SHAKOURI LAW FIRM
Ashkan Shakouri, Esq. [SBN 242072]
ash@shakourilawfirm.com
Sharon W. Lin, Esq. [SBN 260443]
sharon@shakourilawfirm.com
11601 Wilshire Blvd., Fifth Floor
Los Angeles, California 90025
Telephone: (310) 575-1827
Fax: (310) 575-1872

Attorneys for Plaintiff

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

SUPERIOR COURT OF LOS ANGELES

AMY WILLIAMS, on behalf of herself and others similarly situated

Plaintiff,

v.

PROLINK STAFFING SERVICES, LLC; and DOES 1-20, INCLUSIVE

Defendants.

Case No.: 23STCV12912

Assigned for All Purposes to Hon. William F. Highberger; Dept. 10

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

Hearing Date: January 11, 2024
Hearing Time: 2:00 p.m.
Department: 10

Trial Date: Not Set
Action Filed: June 6, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: **Page:**

Statutes, Rules and Regulations:

Secondary Sources:

I. INTRODUCTION

Plaintiff Amy Williams ("Plaintiff" or "Named Plaintiff") respectfully submits this memorandum in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement with Defendant ProLink Staffing Services, LLC ("Defendant"), and seeks entry of an order: (1) preliminarily approving the proposed settlement of this class action with Defendant; (2) approving the form and method for providing class-wide notice; (3) directing that notice of the proposed settlement be given to the class; and (4) scheduling a final approval hearing date for Plaintiff's motion for final approval of the settlement and entry of judgment, and Plaintiff's motion for approval of attorneys' fees, litigation expenses, and class representative service payment on April 29, 2024 (110 days after granting preliminary approval), or anytime thereafter as the Court's calendar permits.

Plaintiff and Defendant (collectively, "the Parties") have reached a full settlement of the above-captioned action, which is embodied in the Class Action Settlement Agreement ("Settlement Agreement" or "Settlement").[1] A copy of the fully executed Settlement Agreement is attached as Exhibit 1 to the Declaration of Ashkan Shakouri ("Decl. Shakouri"), concurrently filed herewith. The Settlement Agreement and Class Notice are modeled after the model settlement agreement and class notice approved by the Los Angeles Superior Court.

As consideration for this Settlement, the total amount to be paid by Defendant is $485,000.00 (the "Gross Settlement Amount"). The Gross Settlement Amount will settle all claims and issues pending in this litigation between Plaintiff and the Class, on the one hand, and the Defendant and the Released Parties, on the other hand, including: payment of Individual Class Payments to Participating Class Members; Class Representative Service Payment to Named Plaintiff; Class Counsel Fees and Class Counsel Litigation Expenses Payment to Class Counsel; and the Administration Expenses Payment to the Administrator. The Settlement is all-in with no reversion to Defendant and no need to submit a claim form. (Decl. Shakouri at ¶3). Based on Defendant's latest estimate there are approximately 447 Class Members, which means that, if the

[1] All capitalized terms used herein shall have the same meaning ascribed to them in the Settlement Agreement.

Court approves the Settlement, on average each Class Member will be entitled to about $656.26. (Decl. Shakouri at ¶37).

In July and August of 2023 the Parties engaged in direct settlement negotiations which led to the agreement to settle the Action. Notably, the Parties have been engaged in protracted litigation in a related PAGA lawsuit since April 8, 2021, *Bowers et al. v. ProLink Staffing Services, LLC* (Los Angeles Superior Court Case No. 21STCV22188) ("the *Bowers* Action"), involving the same or similar theories of liability as alleged in the Action. Prior to negotiating the Settlement, Plaintiff obtained, through informal discovery, policies, personnel files, payroll data, and information about the number of pay periods and number of employees, in addition to the informal and formal discovery obtained in connection with the *Bowers* Action. After reaching an agreement to settle the Action, the Parties then prepared the full Settlement Agreement, which was signed by all counsel and the Parties and is now presented to this Court for preliminary approval. Named Plaintiff and Class Counsel believe that this Settlement is fair, reasonable, adequate, and should be preliminarily approved. (Decl. Shakouri at ¶4).

Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement and enter the Proposed Order, concurrently filed herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount to be paid by Defendant is $485,000.00. Under the Settlement, the Gross Settlement Amount consists of the following elements: 1) Individual Class Payments to Participating Class Members; 2) the Class Representative Service Payment to Named Plaintiff; 3) Class Counsel Fees Payment; 4) Class Counsel Litigation Expenses Payment; and 5) the Administration Expenses Payment. The Gross Settlement Amount does not include Defendant's share of employer-side payroll taxes, which Defendant shall pay to the Administrator separately. The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Decl. Shakouri at ¶5).

