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10 on behalf of herself and all others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

BRENDA CASTILLO, individually, on behalf
of herself and all others similarly situated,

Plaintiff,

v.

CENTURY GROUP PROFESSIONALS, LLC,
a California limited liability company; and DOES
1 through 100, inclusive,

Defendants.

CASE NO.: 20STCV37259
[Unlimited Jurisdiction]

Assigned for all purposes to the
Honorable Carolyn B. Kuhl, Dept. 12

CLASS ACTION

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

Date: July 27, 2023
Time: 10:30 a.m.
Dept.: 12

Complaint Filed: September 29, 2020
FAC Filed: October 13, 2020
SAC Filed: May 10, 2023
Trial Date: Not Yet Set

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

PLEASE TAKE NOTICE that on July 27, 2023 at 10:30 a.m., or as soon thereafter as the matter may be heard, in Department 12 of the above-captioned Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff BRENDA CASTILLO ("Plaintiff") will and hereby do move this Court for an order:

1 1. Granting class certification of the Settlement Class, solely for settlement purposes pursuant
2 to Code of Civil Procedure § 382;

3 2. Preliminarily approving the CLASS ACTION AND PRIVATE ATTORNEYS
4 GENERAL ACT (LABOR CODE § 2698, et seq.) SETTLEMENT AGREEMENT (“Settlement” or
5 “Agreement”);

6 3. Appointing counsel for Plaintiff, Kharatian Law, APC, as Class Counsel;

7 4. Appointing Plaintiff as the Class Representative;

8 5. Approving the use of the proposed notice procedure and related notice form;

9 6. Approving Phoenix Settlement Administrators as the third-party administrator;

10 7. Directing that notice be mailed to the Settlement Class; and,

11 8. Scheduling a hearing date for motions for final approval of class action settlement and
12 awards of attorneys’ fees and costs.

13 Good cause exists to grant this Motion because:

14 1. The Settlement Class meets all the requirements for class certification for settlement
15 purposes under Code of Civil Procedure § 382;

16 2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the disputed
17 wage and hour claims asserted by Plaintiff;

18 3. Plaintiff and Class Counsel are adequate to represent the Settlement Class;

19 4. The proposed notice procedures and related forms comply with California Rules of Court
20 3.766(d) and (e), adequately apprise Class Members of their rights, and fully comport with due process;
21 and

22 5. Based on the foregoing, notice should be directed to the Class Members and a final fairness
23 hearing should be scheduled (approximately 150 days after preliminary approval is granted).

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1 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points
2 and Authorities, the Declaration of Jores Kharatian in support thereof, all papers and pleadings on file with
3 the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as
4 may be presented in connection with the hearing on the Motion.

5
6 Respectfully submitted,

7 Dated:

KHARATIAN LAW, APC

8
9 By: _____

Jores Kharatian 

10
11 Attorneys for Plaintiff BRENDA CASTILLO,
on behalf of herself and all others similarly situated

1 TABLE OF CONTENTS

2 I. INTRODUCTION 1

3 II. THE MAJOR TERMS OF SETTLEMENT 1

4 III. FACTUAL AND PROCEDURAL BACKGROUND 3

5 A. Plaintiff’s Claims 3

6 B. Pre-Mediation Data Production and Analysis..... 3

7 C. Settlement..... 4

8 IV. CLASS DEFINITION 5

9 V. DISCUSSION..... 5

10 A. The Court Should Conditionally Certify the Settlement Class Because It Meets All

11 the Requirements for Certification for Settlement Purposes Under CCP § 382..... 5

12 1. The Members of the Settlement Class Are Both Objectively Ascertainable and

13 Sufficiently Numerous. 6

14 2. There Are Common Questions That Predominate Over Any Questions That May Be

15 Unique to Individual Settlement Class Members. 7

16 3. Plaintiff’s Claims Are Typical of Those of the Settlement Class. 8

17 4. Plaintiff and Her Counsel Will Adequately Represent the Class..... 9

18 5. Proceeding as a Class Action is Superior to Individual Actions..... 10

19 B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair,

20 Adequate, and Reasonable Compromise of Disputed Wage Claims in View of

21 Defendant’s Potential Liability Exposure and the Risks of Continued Litigation 10

22 1. Class Action Settlements Are Subject to Review and Approval. 11

23 2. The Parties Reached the Settlement Through Arms’ Length Negotiations Between

24 Experienced Counsel with the Assistance of a Highly-Qualified Mediator After

25 Sufficient Data Was Exchanged to Evaluate Settlement. 11

26 3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise of

27 Settlement Class Members’ Claims Based on Defendant’s Estimated Liability

28 Exposure Given the Risks Continued Litigation Would Entail. 13

1
2
3
4
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27
28

4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate, and Reasonable. 16

5. The Proposed Enhancement Award to Plaintiff Is Fair, Adequate, and Reasonable and Warrants Preliminary Approval. 16

6. The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Preliminary Approval. 17

7. The Proposed Payment to the Administrator Is Fair and Reasonable..... 18

8. The Proposed Class Notice Is Constitutionally Sound and Complies with Rule 3.766(d) and (e)..... 18

 a) The Notice Procedure Satisfies Due Process 18

 b) The Notice is Accurate and Informative 19

9. The PAGA Allocation is Reasonable 19

VI. THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING.....20

VII. CONCLUSION21

TABLE OF AUTHORITIES

CASES

1

2

3 *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135(2000)..... 11

4 *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157 (2008)..... 19

5 *Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715 (2004) 16

6 *Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)..... 7

7 *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004 (2012).....8, 15

8 *Cartt v. Sup. Ct.*, 50 Cal. App. 3d 960 (1975) 18

9 *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43 (2008) 17

10 *Classen v. Weller*, 145 Cal. App. 3d 27 (1983)..... 9

11 *Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605 (1987)..... 7

12 *Daar v. Yellow Cab Co.*, 67 Cal.2d 695 (1967).....7

13 *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794 (1996)..... 6, 11, 17

