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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

DEVIKA PATEL, Individually and on
behalf of all other current and former
similarly-situated and aggrieved
employees of Defendants in the State of
California,

Plaintiffs,

v.

APEX RECOVERY, LLC and DOES 1
through 50, inclusive,

Defendants.

Case No.: 37-2021-00044618-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

**PLAINTIFF DEVIKA PATEL'S
MEMORANDUM OF POINT AND
AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION AND MOTION
FOR AN ORDER 1) PROVISIONALLY
CERTIFYING SETTLEMENT CLASS;
2) PRELIMINARILY APPROVING
CLASS SETTLEMENT; 3)
DIRECTING DISTRIBUTION OF
NOTICE OF SETTLEMENT TO THE
CLASS; 4) APPOINTING CLASS
COUNSEL AND CLASS
REPRESENTATIVE; AND 5)
SETTING A HEARING FOR FINAL
APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: March 17, 2023

Time: 9:30 A.M.

Judge: Hon. Kenneth Medel

Dept.: C-66

Date Complaint Filed: October 20, 2021

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I. INTRODUCTION

Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff Devika Patel (hereinafter “Plaintiff”), on behalf of herself and all others similarly-situated, respectfully requests that this Court grant preliminary approval for the proposed Stipulated Settlement Agreement and Release of Claims Agreement (“Agreement”) attached as Exhibit 1 to Declaration of Brian R. Short filed in support of instant motion (“Short Decl.”). In particular, Plaintiff respectfully requests that the Court: (1) grant preliminary approval for the settlement; (2) grant preliminary certification of the proposed class for settlement purposes only; (3) authorize the parties to provide notice to the class in the manner set forth in the agreement; (4) appoint Plaintiff’s Counsel as Class Counsel; and (5) schedule a final approval hearing. Defendant Apex Recovery, LLC, (“APEX” or “Defendant”) does not oppose this Motion or the relief requested herein.

This settlement follows a highly contested litigation and was achieved after the parties attended mediation with experienced neutral Steven Pearl, Esq. and subsequently by lengthy post-mediation settlement negotiations. As a key component of the settlement, Plaintiff’s counsel requested and reviewed reliable financial documentation from Defendant which indicates Defendant’s precarious financial status and the very real risk of bankruptcy due to their inability to continue costly litigation or pay a judgment if Plaintiff were ultimately successful at trial. In light of the circumstances present in this action, this settlement is an important win for the absent Class Members as it provides true value to each and every one of them for their claims without the need for protracted and risky litigation. The key components of the Agreement are as follows:

- The class consists of 176 non-exempt employees who worked for APEX within the State of California, from July 30, 2017 through February 21, 2022;
- Defendant will pay the full amount of the non-reversionary gross settlement amount of \$150,000 (“the Gross Fund Value Amount.”);
- Notice to Class Members will provide information regarding the settlement as well as allow individuals an opportunity to opt-out of the settlement;
- Participating Class Members are not subject to a general release or Civ. Code §1542 waiver and are only subject to a release for the wage and hour claims in this action only;
- The Net Fund Value Amount of \$63,250 is made available for direct payment to the approximately 176 class members, which equates to an average payment of **\$359.38** per employee. This amount will be distributed pro rata based on workweeks worked by each employee within the Class Period without any affirmative action being necessary on the part of the class member (like a submission of a claim form).
- A maximum amount of one-third of the gross settlement amount (or \$50,000) will be requested

by Class Counsel to compensate them for their fees and up to \$12,000 for their costs incurred during the litigation;

- The Claims Administration costs expected not to exceed \$6,000 will be allocated from the gross settlement amount; a maximum of \$7,500 will be requested as a service award to the Class Representative; and
- A payment of \$11,250 to the California Labor Workforce and Development Agency which represents 75% of the total \$15,000 allocated for PAGA penalties.