Within twenty-one (21) calendar days of the Effective Date, Defendant shall pay the Gross Settlement Amount to the Administrator. Within fourteen (14) calendar days after Defendant funds the Gross Settlement Amount, the Administrator shall issue payments to (1) the Participating Class

Members; (2) Named Plaintiff; (3) Class Counsel; and (4) the Administrator, all in the amounts approved by the Court. (Decl. Shakouri at ¶6).

The Net Settlement Amount shall equal the net amount available for Individual Class Payments to Participating Class Members from the Gross Settlement Amount after deducting the Court-approved amounts for Named Plaintiff's Class Representative Service Payment; Class Counsel Fees Payment; Class Counsel Litigation Expenses Payment; and the Administration Expenses Payment. The Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required in order for the Class Member to be paid his or her Individual Class Payment. Distribution of the Net Settlement Amount to Participating Class Members will be calculated by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and then multiplying the result by each Participating Class Member's Workweeks. (Decl. Shakouri at ¶7).

Class Members will have forty-five (45) days after the mailing of the Class Notice ("Response Deadline") to exclude themselves, submit written objections and/or submit disputes as to their estimated payments. Class Members may choose to opt-out of the Settlement by following the directions in the Class Notice. The procedure for dissemination of the Class Notice, as well as the procedure Class Members must follow to dispute their estimated payments, submit objections to the Settlement and/or requests for exclusion from the Class, is specifically articulated in Exhibit A of the Settlement Agreement. The Class Notice shall provide that Class Members who wish to exclude themselves from the Class must submit a written Request for Exclusion by the Response Deadline. The Class Notice shall also provide that Class Members who wish to object to the Settlement may submit a written objection to the Administrator (or through any other method through which the Court will accept objections, if any). The Class Notice also informs Class Members of their right to appear at the fairness or final approval hearing ("Final Approval Hearing") and to orally object to the Settlement at the Final Approval Hearing, regardless of whether they have submitted written objections. (Decl. Shakouri at ¶8).

If a Class Member's Individual Class Payment check is not cashed within one hundred and eighty (180) calendar days from the date the settlement checks are issued, the funds from such uncashed checks will be distributed to the California Controller's Unclaimed Property Fund in the name of the Class Member and the Class Member will remain bound by the Settlement. A Class Member who opts out of the Settlement will not release his or her claims pursuant to the Settlement. (Decl. Shakouri at ¶9).

The Parties have agreed to use CPT Group, Inc. as the Administrator for the Settlement. Payment of the expenses of the Administrator from the Gross Settlement Amount shall be made for the expenses of effectuating and administering the Settlement. The Administrator shall receive payment for its services in an amount not to exceed $10,000.00. (Decl. Shakouri at ¶10).

Subject to Court approval, the Settlement Agreement provides for Class Counsel to be awarded as their attorneys' fees (i.e., Class Counsel Fees Payment) a sum not to exceed 33.33% of the Gross Settlement Amount (i.e., $161,650.00). Class Counsel will also be allowed to apply separately for reimbursement of reasonable litigation costs and expenses (i.e., Class Counsel Litigation Expenses Payment) in an amount not to exceed $10,000.00. In support of these requests, Class Counsel will provide evidentiary support, including lodestar method calculations. Subject to Court approval, the Settlement Agreement provides for a Class Representative Service Payment of no more than $10,000.00 to the Named Plaintiff, or such lesser amount as may be approved by the Court at final approval.[2] Defendant will not oppose a motion for approval of attorneys' fees, litigation expenses, and class representative service payment consistent with the Settlement Agreement. (Decl. Shakouri at ¶11).

Should the Court approve the above distributions, the Net Settlement Amount is estimated to be $293,349.50. Based on Defendant's latest estimate there are approximately 447 Class Members, which means that on average each Class Member will be entitled to about $656.26. (Decl. Shakouri at ¶37).

[2] Plaintiff will address the reasonableness of these payments when filing her final approval papers, including the enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.*, 238 Cal.App.4th 1251 (2015) and *Clark v. Am. Residential Servs. LLC,* 175 Cal.App.4th 785 (2009).

In exchange for participating in the Settlement, and only after final approval and judgment is entered and upon the full funding of the Gross Settlement Amount, Plaintiff and all Class Members who do not submit timely and valid Requests for Exclusion (i.e., Participating Class Members) will be deemed to have fully and finally released the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the operative complaint and ascertained in the course of the Action, that arose during the Class Period ("Released Class Claims"). (Decl. Shakouri at ¶12).

III. CASE BACKGROUND

On June 6, 2023, Plaintiff filed a class action complaint in the Superior Court of the State of California, County of Los Angeles, against Defendant on behalf of herself and all of Defendant's non-exempt employees who were assigned to work at any facility inside California during the Class Period who have not executed a valid and enforceable arbitration agreement under California law, alleging the following causes of action: (1) failure to pay for all hours worked; (2) failure to pay overtime; (3) failure to pay minimum wage; (4) breach of contract; (5) failure to reimburse business-related expenditures; (6) failure to furnish accurate wage statements; (7) waiting time penalties; and (8) unfair business practices. (Decl. Shakouri at ¶13).