14 *Duran v. US Bank Nat’l Ass’n*, 59 Cal. 4th 1 (2014)..... 13

15 *Fireside Bank v. Superior Court*, 40 Cal. 4th 1069 (2007) 8

16 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524 (2008)..... 8

17 *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836 (2003) 6

18 *Hebbard v. Colgrove*, 28 Cal. App. 3d 1017 (1972)..... 7

19 *Jaimez v. Daihns USA, Inc.* 181 Cal. App. 4th 1286 (2010).....5, 7

20 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) 11

21 *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480 (2016) 17

22 *Lealao v. Beneficial California, Inc.* 82 Cal.App.4th 19 (2000).....16

23 *Linderv. Thrifty Oil Co.*, 23 Cal. 4th 429 (2000).....5, 10

24 *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573 (1980)..... 10

25 *Mallick v. Superior Court*, 89 Cal. App. 3d 434 (1979) 12, 17

26 *McGhee v. Bank of America*, 60 Cal. App. 3d 442 (1976)..... 9

27 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006).....11

28 *Miller v. Woods*, 148 Cal. App. 3d 862 (1983) 6

1	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , 186 Cal. App. 4th 399 (2010)	11
2	<i>Reyes v. San Diego County Bd. of Supervisors.</i> , 196 Cal. App. 3d 1263 (1987).....	7
3	<i>Rose v. City of Hayward</i> , 126 Cal. App. 3d 926 (1981)	6
4	<i>Richmond v. Dart Indus. Inc.</i> , 29 Cal. 3d 462 (1981).....	5, 7
5	<i>Sav-on Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004).....	5, 7
6	<i>Seastrom v. Neways, Inc.</i> , 149 Cal. App. 4th 1496 (2007).....	9
7	<i>Stambaugh v. Superior Court</i> , 62 Cal. App. 3d 231 (1976).....	10
8	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	12
9		
10	FEDERAL DECISIONAL AUTHORITY	
11	<i>Air Line Stewards & Stewardesses Ass’n, Local 550 v. American Airlines, Inc.</i> , 455 F.2d 101 (7th Cir.	
12	1972).....	13
13	<i>Alaniz v. California Processors, Inc.</i> , 73 F.R.D. 269 (N.D. Cal. 1976)	7
14	<i>Dilts v. Penske Logistics, LLC</i> 2014 WL 205039 (S.D. Cal. 2014).....	13
15	<i>Hanon v. Dataproducts Corp.</i> , 976 F.2d 497 (9th Cir. 1992).....	9
16	<i>In re Drexel Burnham Lambert Group, Inc.</i> , 960 F.2d 285 (2d Cir. 1992), cert. dismissed, 506 U.S. 1088,	
17	122 L. Ed. 497, 113 S. Ct 1070 (1993).....	6
18	<i>Miller v. CEVA Logistics U.S.A., Inc.</i> , 2015 WL 729638 (E.D. Cal. Feb. 19, 2015)	16
19	<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306 (1950).....	18
20	<i>O’Connor v. Uber Technologies, Inc.</i> , 201 F.Supp.3d 1110 (N.D. Cal. 2016)	21
21	<i>Officers for Justice v. Civil Serv. Comm’n of San Francisco</i> , 688 F.2d 615 (9th Cir. 1982).....	12
22	<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797 (1985)	19
23	<i>Rawlings v. Prudential–Bache Properties, Inc.</i> 9 F.3d 513 (6th Cir. 1993).....	16
24	<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2000).....	16
25	<i>Schwartz v. Harp</i> , 108 F.R.D. 279 (C.D. Cal. 1985)	10
26	<i>Shaw v. Toshiba America Information Systems, Inc.</i> , 91 F.Supp.2d 942, 972 (E.D. Tex. 2000)	18
27	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F.Supp. 294 (N.D. Cal. 1995)	17
28	<i>Viceral v. Mistras Group</i> , 2016 WL 5907869 (N.D. Cal. 2016)	21

1 *Willis v. Xerox Bus. Servs., LLC*, 2013 WL 6053831 (E.D. Cal. 2013) 21

2

3 **STATUTES**

4 Code of Civil Procedure § 3825, 7, 21

5 Labor Code § 2038, 13-15

6 Labor Code § 226(e)13

7 Labor Code § 2699 14

8 Labor Code § 2699(e)(1)..... 13

9 Lab. Code § 2699(e)(2)..... 15

10

11

12 **RULES**

13 Rules of Court, rule 3.766..... 19

14 Rules of Court, Rule 3.7697, 11, 20

15 Rules of Court, Rule 3.769(f).....18, 19

16

17 **TREATISES**

18 Newberg on Class Actions (3d ed. 1991) § 11.27..... 7

19

20 **OTHER AUTHORITIES**

21 *Class Certification in California*, February 2010 15

22 Manual for Complex Litigation, 2d (1993) § 30.45..... 6

23

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiff respectfully requests that
3 this Court preliminarily approve the proposed class action settlement set forth in the CLASS ACTION AND
4 PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698, et seq.) SETTLEMENT
5 AGREEMENT (“Settlement” or “Agreement”) with Defendant CENTURY GROUP INTERNATIONAL,
6 LLC (“CENTURY” or “Defendant”).

7 After informal discovery, the exchange of documents, an arm’s-length mediation session with
8 experienced third-party mediator Steven Mehta, Esq. and a second arm’s-length mediation session with
9 experienced third-party mediator, and further negotiation conducted with the assistance of the mediator
10 Steve Pearl, Esq., Plaintiff and Defendant (collectively referred to herein as the “Parties”) reached a
11 proposed class action settlement with a gross settlement amount (“GSA”) of \$390,000.00 in compromise
12 of disputed claims asserted on behalf of the below-defined Settlement Class (also referred to herein simply
13 as the “Class”) consisting of approximately 888 class members and 278 Aggrieved Employees under
14 PAGA. Plaintiff believes that this settlement is a fair, adequate, and reasonable compromise of the disputed
15 claims for alleged unpaid wage and hour violations and penalties asserted in this case.

16 Plaintiff now submits this Motion for Preliminary Approval of Class Action Settlement, along with
17 the Settlement (attached to the Declaration of Jores Kharatian [“Kharatian Decl.”], Exhibit 1 thereto). For
18 the Court’s convenience, below is a summary of the key provisions of the Settlement.

19 **II. THE MAJOR TERMS OF SETTLEMENT**

20 Key provisions of the proposed Settlement include the following:

- 21 • Defendant stipulates to certification of a Settlement Class for purposes of Settlement only;
- 22 • Settlement Amount: Defendant will pay a maximum of \$390,000.00, referred to as the Gross
23 Settlement Amount (or GSA herein) (Settlement, Section 3);
- 24 • No Claim Form: No claim form is required (Settlement., Section 4);
- 25 • Release: The Settlement will release specified wage-and-hour claims for those Settlement Class
26 Members who do not opt out of the Settlement;
- 27 • Net Settlement Amount Available to the Class: After deducting Class Counsel’s attorneys’ fees
28 and costs, enhancement payment to Plaintiff, Administration Costs, and the payment to the

1 LWDA, the remainder will be available for distribution to Settlement Class Members who do
2 not opt out, with each Settlement Class Member receiving a share based on the number of
3 workweeks each Settlement Class Member worked for Defendant within the Settlement Class
4 Period. The Net Settlement Amount is estimated to be \$191,600, and each of the approximately
5 888 Class Members will receive, on average, \$212.76, before any tax withholdings (Settlement,
6 Section 4);