As set forth in detail below, this settlement will provide tangible and valuable relief and is the result of the significant efforts of Plaintiff and her Counsel, including an exhaustive legal analysis of the numerous complex and legal issues. These efforts are significant in this period of great fluidity of California wage and hour class/representative action legal claims. Indeed, Plaintiff's counsel performed a detailed and thorough analysis of the discovery provided by the Defendant in preparation for mediation so that a comprehensive analysis of the claims and damages model could be assessed. After an in-depth analysis of the claims, the current state of the case law on-point in California regarding the claims asserted, potential defenses, and potential damages related to the allegations, the parties engaged in a full-day mediation with neutral mediator Steve Pearl who is extremely knowledgeable in wage and hour class and PAGA litigation. With the benefit of Mr. Pearl's substantial experience in wage and hour class actions, along with his neutral input, the parties were able to reach an agreement that is subject of the instant motion.

As set forth in more detail below, preliminary approval of a class action settlement is appropriate so long as the proposed settlement is "within the range of possible approval" based on a finding that the terms are fair, reasonable and adequate. West's Manual for Complex Litigation (Federal Judicial Center 4th ed. 2008) § 21.632; See also, Newberg on Class Actions, Class Actions in State Courts, Preliminary Approval (4th ed. 2002) § 13:64. This settlement certainly qualifies under this standard, and Plaintiff posits that the Court will find this outcome is an excellent result for the absent Class Members. Accordingly, Plaintiff respectfully requests that the Court grant preliminary approval for this settlement, authorize the dissemination of the Notice to the Class Members, appoint Plaintiff's Counsel as Class Counsel, and schedule a final fairness hearing.

II. SUMMARY OF ARGUMENT

Pursuant to Cal. Rules of Court, Rule 3.769, the settlement of class actions requires the court's approval. Here, Plaintiff seeks only preliminary approval of a settlement the parties reached through arm's length settlement negotiations. Because the eventual final approval hearing will provide an opportunity to review the settlement following the notice process, preliminary approval of a class action settlement is appropriate so long as the proposed settlement is "within the range of possible approval." In *re General Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106, 1124 (7th Cir. 1979) (quoting and following the Manual for Complex Litigation); *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 827 (E.D. N.C. 1994); *Holden v. Burlington Northern, Inc.*, 665 F. Supp. 1398, 1402 (D. Minn. 1987). Because parties seeking preliminary approval are simply requesting the opportunity to allow absent and previously uninvolved class members to respond to the settlement, preliminary approval "is at most a determination that there is what might be termed 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness." *In re Traffic Exec. Assoc.-Eastern R.R.*, 627 F.2d 631, 634 (2d Cir. 1980). In approving a class settlement, courts must have sufficient information to assure themselves that the terms of the Settlement are fair, reasonable and adequate. Moreover, courts must understand the amount in controversy and the realistic range of outcomes of the litigation. *Kullar v. Foot Locker, Inc.*, 168 Cal. App. 4th 116, 120 (2009).

Because, as set forth below, the instant settlement was reached through informed, arms-length bargaining between skilled counsel and with the benefit of an experienced mediator it is clear that the parties have met this threshold. As such, the parties respectfully request that the Court grant preliminary approval for the settlement, authorize notice to the class members, and schedule a final fairness hearing.

III. FACTS AND PERTINENT PROCEDURAL BACKGROUND

APEX is a California state licensed treatment provider of programs for patients with substance abuse problems. Plaintiff Devika Patel is a former employee and worked for APEX from December 31, 2020 through June 30, 2021 in various non-exempt positions including behavioral health technician, lead behavioral health technician, and recovery house manager. Plaintiff filed her class action lawsuit on behalf of similarly-situated non-exempt employees of APEX alleging that they have been denied the benefits

1 provisions of the Cal. Labor Code, including but not limited to payment of all regular wages and overtime
2 wages for all hours worked, authorization and permission for compliant meal and rest breaks,
3 reimbursement of necessary business expenses, retaliation for complaining about Defendant's illegal wage
4 and hour policies and relevant derivative claims. Plaintiff also brought claims under Cal. Unfair
5 Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. ("UCL") and the Private Attorney General Act
6 ("PAGA") for civil penalties resulting from Defendant's violations of the applicable sections of the
7 California Labor Code. (Declaration of Brian R. Short ("Short Decl.") ¶10.)

8
9 At the outset and during the course of the action, Plaintiff conducted comprehensive research
10 regarding the applicable provisions of the California Labor Code and relevant Wage Order to the instant
11 matter and analysis of the relevant claims and potential defenses. Plaintiff also performed an extensive
12 review of Defendant's policies and practices related to employees' job duties. (Short Decl. ¶¶11-13.)