In July 2023 and August 2023, the Parties engaged in direct settlement negotiations which led to the Agreement to settle the Action. Notably, as mentioned above, the Parties had been engaged in protracted litigation in a related PAGA lawsuit since April 8, 2021, the *Bowers* Action, which involved the same or substantially similar theories of liability as alleged in the Action and an overlapping group of employees. Although the "aggrieved employees" in *Bowers* PAGA litigation exceeded 7,500 employees, this class action involves the small subset of those employees who are *not* bound by arbitration agreements. Through the *Bowers* Action, Class Counsel obtained informal discovery for mediation purposes and formal discovery for litigation concerning the wage and hour policies and practices at issue in the Action, including sample payroll data, timekeeping records, contracts, Defendant's policies, release of employee contact information, and the deposition of Defendant's person most knowledgeable. The *Bowers* Action is presently pending before Hon.

Kristen Escalante of the Los Angeles Superior Court, who granted approval of the PAGA settlement on October 10, 2023. (Decl. Shakouri at ¶14).

Further, prior to negotiating the Settlement, in addition to the informal and formal discovery obtained in connection with the *Bowers* Action, Defendant also produced policies, personnel files, payroll data, and information about the number of pay periods and number of employees through informal discovery. Class Counsel reviewed these records and, with the assistance of a retained expert, analyzed the previously produced time and pay records to determine Defendant's potential damage exposure in this Action. Class Counsel then used this analysis in conjunction with the anecdotal evidence provided by Plaintiff and interviewed employees to obtain detailed information on both liability and damages. (Decl. Shakouri at ¶15).

The settlement discussions were conducted at arm's-length. The Settlement was the result of an informed and detailed analysis of Defendant's alleged, potential liability of total exposure in relation to the costs and risks associated with continued litigation. After reaching an agreement to settle the Action, the Parties subsequently prepared the Settlement Agreement, which was signed by the Parties and is now presented to this Court for preliminary approval. (Decl. Shakouri at ¶16).

Accordingly, for purposes of this Settlement, Plaintiff seeks to represent the following Class: All non-exempt employees who work or worked for Defendant as healthcare professionals in California during the Class Period and who have not executed an arbitration agreement. The Class Period means the period from June 6, 2019 to November 12, 2023. (Settlement Agreement at ¶¶1.4, 1.11). (Decl. Shakouri at ¶17).

Although a resolution has been reached, Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action and further denies that, for any purpose other than Settlement, the Action is appropriate for class treatment. Defendant contends, among other things, that it has complied at all times with the California Labor Code and the applicable Wage Orders. Further, Defendant contends that class certification would be inappropriate for any reason other than for settlement. Plaintiff contends that Defendant violated California wage and hour laws. Plaintiff further contends that the Action is appropriate for class certification on the basis that Plaintiff's claims meet the requisites for class certification. Without admitting that class

certification is proper, Defendant has stipulated that the above Class may be certified for settlement purposes only. Based upon the totality of the evidence presented, Plaintiff is equipped to provide this Court sufficient evidence to determine adequacy of the Settlement. The Parties agree that certification for settlement purposes is not an admission that class certification would be proper or that Plaintiff would be an adequate class representative if the class certification issues were litigated. Further, the Settlement Agreement is not admissible in this or any other proceeding as evidence that the Class could be certified absent a settlement. Solely for purposes of settling the Action, the Parties stipulate and agree that the requisites for establishing class certification with respect to the Class, as defined above, are satisfied. (Decl. Shakouri at ¶18).

Class Counsel have conducted a thorough investigation into the facts of the class action. Class Counsel has diligently evaluated the Class Members' claims against Defendant. Class Counsel reviewed the extensive production of records and data from the Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with access to the necessary information for Class Counsel to evaluate the class claims. Class Counsel conducted extensive review of time and pay data with the assistance of an expert. Based on the documents and information produced and their own independent investigation, evaluation and experience, Class Counsel believe that the Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, the defenses asserted by Defendant, and potential appellate issues. (Decl. Shakouri at ¶19).

IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL

When a proposed class-wide settlement is reached, the settlement must be submitted to the court for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87. California "[p]ublic policy generally favors the compromise of complex class action litigation." *Nordstrom Comm'n Cases*, 186 Cal.App.4th 576, 581 (2010) (quoting *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1117-18 (2009)). Class action settlements are approved where the proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor*

Co., 48 Cal.App.4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983)).