- 7 • Tax Allocation: The amounts distributed to Settlement Class Members will be characterized as
8 15% alleged unpaid wages, and 85% as alleged unpaid penalties and interest (Settlement,
9 Section 3, ¶ 3.2.4.1);
- 10 • Employer’s Portion of Payroll Taxes Paid Separately: Defendant’s portion of payroll taxes (e.g.,
11 FICA, FUTA, etc.) owed on any settlement payments to Settlement Class Members that
12 constitute wages will be paid separate and apart from the GSM (Settlement, Section 4, ¶ 4.3);
- 13 • Uncashed checks: Any settlement checks that are mailed to the Settlement Class Members and
14 remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will
15 be directed to the State Controller’s Office Unclaimed Property Division or other recipient as
16 directed by the Court (Settlement, Section 4, ¶ 4.4.3);
- 17 • The notice portion of the Settlement will be administered by a third-party Administrator,
18 Phoenix Settlement Administrators, and costs of administration are estimated to be no more
19 than \$20,000 (Settlement, Section 7);
- 20 • PAGA Allocation: From the GSA, \$2,925 will be paid to the California Labor & Workforce
21 Development Agency to resolve and settle claims brought pursuant to the California Private
22 Attorneys General Act, Labor Code § 2699 *et seq.* (“PAGA”), representing 75% of the
23 \$3,900.00 allocated to resolve claims arising under PAGA (Settlement, Section 3, ¶ 3.2.5);
- 24 • Enhancement/Service Awards to Plaintiff: Defendant will not oppose the application for Class
25 Representative Enhancement of up to \$15,000 for Plaintiff, to be paid from the GSA
26 (Settlement, Section 3, ¶ 3.2.1);
- 27 • Fees and Costs: Defendant will not oppose Class Counsel’s application for fees up to the
28 amount of \$136,500, and actual costs, in an amount not to exceed \$23,000.00, to be paid out of

1 the GSA. (Settlement, Section 3, ¶ 3.2.2)

2 **III. FACTUAL AND PROCEDURAL BACKGROUND**

3 **A. Plaintiff's Claims**

4 On September 29, 2020, Plaintiff filed a putative Class Action inadvertently naming the wrong
5 Defendant and thereafter on October 13, 2020 Plaintiff filed a First Amended Complaint alleging that
6 Defendant: (1) failure to provide meal periods, (2) failure to provide rest periods, (3) failure to pay overtime
7 wages, (4) failure to pay minimum wage, (5) failure to compensate for all hours worked, (6) failure to
8 maintain required records, (7) failure to provide accurate wage statements, (8) violation of Business &
9 Professions Code section 17200, *et seq.*, and (9) waiting time penalties. (Kharatian Decl., ¶ 4.) Once more
10 on May 10, 2023 Plaintiff filed a second amended complaint alleging that Defendant: (1) failure to provide
11 meal periods, (2) failure to provide rest periods, (3) failure to pay overtime wages, (4) failure to pay
12 minimum wage, (5) failure to compensate for all hours worked, (6) failure to maintain required records, (7)
13 failure to provide accurate wage statements, (8) violation of Business & Professions Code section 17200,
14 *et seq.*, (9) waiting time penalties, (10) failure to reimburse for necessary business expenses and (11)
15 violation of California Labor Code Sections 2698, *et seq.* (violation of the Private Attorneys General Act).
16 (*Id.*) In the Complaint, Plaintiff seeks to represent all non-exempt employees who are or have been
17 employed by Defendant in the State of California during the period beginning four years before the filing
18 of the initial Complaint and ending when the Court grants preliminary approval. (*Id.*)

19 **B. Pre-Mediation Data Production and Analysis**

20 The Parties have conducted formal and informal discovery and investigation of the facts and law.
21 Such discovery and investigation have included, *inter alia*, the exchange of informal data and discoverable
22 information in preparation for the mediation sessions. (Kharatian Decl., ¶ 5.) The Parties have analyzed
23 payroll and other data pertaining to Plaintiff and the Settlement Class during the relevant Settlement Period,
24 including but not limited to the numbers of former and current members of each purported subclass within
25 the Settlement Class, average workweeks, and average rate of hourly pay. (*Id.*) In addition, Defendant also
26 provided documents reflecting their wage and hour policies and practices during the Settlement Period and
27 information regarding the total number of current and former employees in the Settlement Class. (*Id.*)

28 After reviewing documents regarding Defendant's wage and hour policies and practices and other

1 information obtained during both formal and informal exchange of discovery, Class Counsel were able to
2 evaluate the probability of class certification, success on the merits, and the reasonably obtainable maximum
3 monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis
4 prior to each mediation. Class Counsel also investigated the applicable law regarding the claims and
5 defenses asserted in the litigation. (Kharatian Decl., at ¶ 6.)

6 C. Settlement

7 On May 24, 2022, the Parties mediated before Steven Mehta, who is a highly experienced and well-
8 regarded mediator for wage and hour class action litigation. (Kharatian Decl., ¶ 7.) At the mediation, the
9 Parties discussed at length the burdens and risks of continuing with the litigation as well as the merits of the
10 claims and defenses. (*Id.*) However, the Parties did not settle at the mediation. (*Id.*) Thereafter, on January
11 23, 2023, the Parties mediated before Steve Pearl, who is a highly experienced and well-regarded mediator
12 for wage and hour class action litigation. During the second mediation with the assistance of Mr. Pearl, the
13 Parties agreed to the basic terms of a proposed settlement and ultimately signed a Memorandum of
14 Understanding (“MOU”) regarding the substantive terms of a class-wide settlement, pending the Parties’
15 agreement on a long-form class settlement agreement. (*Id.*) The Parties then signed a long form settlement
16 agreement (the Agreement). (*Id.*)

17 Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for the
18 claims asserted in this action, both generally and in response to Defendant’s defenses thereto. Plaintiff and
19 Class Counsel have also taken into account Defendant’s agreement to enter into a Settlement that confers
20 substantial relief upon the Class. (Kharatian Decl., ¶ 8.)

21 Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth
22 in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class.
23 (Kharatian Decl., ¶ 9.) Solely for the purpose of settling this case, the Parties agree that the requirements
24 for establishing class action certification with respect to this class have been met and are met. (*Id.*) If this
25 Settlement is not approved by the Court for any reason, Defendant reserves its rights to contest class
26 certification. (*Id.*) This Settlement, if approved by the Court, will result in the termination with prejudice
27 of the litigation through the entry of the Judgment and the release of all Released Claims for all Class
28 Members, including all within the class definition who have not elected to exclude themselves from the

1 Settlement Class. (*Id.*)

2 **IV. CLASS DEFINITION**

3 The Settlement Class is defined as follows:

4 all persons employed by CGP in California as hourly paid, non-exempt employees who worked for
5 CGP during the Class Period, and who did not sign an arbitration agreement with an express class
6 action waiver, including but not limited to, the CA Universal At-Will Employment Dispute and
7 Arbitration Agreement, Century Group Professionals, LLC Arbitration Agreement, Century Group
8 Professionals, LLC Voluntary Arbitration Agreement, and (CA) Century Group Professionals LLC
9 Arbitration Agreement. (Settlement, Section 1 ¶ 1.5.)