13 Once the action commenced, the parties engaged in discussions related to the claims and
14 ultimately agreed to attempt to resolve the action through a private mediation. (Short Decl. ¶¶14-15.)
15 During the pre-mediation discussions that ensued, Plaintiff's counsel requested, and Defendant agreed to
16 provide information and data sufficient to thoroughly examine the claims and defenses and evaluate the
17 settlement value of the action. This included documents and information regarding the size of the class,
18 total number of current and former employees, in addition to a random statistically-significant sampling
19 of the putative class members' wage statements and corresponding time cards. The information requested
20 allowed a thorough evaluation of the claims and defenses at mediation. In addition, Defendant raised the
21 issue of financial concerns and ability-to-pay which their counsel indicated that should be taken into
22 account for evaluation of settlement purposes. In order to evaluate the financial condition of the
23 Defendant, Plaintiff's counsel requested and Defendant provided reliable financial information for
24 consideration during the settlement negotiations. (Short Decl. ¶¶ 14-16)

25 Prior to the mediation, the parties exchanged numerous email correspondence and participated in
26 multiple phone calls to discuss further the underlying merits of the claims and affirmative defenses.
27 Through numerous pre-mediation conversations and emails, the Parties' attorneys were able to narrow the
28 scope of the contested matters and rationally evaluate the merits and defenses which could be presented

1 at the mediation. They also agreed to use experienced wage and hour mediator Steve Pearl and mutually
2 agreed upon a mediation date. (Short Decl. ¶¶ 17-18, 20.) In advance of mediation and after thorough
3 review of the relevant case law and statutes, the documents and records provided by Defendant in
4 preparation for mediation, and information provided by the named Plaintiff, Plaintiff also prepared a
5 comprehensive damage analysis in order to assess the potential damages as well as the risks involved with
6 the probable outcomes in this litigation. (Short Decl. ¶¶ 18-19.)

7
8 On February 21, 2022, the parties engaged in a full-day remote mediation with mediator Steve
9 Pearl who is a highly experienced neutral in wage and hour class actions and was able to lend his
10 significant experience to the parties in their efforts to mediate the case. Although the Parties previously
11 had multiple discussions and shared emails with respect to the strength of certain claims, Defendant
12 vehemently denied that any act or omission on its part created any liability to the Class Members for any
13 of the claims alleged. Conversely, Plaintiff firmly believes in the merits of her claims and the strong
14 potential that the class could be certified. However, after a full day of negotiations, information exchanges
15 conducted through the mediator, the parties ultimately reached an written memorandum of understanding
16 which included and memorialized the basic material terms of the settlement, which was later finalized in
17 the long-form Agreement for which now Plaintiff seeks preliminary approval. (Short Decl. ¶¶ 20-21.)
18 Plaintiff and Defendant concluded, after taking into account the sharply disputed factual and legal issues
19 involved into this action, the risks involved in further litigation, including the Defendant's financial
20 condition, and the benefits to be received pursuant to the terms of the Agreement, that the settlement
21 reached by the parties is in the best interest of the representative Plaintiff and the Class and is fair and
22 reasonable.

23 **IV. THE PROPOSED SETTLEMENT**

24 The proposed settlement calls for the certification of the following settlement class:

25 *"Class Member(s)" means all individuals who are or were employed by Defendant as*
26 *non-exempt employees in California during the Class Period, which is estimated to consist*
of approximately 176 current and former employees from July 30, 2017 through February
21, 2022.

27 The class is estimated to consist of approximately 176 current and former employees of Defendant
28 in California. The identification of the defined settlement class is easily determined based on a review of

1 the Defendant's personnel records. (Agreement Sec. 5.03 (a)). The Agreement provides for an
2 individualized notice to each Class Member. The proposed notice will be sent via first-class mail, postage
3 pre-paid, and it will advise Class Members about the lawsuit and settlement after preliminary approval.
4 (Agreement Sec. 5.03 (a)-(b)). The Agreement provides for a multi-layer address verification procedure
5 that will ensure Class Members receive the Notice even if they have moved since leaving their
6 employment with Defendant. (Agreement Sec. 5.03 (b)). These additional address verification measures
7 are intended to guarantee that the maximum number of Class Members will be informed of the settlement
8 and to ensure Class Member settlement funds are received in a timely manner. Additionally, the proposed
9 notice will provide Class Members with information, including the anticipated individual settlement
10 payment and methodology for computation of that sum so that they will know how settlement payments
11 will be computed. (See Class Notice attached to Short Decl. as Ex. 2).