The decision to approve or reject a proposed settlement is committed to the Court's sound discretion. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001). The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement terms and conditions and the scheduling of a formal fairness hearing is worthwhile. *Wershba*, 91 Cal.App.4th at 234-35; 4 *Newberg* § 11:25. In passing on class action settlements, the Court has broad powers to determine whether the proposed settlement is fair under the circumstances of the case.

Preliminary approval is the first of three steps that comprise the approval procedure for settlements of class actions. The second step is the dissemination of notice of the settlement to all Class Members. The third step is a final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented and Class Members may be heard regarding the settlement. *See Dunk, supra,* at 1801; *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

The primary question presented on an application for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval." *Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982).[3] Preliminary approval is merely the prerequisite to giving notice so that "the proposed settlement... may be submitted to members of the prospective Class for their acceptance or rejection." *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D. Pa. 1970); *Sayaman v. Baxter Healthcare Corp*., 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is an initial presumption of fairness when a proposed settlement, which was negotiated at arm's length by counsel for the Class, is presented for court

[3] California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for conducting class actions." *Frazier v. City of Richmond*, 184 Cal.App.3d 1491, 1499 (1986), *citing Green v. Obledo*, 29 Cal.3d 126, 145-146 (1981).

approval. *Newberg*, 3d Ed.,§11.41, p.11-88; *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) [citation omitted]; *see also Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal.App.4th 734, 742-45 (2009) (upholding trial court's determination that settlement was "fair, reasonable and adequate" where the settlement "provided valuable benefits to the class … that were 'particularly valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.'"). However, the ultimate question of whether the proposed settlement is fair, reasonable, and adequate is made after notice of the settlement is given to the class members and a final settlement hearing is held by the Court.

A. The Role of the Court in Preliminary Approval of a Class Action Settlement

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. *Wershba*, 91 Cal.App.4th at 234-235; *Dunk, supra,* at 1794. Preliminary approval does not require the trial court to answer the ultimate question of whether a proposed settlement is fair, reasonable, and adequate. That final determination is made only after notice of the settlement has been given to the class members and after they have been given an opportunity to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore, *Moore's Federal Practice* §§23.80 - 23.85 (2003).

In considering a potential settlement for preliminary approval purposes, the trial court does not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. *Wershba*, *supra*, 91 Cal.App.4th at 239-40; *Dunk*, *supra*, 48 Cal.App.4th at 1807. The Ninth Circuit explains, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice v. Civil Service Com'n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982). The question whether a proposed settlement is fair, reasonable, and adequate necessarily requires a judgment and evaluation by the attorneys for the parties based upon a comparison of "'the terms of the compromise with the likely rewards of litigation.'" *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the

settlement, the amount is "not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice*, 688 F.2d at 625, 628.

With regard to class action settlements, the opinions of counsel should be given considerable weight both because of counsel's familiarity with this litigation and previous experience with cases such as these. *Officers for Justice*, 688 F.2d 615, 625 (9th Cir. 1982); *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*, 698 F.2d at 74. For example, in *Lyons v. Marrud, Inc.*, [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 93,525 (S.D.N.Y. 1972), the court noted that "[e]xperienced and competent counsel have assessed these problems and the probability of success on the merits... The parties' decision regarding the respective merits of their position has an important bearing." Id. at ¶92,520. "The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

B. Factors to be Considered in Granting Preliminary Approval

A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. In determining whether to grant preliminary approval, the court considers whether the "(1) the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). No one factor should be determinative, but rather all factors should be considered. The analysis has been summarized as follows:

> If the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be

presented in support of and in opposition to the settlement. *Manual of Complex Litigation, Second* §30.44, at 229.

Here, the Settlement meets all of these criteria for preliminary approval.

1. The Settlement Is the Product of Serious, Informed and Arm's-Length Negotiations by Experienced Counsel

This Settlement is the result of extensive and hard-fought litigation and negotiations between the Parties. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class Counsel have determined that it is desirable and beneficial to the Class Members to put to rest the Released Class Claims.

Class Counsel conducted a thorough investigation into the facts of the Action. Class Counsel have diligently evaluated the Class Members' claims against Defendant. Prior to the settlement negotiations, Defendant provided Class Counsel with access to the necessary data and information for Class Counsel to evaluate the claims by the Class. Defendant also produced Defendant's relevant employment policies, including compensation and timekeeping policies. Class Counsel conducted extensive review of time records and data with the assistance of an expert. Based on the foregoing data and their own independent investigation, evaluation and experience, Class Counsel believe that the Settlement is fair, reasonable, and adequate and are in the best interest of the Class in light of all known facts and circumstances. (Decl. Shakouri at ¶20).

Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying the Action against Defendant through possible appeals which could take several years. Class Counsel have also taken into account the uncertain outcome and risk of litigation, especially in complex actions such as the one here. Class Counsel are also mindful of, and recognize, the inherent problems of proof under, and asserted defenses to, the claims asserted in the Action. Based upon their evaluation, Plaintiff and Class Counsel have determined that the settlement set forth in the Settlement Agreement is in the best interest of the Class Members. (Decl. Shakouri at ¶21).

Here, there can be no dispute that the litigation has been hard-fought with aggressive and capable advocacy on both sides. The Parties were represented by experienced and capable counsel who zealously advocated their respective positions. Accordingly, "[t]here is likewise every reason

to conclude that settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue influence." *In re Wash. Public Power*, 720 F. Supp. at 1392.

2. The Settlement Has No "Obvious Deficiencies" and Falls Within the Range of Approval

a. The Settlement Is Fair, Reasonable, and Adequate

The Settlement has no "obvious deficiencies" and is well within the range of possible approval. All Class Members will receive an opportunity to participate in the Settlement and receive payment according to the same formula if they do not opt out. (Settlement Agreement at ¶3.3.1).

The amounts to compensate the Class Members for the alleged violations at the time this Settlement was negotiated were calculated by Berger, Plaintiff's damage expert. Plaintiff used Berger to analyze the data and determine the potential damages for the Class Members. For the Class, Plaintiff estimates that Defendant were subject to maximum liability for alleged damages in the amount of $1,246,037, consisting of $140,984 for alleged unpaid off the clock work; $811,460 for alleged unpaid overtime; $273,783 for alleged unpaid guaranteed pay (for breach of contract claim); and $19,810 for alleged unreimbursed expenses. Consequently, the Gross Settlement Amount of $485,000 represents 38.9% of the value of the maximum actual damages at issue here. Plaintiff further calculated that Defendant could be liable for $302,785 for alleged waiting time penalties, and $95,550 for alleged wage statement penalties.[4] Thus, the maximum combination of damages and penalties to the Class amounts to $1,644,372, assuming all of these amounts could be proven at trial. Consequently, the Settlement represents approximately 29.5% of the maximum combination of damages and penalties at issue here. Given the amount of the Settlement as compared to the potential value of claims in this case, the Settlement is fair and reasonable. Clearly,

[4] While Plaintiff alleged claims for statutory penalties, she recognized that these claims were derivative of Plaintiff's previous claims and if certification was denied on these underlying claims, these claims would also likely fail. Moreover, Plaintiff's claims pursuant to Labor Code Section 226 are also subject to a good faith defense as to whether wages were owed given Defendant's position that Plaintiff and the Class were properly compensated. *See Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008) (granting defendant's motion for summary judgment on claim for failure to provide accurate itemized wage statements "because a good faith dispute exists... [therefore, defendant] was not 'knowing and intentional' in failing to provide [Section 226] statements"); *see also Nordstrom Commission Cases*, 186 Cal.App.4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether and when the wages were due.").

the goal of this litigation to provide compensation to Class Members for their alleged damages has been met. (Decl. Shakouri at ¶22).

In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015), the court approved a settlement of an action claiming unpaid wages where the settlement amount constituted roughly 10% of the estimated actual damages to the class. In *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015), the Court approved a settlement where the gross recovery to the class was approximately 8.5% of the maximum recovery amount. The Settlement here recovered a significantly higher percentage than those in the above cases. As a result, this Settlement is entitled to preliminary approval.

b. The Strengths and Weaknesses in Plaintiff's Case and Defendant's Defenses Warrant the Settlement

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant presented serious threats to the claims of Plaintiff and the other Class Members. Defendant asserted that its employment practices complied with all applicable Labor Laws. (Decl. Shakouri at ¶23).

Plaintiff's alleged unpaid overtime claim was based on the allegations that Defendant unlawfully failed to include housing and meals and incidentals stipends ("travel stipends") in Class Members' regular rates of pay to determine their overtime and double-time rates of pay. Nonetheless, there is no California authority holding that Defendant's stipend practice violates California law. There is, however, the Ninth Circuit ruling in *Clarke v. AMN Servs., LLC,* 987 F.3d 848 (9th Cir. 2021), holding that the travel stipends paid to travelers in that case were not excludable for overtime calculation purposes, because the defendant in that case prorated its "travel stipends" based on the numbers of hours worked; reduced stipends if employees called in sick; did not verify that travel expenses were actually incurred; did not reduce "travel stipends" for scheduled days off; paid local employees "travel stipends"; and allowed traveling employees to make up missed shifts to avoid "travel stipends" deductions (i.e., "banked hours"). Here, Defendant vociferously argued that the *Clarke* holding was distinguishable based on several factors. Further, even if Plaintiff could prove a violation, Defendant would be entitled to an overtime offset because of its practice of paying

weekly *and* daily overtime to Class Members (i.e., also known as pyramiding), which it is not required to pay by law. *See Advanced Tech Sec. Servs., Inc. v. Superior Court*, 163 Cal.App.4th 700, 707 (2008) (allowing for employer to use excess overtime payments as offset for overtime underpayments). Therefore, it was not at all certain that Plaintiff would ultimately prevail on this substantive claim. (Decl. Shakouri at ¶24).