10 (Kharatian Decl., ¶ 33 and Exhibit 1.)

11 **V. DISCUSSION**

12 **A. The Court Should Conditionally Certify the Settlement Class Because It Meets All the**
13 **Requirements for Certification for Settlement Purposes Under CCP § 382**

14 Under Code of Civil Procedure § 382,¹ class certification is warranted so long as there is a numerous
15 and ascertainable class with a well-defined community of interest among its members and that a “class
16 action proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *See, e.g.,*
17 *Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). Any doubts as to the
18 appropriateness of class treatment must be resolved in favor of certification, subject to later modification.
19 *Richmond v. Dart Indus. Inc.*, 29 Cal. 3d 462, 473-475 (1981). For purposes of this Settlement only,
20 Defendant has stipulated to conditional certification of the proposed class action.

21 “The certification question is ‘essentially a procedural one that does not ask whether an action is
22 legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
23 (2000). Indeed, the certification question simply asks whether the theory of recovery advanced by the
24 plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daihls USA, Inc.*, 181 Cal. App.
25 4th 1286, 1298 (2010). In ruling on certification, a trial court’s task is to determine “whether ... the issues
26 which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or
27 substantial that the maintenance of a class action would be advantageous to the judicial process and to the
28

¹ Code Civ. Proc. § 382, which is the statutory basis for the maintenance of class actions under California law, states in relevant part, “[W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.”

litigants.” *Id.* Thus, “[t]he relevant comparison lies between the costs and benefits of adjudicating plaintiffs’ claims in a class action and the costs and benefits of proceeding by numerous separate actions” *See, e.g., id.*

“[I]t is also well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). As the court noted in *Dunk*, although certification requirements are intended “to protect the interests of the non-representative class members,” that concern is “protected by the trial court’s fairness review of the settlement.” *Dunk*, 48 Cal. App. 4th at 1807 n.19.

Indeed, numerous courts have certified settlement classes. For example, the court in *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285 (2d Cir. 1992), cert. dismissed, 506 U.S. 1088, 122 L. Ed. 497, 113 S. Ct 1070 (1993), addressed settlement before a class was certified. After a hearing, the “district court issued an order certifying the class and approving the settlement agreement.” *Id.* at 289; *see also Alaniz v. California Processors, Inc.*, 73 F.R.D. 269, 278 (N.D. Cal. 1976) (“the use of the tentative settlement class procedure was appropriate in this case”), *aff’d*, 572 F.2d 657 (9th Cir.), cert. denied, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action litigation and an approved procedure which ought to be followed in this case. *See Newberg on Class Actions* (3d ed. 1991) § 11.27, pp. 11-40 to 11-56; *Manual for Complex Litigation*, 2d (1993) § 30.45.

In view of these standards, and as shown below, the Settlement Class should be certified for purposes of settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

1. The Members of the Settlement Class Are Both Objectively Ascertainable and Sufficiently Numerous.

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal. App. 3d 862, 873 (1983). In this case, Plaintiff contends that all three considerations strongly favor class certification for purposes of settlement.

A class is ascertainable when it may be readily identified without unreasonable expense or time by

1 reference to official records. *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 932 (1981) (holding that forty-
2 two class members are quantitatively sufficient to satisfy the numerosity requirement). No set number of
3 class members is required to maintain a class action. *Hebbard v. Colgrove*, 28 Cal. App. 3d 1017, 1030
4 (1972). In fact, the California Supreme Court has upheld a class of as few as ten members. *Bowles v.*
5 *Superior Court*, 44 Cal. 2d 574 (1955).

6 The class definition is sufficiently specific to enable the Parties, Class Members, and the Court to
7 readily determine the parameters of the class. See *Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605,
8 617 (1987) (proposed class defined as all persons nationwide subscribing to telephone service since January
9 1, 1981, who were charged for one or more unanswered long distance calls, deemed “plainly”
10 ascertainable).

11 The question of whether class members are easily identifiable turns on whether a plaintiff can
12 establish “the existence of an ascertainable class,” not whether the plaintiff can “identify the individual
13 members of such class as prerequisite to the class suit.” *Daar v. Yellow Cab Co.*, 67 Cal.2d 695, 706 (1967);
14 see also, *Reyes v. San Diego County Bd. of Supervisors.*, 196 Cal. App. 3d 1263, 1275 (1987).

15 In this case, there are approximately 888 Settlement Class Members, and approximately 278 alleged
16 aggrieved employees in relation to Plaintiff’s PAGA claims, all of whom may be identified by reference to
17 Defendant’s records. In addition, to facilitate the administration of the Settlement, Defendant has agreed to
18 share the information from its records and has already demonstrated that it can do so when providing class-
19 wide informal discovery to Plaintiff to facilitate settlement discussions. Accordingly, the Settlement Class
20 is not only ascertainable, but also sufficiently numerous. (Kharatian Decl., ¶ 34.)

21 **2. There Are Common Questions That Predominate Over Any Questions That**
22 **May Be Unique to Individual Settlement Class Members.**

23 The community of interest requirement embodies three factors: (1) predominant questions of law
24 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
25 who can adequately represent the class. *Dunk*, 48 Cal. App. 4th at 1806; *Richmond*, 29 Cal. 3d at 473-75.
26 In this case, Plaintiff’s claims satisfy all three factors.

27 A question of law or fact is common to the members of a class if it may be resolved through common
28 proof. See, *Jaimez*, 181 Cal.App.4th at 1305. As for predominance, it “is a comparative concept, and ‘the

1 necessity for class members to individually establish eligibility and damages does not mean individual fact
2 questions predominate.” *Sav-on*, 34 Cal. 4th at 334, quoting *Reyes v. Los Angeles County Bd. of*
3 *Supervisors*, 196 Cal. App. 3d 1263, 1278 (1979). Thus, “[i]ndividual issues do not render class certification
4 inappropriate so long as such issues may effectively be managed.” *Id.* This is especially so where the key
5 difference between class members solely concerns their damages. *See id.*

6 In this case, common questions include, but are not limited to: i. Whether or not Defendant paid
7 proper wages to the Class; ii. Whether or not Defendant provided meal periods to the Class; iii. Whether or
8 not Defendant provided rest periods to the Class; iv. Whether or not Defendant paid compensation timely
9 upon separation of employment to former Class Members; v. Whether or not Defendant paid compensation
10 timely throughout Class Members’ employment; vi. Whether or not Defendant provided accurate itemized
11 wage statements to the Class; vii. Whether or not Defendant failed to indemnify employees for necessary
12 expenditures incurred in discharge of duties; viii. Whether or not waiting-time penalties are available to the
13 Class for violation of California Labor Code § 203; ix. Whether or not Defendant engaged in unlawful or
14 unfair business practices affecting the Class in violation of California Business and Professions Code §§
15 17200-17208; and x. Whether or not Plaintiff and the alleged aggrieved employees within the PAGA period
16 are entitled to penalties pursuant to PAGA. (Kharatian Decl., ¶¶ 36.)