12
13 Class Members who wish to participate in the settlement will not need to take any affirmative
14 action or submit a claim form. Instead, their individual settlement checks will be mailed to their best
15 available address after the multi-layer address-verification procedures are carried out by the Claims
16 Administrator. (Agreement Sec. 5.03 (b)).

17 Defendant has agreed to pay \$150,000 to settle this matter on a class-wide basis, which is the
18 total and all-inclusive maximum amount Defendant shall be obligated to pay under the settlement
19 embodied by this Agreement. The settlement sum includes Class Counsel's attorney's fees of not more
20 than one-third of the settlement amount of Fifty Thousand Dollars and Zero Cents (\$50,000) and
21 litigation costs not to exceed Twelve Thousand Dollars (\$12,000), a Service Award for Representative
22 Plaintiff of not more than Seven Thousand and Five Hundred Dollars (\$7,500), a PAGA penalty
23 payment of Fifteen Thousand Dollars (\$15,000), which includes the payment of Eleven Thousand Two
24 Hundred and Fifty Dollars (\$11,250) to the LWDA, the Claims Administration Costs anticipated to be
25 not more than Six Thousand Dollars (\$6,000).

26 In order to provide an equitable distribution of the settlement funds, each settlement Class
27 Member will receive a payment equal to their pro rata number of workweeks worked during the Class
28 Period as compared to the total amount of workweeks worked by all Class Members during the same

1 period. (Agreement Sec. 5.06 (c)(1)). Using this formulation, the settlement results in an average payment
2 of \$359.38 to each and every Class Member on a non-reversionary basis, assuming 100% participation of
3 all 176 individuals. However, class members with longer tenure or paid more will receive a higher
4 settlement amount consistent with their higher proportion of estimated damages based on the claims
5 asserted in this action. If less than 100% of Class Members participate in the settlement, the participating
6 Class Members' portion will increase pro rata until the settlement fund is fully exhausted. *Id.*

7
8 Upon the Effective Date of the Judgment, all settlement Class Members will be deemed to have,
9 and by operation of the Judgment will have, released all Released Claims as defined in the agreement.
10 (Agreement Sec. 7.02) This release is specifically tailored to be as narrow as possible and is limited to the
11 release of wage and hour claims based on the facts alleged in the operative complaint. *Id.* Class members
12 who do not wish to be a part of the settlement Class and do not wish to be subject to the Judgment may
13 request exclusion from the class action settlement. Those Class Members who submit a request to be
14 excluded from the class action settlement will not be subject to the Judgment and will be deemed to have
15 never participated in this action. (Agreement Sec. 5.04 (a)). Class Members are also permitted to object
16 to the settlement terms if desired. (Agreement Sec. 5.04 (b)). All Class Members who do not timely request
17 exclusion will become members of the settlement Class and will be subject to the Judgment and its
18 associated release regardless of whether they become Participating Claimants by cashing their settlement
19 checks. *Id.*

20 In addition to making payments to Participating Claimants, and subject to Court approval,
21 Defendant will pay up \$50,000 for attorney's fees and up to \$12,000 for reimbursement of litigation costs
22 to Plaintiff's Counsel for their costs advanced prosecuting this case on behalf of the putative class. These
23 payments will reimburse Ms. Patel and her attorneys for all attorney's fees, costs and other litigation
24 expenses incurred in this case. (Agreement Sec. 5.06 (b)(1)). As will be set forth in further detail in
25 Plaintiff's Motion for Approval of Attorney's Fees and Costs, which will be submitted to be heard in
26 conjunction with the Motion for Final Approval, this maximum attorney fee payment represents a
27 reasonable reimbursement for the Plaintiff's fees accrued during the litigation of the action and recognizes
28 the dedicated efforts of experienced Counsel who obtained this significant result for the Class Members

1 at the expense of other guaranteed potential hourly work and without a guarantee of payment for the work
2 performed. (Short Decl. ¶¶ 3-8). This payment will be paid after the judgment becomes final and in
3 conjunction with the timeline of the two periodic payments made to settlement Class Members over a
4 period of approximately 6 months per the terms of the settlement agreement. (Agreement Sec. 5.06(d)).