Plaintiff's claims for Defendant's alleged failure to pay for all hours worked and minimum wage were based on the allegations that Defendant did not compensate Class Members for required job specific online competency/training/orientation courses (or modules) taken offsite and prior to the start of their assignments. These claims were therefore based on alleged unrecorded, off-the-clock work performed by Class Members. Defendant contended it did not permit off-the-clock work and that it was not aware off-the-clock work was being performed. Plaintiff's claim for Defendant's breach of contract was based on the alleged failure to pay promised "guaranteed" payments. For all of these claims, Defendant argued that even if a class could be certified, which Defendant vigorously disputes, the individualized nature of the claims presented substantial concerns regarding the manageability of the case and the risk the Court could find these issues prevented certification. (Decl. Shakouri at ¶25).

As to expense reimbursement, Plaintiff's claim was based on mobile phone and business-related travel costs, which Defendant argued would similarly raise numerous individualized inquiries that would prohibit certification. Defendant also issued retroactive cell phone reimbursements to all members of the settlement Class who worked since April 2020, and has changed its practice by issuing such reimbursements moving forward. Finally, the court may find remitter/reduction of the statutory damages appropriate. *See e.g., Klingensmith v. Max & Erma's Restaurants, Inc.*, 2007 U.S. Dist. LEXIS 81029, 2007 WL 3118505, at *5 (E.D. Pa. 2007). (Decl. Shakouri at ¶26).

c. The Risk of Obtaining and Maintaining a Class Action and the Risk, Duration and Complexity of Further Litigation Weigh in Favor of the Settlement

There was also a significant risk that, if the Action was not settled, Plaintiff would be unable to obtain class certification and thereby not recover on behalf of anyone else other than herself. Throughout the litigation, Defendant argued that the individual experience of each employee varied

with respect to the alleged claims. While other cases have approved class certification of wage and hour claims, class certification in this Action would have been hotly disputed and was by no means a foregone conclusion. Finally, even if class certification was successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal.4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the class has been certified. (Decl. Shakouri at ¶27).

This Settlement is therefore entitled to preliminary approval. Were this case to go to trial, Plaintiff and Class Members would need to prove to the satisfaction of the Court, among other things, that wages, premiums, and other damages were owed on a class-wide basis. This was and is a substantial risk, and the Parties, after arm's-length negotiations between experienced and informed counsel, recognized the potential risks and agreed to the Settlement. (Decl. Shakouri at ¶28). The "risk, expense, complexity, and likely duration of further litigation" in this case "favors the settlement." *Glass v. UBS Fin. Servs.*, 2007 WL 221862 at *4 (N.D. Cal. 2007) ("Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigating an appeal. 'The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement.'") (citing *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000)).

Despite these hurdles, Plaintiff obtained a substantial monetary recovery. By any reasonable measure, this recovery is a significant achievement given the significant obstacles that Plaintiff faced in the litigation. Significantly, and further increasing the benefit conferred upon Defendant's employees is the fact that, as a direct result of Plaintiff's efforts in this Action and in the *Bowers* Action, Defendant changed its practices and policies to now reimburse its employees for their cell phone costs. Thus, Plaintiff is of the opinion that the Settlement is fair, reasonable and in the best interests of the Class. (Decl. Shakouri at ¶29).

3. The Settlement Does Not Improperly Grant Preferential Treatment to the Named Plaintiff or Segments of the Class

The relief provided in the Settlement will benefit all Class Members and does not improperly grant preferential treatment to the Plaintiff or segments of the Class in any way. Each Participating

Class Member will be entitled to a cash payment based on the plan of allocation described herein. Each Participating Class Member's Individual Class Payment will be determined based upon the Workweeks that employee worked during the prescribed Class Period. (Decl. Shakouri at ¶30).

Plaintiff will apply to the Court for a Class Representative Service Payment in consideration for her service, her general release, and for the risks she has undertaken on behalf of the Class. (Settlement Agreement at ¶¶1.13, 3.2.1). Plaintiff performed her duties admirably by working with Class Counsel. The requested Plaintiff's Class Representative Service Payment is well within the accepted range of awards for purposes of preliminary approval. *See e.g., Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding $12,500 where average class member payment was $351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving $10,000 service award where class member recovery was $375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007) (approving award of $10,000 where class member recoveries were as little as $150); *Louie v. Kaiser Foundation Health Plan, Inc*., 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding $25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862 at *16-17 (N.D. Cal. 2007) (awarding $25,000 service award in overtime class action and a pool of $100,000.00 in enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives to compensate class representatives for the time and effort expended on the case, for the risk of litigation, for the fear of suing and retaliation, and to serve as an incentive to vindicate the statutory rights of their coworkers. *Glass v. UBS Fin. Servs.*, 2007 WL 221862 at *16-17.