17 In the Action, Plaintiff’s claims present sufficient common issues of law and fact that
18 predominate over individual issues and warrant class certification. From their review of the
19 documentation provided, Class Counsel determined that for purposes of these claims, Defendant’s policies
20 and practices are either identical, or sufficiently similar, to raise the same questions of liability, and applied
21 to all Settlement Class Members. Because Settlement Class Members would have to prove the same issues
22 of law and fact to prevail, and because their potential legal remedies are identical, it would be preferable to
23 resolve all Settlement Class Members’ claims by means of the Settlement than to require each Settlement
24 Class Member to litigate his or her individual claims. Therefore, common questions predominate over any
25 questions that may be unique to individual Settlement Class Members, and class-wide settlement is superior
26 to any other method of resolution.

27 **3. Plaintiff’s Claims Are Typical of Those of the Settlement Class.**

28 Typicality “requires a showing that the class representative has claims or defenses typical of the

1 class.” *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1534 (2008), citing
2 *Fireside Bank v. Superior Court*, 40 Cal. 4th 1069, 1089 (2007), and *Sav-On*, 34 Cal. 4th at 326, approved
3 by *Jaimez*, 181 Cal. App. 4th at 1298 and *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004 (2012).

4 To satisfy the typicality requirement, California law does not require that Plaintiff have claims
5 identical to the other class members. Rather, the test of typicality for a class representative is whether other
6 members have the same or similar injury, whether the action is based on conduct which is not unique to the
7 named plaintiff, and whether other class members have been injured by the same course of conduct.
8 *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007). The typicality requirement for a class
9 representative refers to the nature of the claim or defense of the representative, and not to the specific facts
10 from which it arose or the relief sought. *Id.*; *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir.
11 1992).

12 The purpose of this requirement is to ensure that the representative plaintiff has interests that are
13 reasonably co-extensive with those of absent class members. *See id.* “The test of typicality ‘is whether other
14 members have the same or similar injury, whether the action is based on conduct which is not unique to the
15 named plaintiffs, and whether other class members have been injured by the same course of conduct.’” *Id.*,
16 quoting *Schwartz v. Harp* 108 F.R.D. 279, 282 (C.D. Cal. 1985). Notably, “it has never been the law in
17 California that the class representative must have *identical* interest with the class members.” *Classen v.*
18 *Weller*, 145 Cal. App. 3d 27, 46 (1983). In light of these standards, Plaintiff is typical of class members.

19 Here, like other Settlement Class Members and aggrieved employees, Defendant employed Plaintiff
20 in non-exempt positions during the Class Period and PAGA period, and Plaintiff was subject to the same
21 policies alleged to have impacted the entire class. (Kharatian Decl., ¶ 35.) Plaintiff, Settlement Class
22 Members, and aggrieved employees share the same claims stemming from Defendant’s alleged violations
23 of the Labor Code. In addition, Defendant’s main defenses, namely that its policies and practices fully
24 comply with California law, apply equally to the claims of all Settlement Class Members and aggrieved
25 employees. Accordingly, Plaintiff is typical of the Settlement Class and aggrieved employees in the PAGA
26 period.

27 **4. Plaintiff and Her Counsel Will Adequately Represent the Class.**

28 The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct

1 the litigation and the plaintiff's interest in the litigation is not antagonistic to class members' interests.
2 *McGhee v. Bank of America*, 60 Cal.App.3d 442, 451(1976). In other words, where the plaintiff has
3 adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that
4 might hinder the plaintiff's ability to represent the class. *Id.*

5 In the Action, Plaintiff has no conflicts of interest with other Settlement Class Members or aggrieved
6 employees, and has agreed to place Class interests above her own. (Kharatian Decl., ¶ 38.) Moreover, her
7 counsel is experienced in wage and hour class action litigation and have no conflicts of interest with absent
8 Settlement Class Members. (Kharatian Decl., ¶¶ 20-25, 38.) As such, this Court should appoint Plaintiff as
9 Class Representative for the Settlement Class and appoint Plaintiff's Counsel as Class Counsel.

10 **5. Proceeding as a Class Action is Superior to Individual Actions**

11 Under the circumstances, proceeding as a class action is a superior means of resolving this
12 dispute, as the Class Members and the Court will derive substantial benefits from the settlement. Class
13 certification would serve as the only means to deter and redress the alleged Labor Code violations. *See*
14 *Linder v. Thrifty Oil Co.* 23 Cal. 4th at 434 (relevant considerations include the probability that each
15 class member will come forward ultimately to prove his or her separate claim to a portion of the total
16 recovery and whether the class approach would actually serve to deter and redress the alleged
17 wrongdoing). Furthermore, individual actions arising out of the same operative facts would unduly
18 burden the courts and could result in inconsistent results, which may be avoided by class certification.

19 **B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair,** 20 **Adequate, and Reasonable Compromise of Disputed Wage Claims in View of** 21 **Defendant's Potential Liability Exposure and the Risks of Continued Litigation**²

22 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
23 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists to
24 prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior*
25 *Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary settlement

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27 ²The PAGA portion of this settlement also requires court approval. PAGA, Labor Code § 2699(l) ("The
28 superior court shall review and approve any penalties sought as part of a proposed settlement agreement
pursuant to this part.") But, there are no set standards for such approval and Plaintiff submits that PAGA
approval should be granted if the settlement meets the standards for a class action settlement.

1 approval, notice being given to class members, and a final fairness and approval hearing being held at which
2 class members may be heard with respect to the settlement. *Id.* For the reasons discussed below, this Court
3 should preliminarily approve the Settlement, allow the Parties to give notice to the Settlement Class as
4 proposed, and schedule a final fairness and final approval hearing.

5 **1. Class Action Settlements Are Subject to Review and Approval.**

6 Any settlement of class litigation must be reviewed and approved by the presiding court. Rules of
7 Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial court and
8 (2) a subsequent (final) review after notice has been distributed to the class members. The Preliminary
9 Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks
10 *preliminary approval* and the setting of a Final Approval Hearing.

11 To evaluate a settlement, the trial court must receive “basic information about the nature and
12 magnitude of the claims in question and the basis for concluding that the consideration being paid for the
13 release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
14 App. 4th 116, 133 (2008). However, the record need *not* contain an explicit statement of the maximum
15 theoretical amount that the class could recover:

16 Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all cases to
17 contain evidence in the form of an explicit statement of the maximum amount the plaintiff class
18 could recover if it prevailed on all its claims—a number which appears nowhere in the record of
19 this case. But *Kullar* does not, as Greenwell claims, require any such explicit statement of value; it
requires a record which allows “an understanding of the amount that is in controversy and the
realistic range of outcomes of the litigation.”