5 Under the terms of the settlement, the cost of the professional claims administration fees,
6 including the cost of mailing the notice, reminder postcards and settlement payments, will be allocated
7 from the settlement amount. Class Counsel received an estimate for \$6,000. Any excess of the allotted
8 funds will be used to resolve any potential issues in the claims administration process and any unused
9 portion will be reallocated wholly to the class in order to increase Class Members' settlement share.
10 (Agreement Sec. 5.06.e). Finally, as to Ms. Patel's compensation for her unique efforts, the significant
11 risks undertaken by bringing about this litigation in the internet age when her lawsuit may easily be
12 discovered by other employers via Google and used as an "unstated" excuse to refuse to hire her, and in
13 exchange for a much broader general release pursuant to California Civil Code section 1542, Defendant
14 will pay the Representative Plaintiff a service award in the amount of up to \$7,500. (Agreement at Sec.
15 5.06 (b)(3); Short Decl. ¶¶ 36-37). Ms. Patel will also submit a declaration regarding the work she
16 performed on behalf of the class in conjunction with the filing of Plaintiff's Motion for Final Approval.

17 **V.LEGAL ARGUMENT**

18 **A. Conditional Certification Should Be Granted.**

19 Courts should grant class certification if "the question is one of a common or general interest, of
20 many persons, or when the parties are numerous, and it is impracticable to bring them all before the court,
21 one or more may sue or defend for the benefit of all." C.C.P. §382. Specifically, courts will approve
22 certification of a class action if there is (a) an ascertainable class and (b) a well-defined community of
23 interest with common questions of law or fact. *Id.* The community of interest prong embodies three factors:
24 (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical
25 of the class; and (3) class representatives who can adequately represent the class." *Id.* When considering
26 whether to grant such certification, courts apply a "lesser standard of scrutiny" in the context of a stipulated
27 settlement than they do for a contested motion for class certification. *Dunk v. Ford Motor Co.*, 48 Cal.
28

1 App. 4th 1794, 1807 fn. 19 (1996). Here, Plaintiff handily surpasses her certification burden in this
2 settlement context. Moreover, California courts strongly favor settlement. *Ferguson v. Lieff, Cabraser,*
3 *Heimann & Bernstein*, 30 Cal. 4th 1037, 1054 (2003) (Kennard, J., concurring and dissenting) (“[p]ublic
4 policy favoring settlement is especially weighty for class actions”). Based on this standard and the public
5 policy in support of settlement, the proposed class should be certified for settlement purposes.

6 As to the first prong, the class is readily ascertainable from the Defendant’s own internal records.
7 To the extent a Class Member’s contact information is outdated, the Class Administrator has reliable
8 methods to find updated information for those Class Members. As to the second prong, the very foundation
9 of this case presents common questions of law and fact as to all Class Members - whether Defendant is
10 liable to Class Members for unpaid wages, unreimbursed expenses, failure to provide meal and rest breaks,
11 improper wage statements, etc. Moreover, Ms. Patel’s claims are 100% typical of the absent Class
12 Members, and she has no divergent or competing interests. Likewise, as set forth in the accompanying
13 Declaration of Brian R. Short filed in support of the instant motion, Ms. Patel is adequate to represent the
14 class and has proven her adequacy through her vigilant and zealous participation in this case. In short, the
15 requirements for certification are met here and preliminary approval should be determined on a class wide
16 basis.

17 Plaintiff’s Counsel also request that they be appointed as Class Counsel in this matter. As detailed
18 in the attached declaration of Brian Short, Plaintiff’s Counsel have significant experience in complex
19 matters, have vigorously and exhaustively litigated this case, and are adequate to represent the putative
20 Class. (Short Decl. ¶¶ 3-8.).