4. The Stage of the Proceedings Are Sufficiently Advanced to Permit Preliminary Approval of the Settlement

The stage of the proceedings at which this Settlement was reached also militates in favor of preliminary approval and ultimately, final approval of the Settlement. Class Counsel have conducted a thorough investigation into the facts of the class action. Class Counsel began investigating the Class Members' claims years before this action was filed, in connection with the *Bowers* PAGA litigation. Class Counsel performed significant review and analysis of Defendant's

records. Class Counsel further engaged in thorough research and analysis of the relevant claims and issues in the Action. Class Counsel are also experienced with the claims at issue here, as Class Counsel previously litigated and settled similar claims in numerous other actions. Accordingly, the Settlement did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and results that could be obtained through further litigation. (Decl. Shakouri at ¶31).

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both Parties possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. (Decl. Shakouri at ¶32).

The fact that an informal exchange of information (as opposed to formal discovery) was agreed to by the Parties is of no consequence. Especially in this situation where Class Counsel had the benefit of receiving relevant information and data from the formal discovery conducted in the *Bowers* Action, all of which pertained to the claims released through the instant Settlement. In *Glass*, *supra*, at *4 the Northern District of California granted final approval of an unpaid wages action although no formal discovery had been conducted prior to the settlement:

> Here, no formal discovery took place prior to settlement. As the Ninth Circuit has observed, however, '[i]n the context of class action settlements, 'formal discovery is not a necessary ticket to the bargaining table' where the parties have sufficient information to make an informed decision about settlement." *See In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000).

Here, Class Counsel were in an equally strong position to evaluate the fairness of this Settlement because Class Counsel had the same sufficient information, as well as document production, independent investigations and due diligence, to confirm the accuracy of the information supplied by Defendant.

V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES

Plaintiff contends that the Settlement meets all the requirements for class certification under the California Code of Civil Procedure § 382 as demonstrated below, and therefore, the Court may appropriately approve the Class as defined in the Settlement Agreement. This Court should conditionally certify the Class for settlement purposes only, defined as follows: all non-exempt employees who work or worked for Defendant as healthcare professionals in California during the period from June 6, 2019 to November 12, 2023, and who have not executed an arbitration agreement. (Settlement Agreement at ¶¶1.4, 1.11).

A. California Code of Civil Procedure Section 382

Plaintiff seeks certification of this Class for settlement purposes under California Code of Civil Procedure § 382. The California Supreme Court has summarized the standard for determining whether class certification is appropriate as follows:

> Code of Civil Procedure Section 382 authorizes class actions "when 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...." The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. (*citations omitted*). The "community of interest" requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.

Sav-On Drug Stores, Inc. v. Superior Court, 34 Cal.4th 319, 326 (2004).

While Defendant reserves all rights to dispute that the Plaintiff can satisfy any of these requirements, Defendant will not dispute that these requirements may be satisfied in this case for purposes of settlement and therefore, the proposed Class should be certified for purposes of settlement only.

B. The Proposed Class Is Ascertainable and Numerous

Here, the approximately 447 individuals that comprise the Class can be identified based on Defendant's records and are sufficiently numerous for class certification. All of these Class Members are ascertainable because they can readily be determined through examination of Defendant's records. Given that the Class consists of at least 447 Class Members, numerosity is

easily satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement).

C. Common Issues of Law and Fact Predominate

Predominance of common issues of law or fact does not require that the common issues be dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992). "Predominance is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.'" *Sav-On*, *supra*, at 334.

Commonality exists if there is a predominant common legal question regarding how policies impact workers. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its drivers."). Whether Plaintiff is likely to prevail on their theory of recovery is irrelevant at the certification stage since the question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 439-440 (2003).

Here, Plaintiff contends that common questions of law and fact are present, specifically the common questions of whether Defendant's practices were lawful, whether Defendant failed to properly pay overtime, whether Defendant failed to pay all wages, whether Defendant failed to provide accurate wage statements, and whether the Class is entitled to compensation and related penalties. Defendant will not oppose such a finding for purposes of this settlement only. (Decl. Shakouri at ¶33).

D. The Claims of the Plaintiff Are Typical of the Class Claims

The typicality requirement requires Plaintiff to demonstrate that the members of the class have the same or similar claims as Plaintiff. "The typicality requirement is met when the claims of the Plaintiff [] arise from the same event or are based on the same legal theories." *Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon, supra,* at 1020, the Ninth Circuit held that "[u]nder the rule's permissive standards, representative claims are 'typical' if they are

reasonably coextensive with those of absent class members; they need not be substantially identical."