20 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

21 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
22 **Between Experienced Counsel with the Assistance of a Highly-Qualified**
23 **Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

24 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
25 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
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1 experienced in similar litigation, and the percentage of objectors is small.³*Dunk*, 48 Cal.App.4th at 1802;
2 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
3 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a trial
4 court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g., Mallick*
5 *v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding concern is
6 to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801, quoting *Officers for*
7 *Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

8 Relevant factors in making this determination, include, but are not limited to:

9 [T]he complexity and likely duration of further litigation, the risk of maintaining class action status
10 through trial, the amount offered in settlement, the extent of discovery completed and the state of
11 the proceedings, the experience and views of counsel, the presence of a governmental participant,
and the reaction of the class members to the proposed settlement.

12 *Id.* These factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the factors
13 considered to each case and give due regard to “what is otherwise a private consensual agreement between
14 the parties.” *Id.*

15 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
16 counsel with the assistance of highly-regarded mediator. (Kharatian Decl., ¶¶ 7, 16.) With respect to the
17 claims at issue in this case, Plaintiff obtained data from Defendant and then carefully reviewed that
18 information. Counsel for Plaintiff also examined relevant policies.

19 Based on the totality of that review, Plaintiff estimated the potential exposure and then estimated
20 risk factors to adjust the reasonable expected outcome. The investigation and discovery that Plaintiff
21 conducted were sufficient to provide enough information to intelligently evaluate the estimated exposure in
22 this action for purposes of negotiating the Settlement in view of the risks discussed below and are also
23 sufficient to allow this Court to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
24 224, 245 (2001).

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27 ³ Because the fourth prerequisite for the presumption to arise cannot be addressed until the final approval
28 hearing, only the first three prerequisites are relevant at this preliminary stage of the settlement approval
process.

1 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise of**
2 **Settlement Class Members’ Claims Based on Defendant’s Estimated Liability**
3 **Exposure Given the Risks Continued Litigation Would Entail.**

4 A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial
5 and does not have to provide 100% of damages sought to be fair and reasonable. “In the context of a
6 settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the
7 complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91
8 Cal.App.4th at 250. Accordingly, because settlements involve compromise, even one that provides for
9 substantially narrower relief than would likely be obtained if the suit were successfully litigated can be
10 reasonable given that “the public interest may indeed be served by a voluntary settlement in which each
11 side gives ground in the interest of avoiding litigation.” *Id.*, quoting *Air Line Stewards & Stewardesses*
12 *Ass’n, Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).

13 With respect to the claims asserted on behalf of the Settlement Class in this case, there are risks that
14 support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiff
15 would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v. US Bank*
16 *Nat’l Ass’n*, 59 Cal. 4th 1, 39 & n. 33 (2014) (“*Duran*”), citing *Dilts v. Penske Logistics, LLC* 2014 WL
17 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial); (ii) the risk that
18 Defendant’s meal and rest period policies might not ultimately support class certification or a class-wide
19 liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28(citing Court of Appeal decisions favorable on class
20 certification issue without expressing opinion as to ultimate viability of proposition); (iii) the risk that
21 uncertainties pertaining to the ultimate legality of Defendant’s policies and practices could preclude class-
22 wide awards of statutory penalties under Labor Code §§ 203 and 226(e); (iv) the risk that individual
23 differences between Settlement Class Members could be construed as pertaining to liability and not solely
24 to damages, *see Duran*, 59 Cal. 4th at 19; (v) the risk that any civil penalties award under the PAGA could
25 be reduced by the Court in its discretion, *see Labor Code § 2699(e)(1)*; (vi) the risk that class treatment
26 could be deemed improper as to one or more claims, except for settlement purposes; and (vii) the risk that
27 lengthy appellate litigation could ensue. (Kharatian Decl., ¶ 15.) These risks are non-exhaustive.

28 Considering the uncertainties of protracted litigation, the settlement amount reflects a fair and

1 reasonable recovery for the Settlement Class Members. (Kharatian Decl. ¶¶ 12-19.) The settlement amount
2 is, of course, a compromise figure. (Kharatian Decl. ¶ 16.) By necessity it considered risks related to
3 liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Settlement Class Member
4 will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are
5 greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the
6 approximately 888 members of the Settlement Class, the average gross recovery is roughly \$215.76 per
7 class member. (*Id.*) Given that Defendant could challenge certification and liability, this is a significant
8 sum to have achieved in settlement. Moreover, a Class Member who worked a greater number of weeks
9 for Defendant will receive a larger share of the Settlement than a Class Member who worked for a shorter
10 amount of time during the class period. (*Id.*)

11 The Class Settlement Amount exceeds the risk-adjusted recovery at this stage in the litigation. This
12 outcome is in line with a carefully constructed estimate of the current fair value of the case. (Kharatian
13 Decl., ¶ 17.) On that basis, it would be unwise to pass up this settlement opportunity. The maximum
14 damage values are estimates based on average wage rates, numbers of employees, and the amount of time
15 covered by the class period. (*Id.*) After analyzing the claims in this matter, Plaintiff has concluded that the
16 value of this Settlement is fair, adequate, and reasonable. (*Id.*) For example, a reasonably estimated
17 exposure for unpaid wages over the class period was calculated to be approximately \$222,754. However,
18 with the risk factor discounts for certification, and liability proof, the value of that claim is estimated by
19 Plaintiff's counsel to be approximately \$44,550.80, assuming certification probability of 40% and merits
20 success at 50%. The reasonably estimated exposure for rest break violations over the class period was
21 calculated at \$645,569, but with lower chances of certification and proof of liability (20% and 40%
22 respectively) for a risk-adjusted exposure of \$51,645.52. Risk-adjusted penalty recoveries for wage
23 statement and Labor Code § 203 penalties were estimated to be approximately \$45,600 and \$135,284,
24 respectively. Risk adjusted exposure for meal period violations was calculated at \$81,401.40 (assuming
25 certification and liability proof risk factors of 30% and 50%, respectively). Performing risk-adjusted
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1 valuations for all claims yields a total value of approximately \$355,000, excluding PAGA.⁴ (Kharatian
2 Decl., ¶ 17.) PAGA penalties were calculated as having a maximum exposure of \$644,900, but a risk
3 adjusted value of \$32,245, after factoring in risks of reduction in penalties pursuant to Court discretion and
4 the risk of the inability to prove violations for all aggrieved employees. Because Plaintiff’s counsel’s
5 investigation did not reveal a uniform policy or practice of not indemnifying or reimbursing employees for
6 necessary expenditures and because individualized fact questions would predominate, Plaintiff’s counsel
7 did not allocate any monetary value to this claim. The concurrently-filed Declaration of Jores Kharatian
8 sets for claim valuation in greater detail. (*See*, Kharatian Decl., ¶¶ 17(a) – 17(h).)