21 **B. Preliminary Approval of the Settlement is Warranted Here.**

22 The purpose behind the preliminary approval process is for the Court to make an initial
23 determination of whether the settlement is fair, reasonable, adequate, and within the range of possible
24 approval. West’s Manual for Complex Litigation (Federal Judicial Center 4th ed. 2008) § 21.632; See
25 also, Newberg on Class Actions, Class Actions in State Courts, Preliminary Approval (4th ed. 2002) §
26 13:64. In making this determination, courts must understand the amount in controversy and the realistic
27 range of outcomes of the litigations. *Kullar v. Foot Locker, Inc.*, 168 Cal. App. 4th 116, 120 (2009);
28 *Clark v. Am. Residential Serv. LLC*, 175 Cal. App. 4th 785, 806 (2009). There is no doubt that this

1 settlement meets this standard since it provides certainty and real value for the Class Members in a case
2 with complex legal issues and significant financial concerns about Defendant's ability to continue any
3 costly litigation or sustain a judgment without the risk of bankruptcy. The trial court has broad discretion
4 in determining whether a proposed settlement is fair and reasonable. When making this analysis, the court
5 will consider factors such as: the strength of plaintiff's case; the risk, expense, complexity and duration of
6 continued litigation; the amount offered in settlement; the extent of discovery completed and the stage of
7 the proceedings; the experience of Counsel; and the reaction of the Class Members to the proposed
8 settlement. *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010).

9 Evaluation of these factors further indicates that the present settlement is fair and reasonable.
10 Although the Representative Plaintiff certainly believes in the strength of her case, Defendant presented
11 valid arguments to the contrary at the full-day mediation before Mr. Steve Pearl. The realities associated
12 with the risks of protracted litigation and a potential appeal, even if successful at trial, was appropriately
13 considered during the mediation and ultimately aided in Plaintiff's decision to accept the instant
14 settlement. Additionally, significant weight was given to the demonstrated financial concerns of
15 Defendant and risk that Defendant could file for bankruptcy protection and the putative class could receive
16 nothing. This claim was thoroughly analyzed by Plaintiff's counsel after review of reliable financial
17 documents and was a key factor in negotiating the multiple settlement payments. While these payment
18 procedures are not ideal and cause additional work for the class administrator and Plaintiff's attorneys in
19 monitoring of these payments, it ultimately results in the payment of an overall larger settlement sum than
20 would otherwise be available to the participating class members. Moreover, Defendant has claimed that
21 a lengthy litigation in the uncertain current economic environment of the pandemic could put the company
22 under further financial stress which is why obtaining payment now for the Class Members is all the more
23 valuable. Plaintiff's Counsel analyzed this settlement amount very carefully and realized that settling now
24 for the amount offered meant a recovery for the Class Members and weighted it against a prolonged
25 litigation leading to a trial and a possibility of uncollectible judgment. Though it may be tempting for an
26 advocate to insist that their position will ultimately prevail, Plaintiff and her Counsel cannot ignore the
27 value of minimizing risk for the Class Members, particularly when an attractive alternative is available.
(Short Decl. ¶¶ 22-28)

28 This case also involves highly complex issues and required analysis of multiple nuanced legal

1 issues in a constantly-changing legal environment in California wage and hour actions – especially here
2 where Defendant’s counsel claimed that individuals signed arbitration agreements. These factors create
3 additional complexity and therefore trial could potentially be complicated and arduous and require the
4 input of multiple experts who are well-versed in industry-specific issues. Each of these factors increase
5 the risk that Plaintiff may be less successful at trial than the value brought in the current proposed
6 settlement. Moreover, Plaintiff’s Counsel have already invested significant time and money in their
7 prosecution of this case, and continuing litigation would require a substantial amount more investment of
8 resources and expenses and would likely increase the risks that the allegations would be subject to
9 procedural and substantive challenges. In addition to the time and expense of what would surely have been
10 an extensive discovery battle, there would have been high costs related to the retention of field-specific
11 experts, meetings with those experts, expert depositions, not to mention the vast amount of time Counsel
12 would have devoted to class certification and trial preparation. Alternatively, settling now and
13 guaranteeing that the Class Members will receive a value for their claims vastly outweighs continued
14 litigation. (Short Decl. ¶28.)