In the instant case, Plaintiff contends that the typicality requirement is fully satisfied. Plaintiff, like every other member of the Class, was employed by Defendant and is a member of the Class. Thus, the claims of Plaintiff and the Class Members arise from the same course of conduct by the Defendant, involve the same policies, and are based on the same legal theories. For purposes of settlement, the typicality requirement is met as to the common issues presented in this case. Defendant will not oppose such a finding for purposes of this settlement only. (Decl. Shakouri at ¶34).

E. The Named Plaintiff Fairly and Adequately Protected the Class

The Class Members are adequately represented because Named Plaintiff and Class Counsel (a) do not have any conflicts of interest with other class members, and (b) will prosecute the case vigorously on behalf of the class. *See Hanlon*, *supra*, at 1020. First, Plaintiff is well aware of her duties as the representative of the Class and has actively participated in the prosecution of this case to date. She effectively communicated with Class Counsel, provided documents to them and participated in discovery, investigation and negotiations in the Action. Second, Plaintiff retained competent counsel who are experienced in class actions. Third, there is no antagonism between the interests of Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary relief under the same set of facts and legal theories. (Decl. Shakouri at ¶35).

F. The Superiority Requirement Is Met

To certify a class, the Court must also determine that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. "Where classwide litigation of common issues will reduce litigation costs and promote greater efficiency, a class action may be superior to other methods of litigation." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). As courts have previously observed:

> Absent class treatment, each individual plaintiff would present in separate, duplicative proceedings the same or essentially the same arguments and evidence, including expert testimony. The result would be a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants. 'It would be

> neither efficient nor fair to anyone, including defendants, to force multiple trials to hear the same evidence and decide the same issues.'

Sav-On, 34 Cal.4th at 340.

Here, a class action is the superior mechanism for resolution of the claims as pled by the Plaintiff. Defendant will not dispute such a finding for purposes of this settlement only.

VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. The Parties have agreed upon procedures by which the Class Members will be provided with written notice of the Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance with the Settlement Agreement, within thirty (30) calendar days after the Court enters its order granting preliminary approval of the Settlement, Defendant will provide to the Administrator the Class Data. (Settlement Agreement at ¶4.2). Within fourteen (14) calendar days after receiving the Class Data, the Administrator will mail the Class Notice to all Class Members via first-class regular U.S. Mail to their last known addresses. (Settlement Agreement at ¶7.4.2).

The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel and to be approved by the Court, includes all relevant information. (*See* Exhibit A to the Settlement Agreement). The Class Notice will include, among other information: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal terms; (c) the Class definition; (d) the total number of Workweeks each respective Class Member worked for Defendant during the Class Period; (e) each Class Member's estimated share of the Settlement; (f) the dates that comprise the Class Period; (g) information regarding disputing workweeks, objections, or requests for exclusion from the Settlement; (h) the deadlines by which Class Members must postmark disputes of workweeks, objections, or requests for exclusion from the Settlement; (i) the claims to be released; and (j) the date for the Final Approval Hearing. (Settlement Agreement, Exhibit A).

The Class Notice will state that the Class Members shall have forty-five (45) days from the date that the Class Notice is mailed to them to dispute the information, request exclusion, or to submit an objection. Class Members to whom the Class Notice is resent after having been returned undeliverable shall have an additional 14 calendar days. The Class Members will be given an

opportunity to object to the terms of the Settlement Agreement and/or the request for attorneys' fees and costs and to participate at the Final Approval Hearing, in accordance with the instructions set forth in the Class Notice. Class Members who do not opt out will automatically receive a settlement payment. The Class Members are highly skilled and educated healthcare workers who are legally required to comprehend the English language in order to perform their job duties. *See,* 16 CCR § 1413. Therefore, Spanish notice is not necessary and is not included. This notice program was designed to meaningfully reach the Class Members and advises them of all pertinent information concerning the Settlement. The mailing and distribution of the Class Notice satisfies the requirements of due process, is the best notice practicable under the circumstances and constitutes due and sufficient notice to all persons entitled thereto. The Class Notice provides information on the terms and provisions of the Settlement; the benefits that the Settlement provides for Class Members; the date, time and place of the Final Approval Hearing; and the procedure and deadline for submitting disputes, objections, and requests for exclusion. The Class Notice complies with Rules of Court 3.766 and 3.769(f). (Decl. Shakouri at ¶36).

VII. CONCLUSION

Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the Final Approval Hearing on April 29, 2024 (110 days after granting preliminary approval), or anytime thereafter as the Court's calendar permits.

DATED: November 16, 2023

Respectfully submitted,

SHAKOURI LAW FIRM

By: Ashkan Shakouri
Ashkan Shakouri
Attorneys for Plaintiff