9 This result here is fully supportable as reasonable. First, it is important to recognize the wilfulness
10 finding required for Labor Code §§ 203 and 226 is challenging to establish. (Kharatian Decl., ¶ 18.)
11 Second, rest break and meal period claims have been challenging to certify for many years, even after
12 *Brinker*. (*Id.*) Third, the certification rates in California are lower than conventional wisdom holds. *See*,
13 *Class Certification in California*, February 2010, available at
14 <http://www.courts.ca.gov/documents/classaction-certification.pdf> (finding, at page 5, and in Table 9, at
15 page 15, that only 27% of all class actions were certified either as part of a settlement *or* as part of a contested
16 certification motion).

17 Here, the estimated certification probabilities are *above* the average rate at which cases were
18 certified in California over the study years, based upon data available through the California Courts
19 websites. (Kharatian Decl., ¶ 18.) In sum, well *under* 20% of all cases filed as proposed class actions are
20 ultimately certified by way of a *contested* motion. (*Id.*) Since the recovery is roughly 19% of the maximum
21 theoretical recovery (estimated to be approximately \$2,315,410, excluding PAGA), it meets the expected
22 outcome under that metric. (*Id.*)⁵ This Settlement achieves the goals of the litigation.

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24 ⁴In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a specific
25 method for attempting to reduce the concept of “very high risk” or “high risk” to a quantifiable amount.
26 Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either
27 certified or it is not. But the current expected value is best quantified by applying a risk reduction.

28 ⁵ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA
penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser
amount than the maximum civil penalty amount specified by this part...”), and, second, courts evaluate
the strength of a proposed settlement without taking potential penalties or interest into consideration. *See*
Rodriguez v. West Publishing Corp., 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics*

1 **4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate,**
2 **and Reasonable.**

3 The proposed method of allocating the Settlement Fund to Settlement Class Members also is fair
4 and reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members
5 based on time worked by the Class Member during the Class Period, in relation to the total amount of time
6 worked by all participating Class Members collectively during the class period. This proposed method is
7 fair and reasonable because each Settlement Class Member’s actual potential damages vary based on the
8 number of workweeks he or she actually worked (e.g., Lab. Code § 226.7 provides for an extra hour of pay
9 at the employee’s regular rate of pay for each violation, resulting in a higher potential damage when a higher
10 number of incidents occur). A Class Member who worked a greater number of weeks for Defendant will
11 receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of
12 time during the relevant period. (Kharatian Decl., ¶¶ 10, 16.)

13 **5. The Proposed Enhancement Award to Plaintiff Is Fair, Adequate, and**
14 **Reasonable and Warrants Preliminary Approval.**

15 The proposed enhancement payment to Plaintiff is intended to recognize her substantial initiative
16 and significant efforts on behalf of the Settlement Class. Courts routinely approve incentive awards to
17 compensate named plaintiffs for the services they provide and the risks they incur during class action
18 litigation, often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*, 115
19 Cal. App. 4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing
20 the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D.Cal. 1995) (approving a \$50,000
21 enhancement award). Plaintiff contributed her time to the prosecution of this matter, including assistance
22 prior to both mediations with information and substantial time conferring with counsel over the course of
23 this litigation and before it was filed. (Kharatian Decl., ¶ 31.) The enhancements also recognize the
24 considerable risks Plaintiff undertook on behalf of the Settlement Class to be personally liable for all costs
25 incurred regardless of the success of the litigation or class certification, as well as the personal risk she took

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U.S.A., Inc., 2015 WL 729638, at *7(E.D. Cal. Feb. 19, 2015)(court utilized calculation of a defendant’s exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).

1 of facing intrusive discovery and potential disclosure to future employers that she sued a former employer,
2 making her future uncertain. As such, the payment to Plaintiff is appropriate and justified as part of the
3 overall Settlement.

4 **6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate,**
5 **and Reasonable and Merits Preliminary Approval.**

6 The California Supreme Court removed any lingering doubt about the use of the percentage of the
7 fund method to award attorney's fees in California Courts:

8 We join the overwhelming majority of federal and state courts in holding that when class action
9 litigation establishes a monetary fund for the benefit of the class members, and the trial court in its
10 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
11 of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized
12 advantages of the percentage method—including relative ease of calculation, alignment of
13 incentives between counsel and the class, a better approximation of market conditions in a
contingency case, and the encouragement it provides counsel to seek an early settlement and avoid
unnecessarily prolonging the litigation (See pt. I, *ante*; *Lealao v. Beneficial California, Inc.* 82
Cal.App.4th, 48-49 (2000); *Rawlings v. Prudential-Bache Properties, Inc.* 9 F.3d 513, 516 (6th Cir.
1993)—convince us the percentage method is a valuable tool that should not be denied our trial
courts.

14 *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁶ Thus, this Court may and, as strongly
15 encouraged by the California Supreme Court, *should* award attorney's fees to Plaintiff's counsel based upon
16 the percentage of the fund methodology.

17 Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund method or the
18 lodestar method is used, the outcome is roughly the same: "Empirical studies show that, regardless whether
19 the percentage method or the lodestar method is used, fee awards in class actions average around one-third
20 of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 47 n. 11 (2008), quoting *Shaw v. Toshiba*
21 *America Information Systems, Inc.*, 91 F.Supp.2d 942, 972 (E.D. Tex. 2000). Here, Plaintiff's attorneys
22 intend to request attorneys' fees of up to \$136,5000 (35% of the GSA), and costs capped at \$23,000 (which
23 includes payment for two mediation, filing fees, and other standard expenses). (Kharatian Decl., ¶¶ 26-30.)
24 In view of the efforts and risks involved in this case, as well as the results achieved, these amounts are well
25 within the range of reasonableness and warrant *preliminary approval*.

26 _____
27 ⁶ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt
28 about the use of the percentage method: "The *Dunk* court, while finding the percentage method inapplicable
to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage
generally in common fund cases." *Laffitte*, 1 Cal. 5th at 501.

1 **7. The Proposed Payment to the Administrator Is Fair and Reasonable**

2 In deciding whether to approve a proposed settlement, a trial court must determine if the proposed
3 settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In exercising this
4 power, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.”
5 *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Phoenix Settlement Administrators, which has
6 been selected due to its competitive bid, estimates that administration can be performed for no more than
7 \$20,000. Based on similar wage-and-hour actions, an estimated cost of no more than \$20,000 is a fair and
8 reasonable amount for administration fees and should be preliminarily approved. (Kharatian Decl., ¶ 32.)

9 **8. The Proposed Class Notice Is Constitutionally Sound and Complies with Rule**
10 **3.766(d) and (e)**

11 Notice requirements are set forth in Rules of Court, Rule 3.766. In determining the manner of the
12 notice, the court must consider the interests of the class, the type of relief requested, the stake of the
13 individual class members, the cost of notifying class members, the resources of the parties, the possible
14 prejudice to class members who do not receive notice, and the *res judicata* effect on class members. Rules
15 of Court, Rule 3.766(e).