15 Importantly, the amount offered in settlement is fundamentally fair because it provides real and
16 immediate value to the Class Members. Assuming a claims rate of 100% and dividing equally among the
17 class, each Class Member would be entitled to an average of \$359.38 to compensate them for their claims.
18 However, in an effort to make the payment more accurately reflect each Class Members’ potential
19 damages, Plaintiff requested, and Defendant agreed, to make the reward proportional with each Class
20 Members’ workweeks worked during the Class Period. In other words, the settlement of each Class
21 Member’s claims for wage and hour violations, failure to reimburse all expenses, failure to provide an
22 accurate wage statement, *inter alia*, will also accurately reflect the amount of time and effort each Class
23 Member put into his or her job. In addition, Plaintiff negotiated that any payments will be allocated for
24 settlement purposes as 10% wages and 90% non-wage income and therefore permit the maximum
potential payment to participating class members. (Short Decl. ¶ 31)

25 Finally, as to Counsel’s experience, Plaintiff’s attorneys boast more than 20 years of experience
26 in class and complex actions and was utilized to reach this favorable result for the class. Mr. Short has
27 practiced complex class action litigation for more than 17 years and has been exclusively specializing in
28 complex class action and PAGA wage and hour employment litigation for the past 12+ years while

1 Associate Dorota James has represented employees in wage and hour class actions for more than 10 years,
2 both as an attorney and previously as a licensed paralegal. (Short Decl. ¶¶ 3-8). All attorneys representing
3 the Class Members' interests spent considerable time and effort analyzing these complex legal issues, pre
4 and post filing, and developing novel legal arguments in an effort to ensure that all possible arguments
5 were presented as effectively as possible. (Short Decl. ¶¶ 12-18). Without their efforts, along with those
6 of the Representative Plaintiff, the Class Members would be without recourse.

7 Based on the foregoing, preliminary approval is appropriate here because the proposed settlement
8 certainly falls "within the range of possible approval." *Id.*; see also *In re General Motors Corp.*, supra,
9 594 F .2d at p. 1124. This settlement was reached by arm's length negotiations, using an experienced
10 neutral, and a thorough review of Defendant's relevant documents.

11 **C. The Proposed Notice is Adequate.**

12 Cal. Rule of Court, Rule 3.769(f) sets forth the standard under which approval of the form and
13 contents of notice will be approved. Plaintiff has fulfilled this standard since the Notice contains "an
14 explanation of the proposed settlement and procedures for Class Members to follow in filing objections
15 to it and in arranging to appear at the settlement hearing[.]" [See generally, Exhibit 2 to the Short
16 Declaration]. The proposed Notice contains detailed information regarding how each Class Member may
17 make his or her claim, including the precise documents which may be provided in support. It also
18 summarizes, in detail and including deadlines and how a Class Member may object to or opt-out of the
19 settlement. The proposed Notice will be sent by first class mail to the mailing address for each Class
20 Member. Since the class consists of current and former employees of Defendant, Defendant's records will
21 be utilized to contact each Class Member at his/her last known mailing address. For any mailings that are
22 returned, the Claims administrator will perform a skip trace to ensure each Class Member is apprised of
23 his or her rights. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 618-620 (1997) (individual mailing
24 to each Class Member is considered adequate notice.) Moreover, the Notice provides information on how
25 class members may access court-filed documents via a dedicated website so that they may easily review
26 these documents without the need to pay and fees to the court's own system.
27
28

D. The Proposed Incentive Payments To The Representative Plaintiff Is Reasonable, Justified, And Routinely Awarded.

Service payments to representative plaintiffs in class action settlements are intended to recognize the representative's level of risk, time expended, and the efforts he or she undertook. *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785 (2009). "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *See Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). *See also* Manual § 30.42 n. 763 (noting that such awards "may sometimes be warranted for time spent meeting with class members or responding to discovery.") In the *Coca-Cola* case, supra, the Court approved incentive awards of \$300,000 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process and taking the risk of stepping forward on behalf of the class. *See Ingram*, 200 F.R.D. at 694; *See also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving a \$50,000 participation award). *See also Clark*, 175 Cal. App. 4th at 806. ("[T]he rationale for making enhancement awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class.") The requested incentive payment is particularly justified here where Plaintiff was terminated as a result of her complaints regarding the at-issue wage and hour policies and risks that future employers could easily perform an internet search and potentially find that she served as a class representative in a legal action and use this information as an "unstated" reason for refusing employment.