16 a) *The Notice Procedure Satisfies Due Process*

17 Plaintiff requests that the Court approve the proposed plan for giving notice to the Class and
18 administering the Settlement. The notice process is set forth in the Settlement at Section 7.3. The standard
19 for determining the adequacy of notice is whether the notice has “a reasonable chance of reaching a
20 substantial percentage of the class members.” *Cartt v. Sup. Ct.*, 50 Cal.App.3d 960, 974 (1975). California
21 law vests the Court with broad discretion in fashioning an appropriate notice program. *Cartt*, 50 Cal. App.
22 3d at 973-74. There is no statutory or due process requirement that all class members receive actual notice,
23 but in this matter, the Settlement Class Members will receive direct mailed notice. Direct mail notice to
24 Class Members’ last known address is the best possible notice under the circumstances. *Mullane v. Central*
25 *Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

26 As the Court of Appeal has explained, “[t]he notice given should have a reasonable chance of
27 reaching a substantial percentage of the Class Members” *Cartt*, 50 Cal. App. 3d at 974. For class
28 claims “for money damages or similar relief at law, notice sent by first class mail to the last known address

1 of each member of the plaintiff class is sufficient.” *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811
2 (1985). Here, the proposed procedure includes safeguards, including, but not limited to, searches for
3 address changes and the re-mailing of returned notices after skiptraces. As such, the proposed procedure
4 provides a reasonable chance that Settlement Class members will receive notice of the Settlement.

5 *b) The Notice is Accurate and Informative*

6 The proposed Notice of Class Action Settlement should be approved for dissemination to the
7 Settlement Class Members. It will be disseminated through direct mail to the last known address for each
8 Settlement Class Member. It informs the Settlement Class Members of the terms of the settlement and their
9 right to be excluded from the Settlement. If there are Settlement Class Members who wish to object to this
10 proposed class action settlement, they will have the opportunity to file their objections and be heard at the
11 Final Approval Hearing.

12 Rule 3.769(f) of the Rules of Court provides as follows:

13 If the court has certified the action as a class action, notice of the final approval hearing must be
14 given to the class members in the manner specified by the court. The notice must contain an
15 explanation of the proposed settlement and procedures for class members to follow in filing written
objections to it and in arranging to appear at the settlement hearing and state any objections to the
proposed settlement.

16 Rules of Court, rule 3.769(f).

17 The Notice also fulfills the requirement of neutrality in class notices. 3 NEWBERG § 8.39. It
18 summarizes the proceedings and the terms and conditions of the proposed Settlement, in an informative and
19 coherent manner, in compliance with the Manual for Complex Litigation (“MANUAL”), (2d Ed. 1993),
20 which states that “the notice should be accurate, objective, and understandable to Class Members”
21 MANUAL, § 30.211. It makes clear that the Settlement does not constitute an admission of liability by the
22 Defendant and recognizes that this Court has not ruled on the merits. It also states that the final settlement
23 approval decision has yet to be made. Accordingly, the Notice complies with the standards of fairness,
24 completeness, and neutrality required of a combined settlement-certification class notice.

25 Upon the Court’s approval, the Notice of Class Action Settlement will be mailed by the
26 Administrator to each Settlement Class Member.

27 **9. The PAGA Allocation is Reasonable**

28 Admittedly, the PAGA allocation is a small percentage of the possible exposure. However, Plaintiff

1 submits that is permissible in this case because the settlement of the underlying wage and hour claims is
2 robust and serves the deterrent purpose of the PAGA statute. *O'Connor v. Uber Technologies, Inc.*, 201
3 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members as
4 employees and substantial monetary relief, a settlement not only vindicates the rights of class members as
5 employees, but may have a deterrent effect upon the defendant employer and other employers, an objective
6 of PAGA.”); *see also Vicerat v. Mistras Group*, 2016 WL 5907869 *9 (N.D. Cal. 2016) (“Applying
7 O’Connor’s sliding scale approach, settlement of the PAGA claim may be substantially reduced below its
8 standalone settlement value without sacrificing its statutory purposes because the non PAGA settlement is
9 relatively substantial.”)

10 In addition, there is no evidence that a court or a commissioner had informed Defendant that its
11 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
12 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013) (“Under California law, courts have held
13 that employers are not subject to heightened penalties for subsequent violations until and unless a court or
14 commissioner notified the employer that it is in violation of the Labor Code.”)

15 Defendant has committed to updating disputed policies and practices as appropriate. Punitive
16 deterrence is not well served here, where the employees benefit both from the settlement and from changed
17 practices.

18 **VI. THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING**

19 The last step in the settlement approval process is the fairness hearing, where the Court makes a
20 final determination about the propriety of settlement. Plaintiff requests that the fairness hearing in this case
21 be scheduled for approximately 150 days after issuance of the Court’s Order granting preliminary approval
22 of the Settlement. Under the Settlement, the Defendant will have 45 days to provide the mailing data to the
23 Settlement Administrator, which will then have 14 days to mail out class notice. Class Members have at
24 least 45 days after mailing of the notice to submit exclusions or objections. Since the final approval hearing
25 must be held at least 16 court days after the filing of the final approval motion, Plaintiff proposes that the
26 final approval hearing be scheduled for the first available hearing date that is approximately 150 days after
27 preliminary approval is granted.

1 **VII. CONCLUSION**

2 For all the foregoing reasons, because the Class meets the requirements for certification, because
3 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the
4 proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant this
5 Motion for Preliminary Approval, adopt the [Proposed] Order Granting Preliminary Approval of Class
6 Action Settlement submitted herewith, and schedule a Final Fairness Hearing.

7 Dated:

KHARATIAN LAW, APC

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9 By: 

10 Jores Kharatian
11 Attorneys for Plaintiff BRENDA CASTILLO,
12 on behalf of herself and all others similarly situated
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to this action. My business address is 595 E. Colorado Blvd., Suite 210, Pasadena,
7 CA 91101, and my electronic service address is jores@kharatianlaw.com. On **June 21, 2023**, I
8 served the foregoing document described as:

9 **PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL**
10 **OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND**
11 **AUTHORITIES IN SUPPORT THERE OF**

12 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s) addressed
13 as follows:

14 Boris Sorsher, Bar No.
15 bsorsher@fisherphillips.com
16 Lyle M. Chan, Bar No.
17 lchan@fisherphillips.com
18 Fisher & Phillips LLP
19 2050 Main Street, Suite 1000
20 *Attorneys for Defendant, Century Group Professionals, LLC*

21 **By E-Mail) Based on a Court Order or an agreement of the parties to accept**
22 **service by e-mail or electronic transmission, I caused the above-described**
23 **document(s) to be sent to the person at the address listed above.**

24 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
25 and correct.

26 Executed this **June 21, 2023** at Pasadena, California.

27 Donna Lopez
28 Type or Print Name


Signature