Here, the requested enhancement is reasonable, and should be preliminarily approved. The parties agreed to pay the Plaintiff service awards in an amount not to exceed \$7,500 because of her extensive contribution during the case, the valuable information she was able to provide both prior to and at the mediation, and the risks that she incurred by serving as a named representative in a public class action lawsuit. Ms. Patel expended a significant amount of time, both pre- and post-filing, assisting with this litigation. Her assistance and copious and detailed record keeping provided several items of evidence which were pivotal to proving her claims. Moreover, Ms. Patel's documentation and detailed reprisal of events provided her attorneys with the details to craft a unique and comprehensive complaint based on multiple theories of liability. Ultimately, it was Ms. Patel's effort, assistance, and bravery which achieved this result for her fellow Class Members. (Short Decl. ¶¶ 36-37.)

Prior to and throughout the litigation, Plaintiff has performed considerable services on behalf of the Class during litigation. She sought an attorney, repeatedly spoke with Counsel at length during the litigation, forwarded countless emails, poured over numerous documents, and aided her Counsel in litigating this case. Moreover, Ms. Patel made herself available for participation in the full-day mediation, taking time out of her busy work schedule to support her fellow Class Members. (Short Decl. ¶¶ 36-37). Accordingly, Plaintiff's Counsel has requested, and Defendant has agreed to pay, Ms. Patel \$7,500 as an incentive for her work done on behalf of the class in obtaining this significant result. The requested enhancement is justified and reasonable and Plaintiff respectfully requests approval of this incentive payment in conjunction with the settlement approval. *In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1394 (2010) (affirming the trial court's award to each named plaintiff of \$10,000 as incentive payment.)

E. The Maximum Requested Attorneys' Fees are Reasonable

An award of attorney fees in class action litigation are tied to Counsel's actual efforts to benefit the class. *Mark v. Spencer*, 166 Cal. App. 4th 219, 229 (2008). Hence, when class action litigation establishes a monetary fund for the benefit of the Class Members, the preferred method of attributing attorneys' fees is as a percentage of the common fund created by the settlement. *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 503 (2016). The fee award may then be "cross-checked" for reasonableness by reviewing Counsel's lodestar. *Id.* at 506.

Counsel intends to request one-third (1/3) of the gross settlement amount (\$50,000) for their attorneys' fees and reimbursement for up to \$12,000 in costs at the final approval hearing. The requested fee falls well within the range of reasonableness. As will be demonstrated at the final approval hearing and in Class Counsel's fee submission, their lodestar certainly supports this fee request, as does the monetary result obtained for the absent Class Members. The settlement reached by the parties in this matter is a product of Class Counsel work they performed during the course of the litigation. Class Counsel ShortLegal, APC spent significant time and resources ascertaining the viability of these claims, researching and analyzing the unique issues surrounding a misclassification claim in this particular field, performing the extensive discovery that set the case up to the point where class certification could be filed if necessary, analyzing the potential damages for mediation and engaging in protracted and in-depth settlement discussions regarding the valuation of the claims that brought about this settlement. (Short

Decl. ¶¶ 12-19.) In addition, Plaintiff spent a tremendous amount of time reviewing and analyzing relevant documents provided by Defendant and Plaintiff related to the merits of the claims, drafting the mediation brief, and attending the mediation. Importantly, Class Counsels' efforts will not stop here as they have a significant amount of work ahead of them in drafting the final papers, working with the Claims Administrator during the administration of the notices and the post-administration process and any necessary inquiries from class members, and dealing with any other post-settlement issues that may arise. *Id.*

Finally, Class Counsel undertook this case knowing that they may have to set aside other work where the client would otherwise immediately pay the hourly-fees generally charged for legal services. As will be more fully demonstrated in their request for reasonable attorneys' fees and costs which will be made in anticipation of the final approval hearing, Plaintiff's Counsel believes the Court will find their request to be reasonable, appropriate and subject to approval. (Short Decl. ¶¶ 33-34.)

VI. CONCLUSION

For reasons stated above and pursuant to Cal. Rules of Court, Rule 3.769(d) and (e), Plaintiff respectfully requests that the Court issue an order: (1) granting preliminary certification of the settlement class for settlement purposes only; (2) granting preliminary approval for the proposed settlement including appointment of Plaintiff's Counsel as Class Counsel; (3) authorizing the parties to provide the proposed notice to the class; and (4) scheduling a final approval or fairness hearing.

Dated: February 23, 2023

ShortLegal, APC



By: _____

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