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13 **UNITED STATES DISTRICT COURT**
 14 **DISTRICT OF NEVADA**

15 EMILY NEVETT and BONNIE NOBLE, on
 16 behalf of themselves and all other similarly
 17 situated individuals,

18 Plaintiffs,

19 vs.

20 RENOWN HEALTH; and DOES 1 through
 21 50, inclusive,

22 Defendants.

Case No.: 3:21-cv-00319-ART-CSD

**JOINT MOTION FOR PRELIMINARY
 APPROVAL OF CLASS AND
 COLLECTIVE ACTION SETTLEMENT**

24 Plaintiffs Emily Nevett and Bonnie Noble, on behalf of themselves and all other similarly
 25 situated individuals, and Defendant Renown Health (with Plaintiffs and Defendant collectively
 26 referred to as the “Parties”) hereby move this honorable Court pursuant to Rule 23 of the Federal
 27 Rules of Civil Procedure and the Fair Labor Standards Act (“FLSA”) for an order:
 28

- 1 (1) Preliminarily approving the class and collective action settlement between
- 2 Plaintiffs, Defendant, and unnamed Doe entities;
- 3 (2) Preliminarily certifying the Rule 23 and 29 U.S.C. § 216(b) Class for purposes of
- 4 settlement;
- 5 (3) Vacating the hearing on this Joint Motion for Preliminary Approval of Class and
- 6 Collective Action Settlement, currently scheduled on October 22, 2024, at 11:00
- 7 a.m.;¹ and
- 8 (4) Approving the manner and form of Notice and proposed distribution plan to class
- 9 members.

10 This motion is based the following Memorandum of Points and Authorities in support
11 thereof, the settlement agreement and exhibits thereto attached and filed herewith as Exhibit 1 to
12 the Declaration of Leah L. Jones, Esq., the Declaration of Montgomery Y. Paek, Esq., the
13 Declarations of Emily Nevett, Bonnie Noble, Vicki Dang, Collette Finley, and Natalie King
14 submitted in support of this Motion, all pleadings and papers on file in this action, and such other
15 matters as the Court may consider.

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26 ¹ The Parties note that the Court scheduled a hearing on preliminary approval of settlement in
27 response to the Parties' Notice of Settlement (ECF Nos. 70, 71). The Parties will attend the
28 hearing as currently set. However, to the extent that the Court deems a hearing on preliminary
approval unnecessary, the Parties jointly request that the Court vacate the hearing and decide the
Joint Motion for Preliminary Approval of Class and Collective Action Settlement on the papers.

1 Dated: October 4, 2024

/s/ Leah L. Jones

2 Joshua D. Buck
3 Leah L. Jones
4 THIERMAN BUCK, LLP

5 *Attorneys for Plaintiffs and all others*
6 *similarly situated.*

/s/ Andrew S. Clark

7 Montgomery Y. Paek
8 Ethan D. Thomas
9 Emil S. Kim
10 Andrew S. Clark
11 LITTLER MENDELSON, P.C.

12 *Attorneys for Defendant*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND OVERVIEW OF SETTLEMENT TERMS**

3 Plaintiffs Emily Nevett and Bonnie Noble and Defendant, Renown Health (with Plaintiffs
4 and Defendant collectively referred to as the “Parties”) seek preliminary approval of this class
5 and collective action settlement (“Settlement”) pursuant to Rule 23 of the Federal Rules of Civil
6 Procedure and the Fair Labor Standards Act (FLSA). Plaintiffs and Defendant participated in two
7 mediations with mediator Hunter Hughes where, after extensive discussions, the Parties reached
8 a proposed settlement through arms-length negotiations.

9 The Parties have come to a settlement in this action for a total maximum settlement
10 amount of \$8,750,000.00 to be paid to class members on a claims-made basis. The Settlement
11 Amount is reversionary, meaning that any unclaimed amounts will be returned to Defendant.

12 All of the terms of the Settlement² have been agreed upon as follows:

- 13 • Approximately \$5,725,333.33 in estimated settlement funds to the Class;³
- 14 • Approximately \$38,000.00 in Settlement Administrator’s reasonable fees and
15 expenses approved by the Court;
- 16 • \$15,000.00 each as Enhancement Awards to Plaintiff Emily Nevett and Plaintiff
17 Bonnie Noble as Class Representatives and \$5,000.00 each as Enhancement
18 Awards to Consent-to-Join Plaintiffs Vicki Dang, Collette Finley, and Natalie
19 King;⁴

20
21 ² This Motion incorporates by reference the definitions in the Settlement Agreement between
22 Plaintiffs and Defendant and terms used herein shall have the same meaning as set forth in the
23 Settlement Agreement, hereinafter “Settlement” or “Settlement Agreement” attached as Exhibit
24 1 to the Declaration of Leah L. Jones, hereinafter “Jones Dec.” ¶ 4.

25 ³ The dollar amounts provided are approximations based on the pending approval by this Court
26 of Class Counsel’s fees and costs, the Settlement Administrator’s fees, as well as Court approval
27 of the Class Representative’s Enhancement Awards. *See* Jones Dec. ¶ 15.

28 ⁴ *See* Ex. 1, Settlement § III.B.1: Subject to Court Approval, “Named Plaintiffs Emily Nevett and
Bonnie Noble will apply to the District Court for an award up to Fifteen Thousand Dollars and
Zero Cents (\$15,000.00) to each Plaintiff as their Class Representative Payment. Defendant will
not oppose a Class Representative Payment of up to \$15,000.00 for each Named Plaintiff.
Consent-to-Join Plaintiffs Vicki Dang, Collette Finley, and Natalie King may apply to the District

- 1 • \$2,916,666.67 in attorneys' fees;⁵ and
- 2 • \$25,000.00 in costs.

3 See Exhibit 1, "Settlement" §§ III.B.1-4; Jones Dec. ¶ 14.

4 To promote a more effective administration of Notice and to accommodate the Parties'
5 individual needs, the Parties have worked together to obtain this Court's preliminary approval of
6 settlement as expeditiously as possible. To that end, the Parties jointly request that the Court
7 vacate the hearing on this Joint Motion, scheduled for October 22, 2024, at 11:00 a.m. and reserve
8 a hearing for Plaintiffs' eventual Motion for Final Approval of Settlement.

9 The employees' share of payroll taxes will be deducted from the wage payments made to
10 the Class.⁶ The remainder of the Gross Settlement Amount after deduction of the Class
11 Representative Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses
12 Payment, and the Settlement Administrator's Fees Payment is the Net Settlement Amount. The
13 Net Settlement Amount will be paid to the Class Members based on the formula established in
14 Paragraphs III.B.4–6 of the Settlement Agreement based primarily on the number of Covered
15 Shifts worked by Class Members. Defendant's share of applicable taxes and withholdings will
16 be paid out of Defendant's reversion of the Net Settlement Amount.⁷ If Defendant's share of
17 applicable taxes and withholdings exceeds the amount of Defendant's reversion of the Net
18 Settlement, Defendant's reversion will be none, and any such employer taxes or withholding will
19 be paid from the Net Settlement Amount instead of Defendant's reversion. *Id.*

20
21 _____
22 Court for an award up to Five Thousand Dollars and Zero Cents (\$5,000.00) each. Defendant
23 will not oppose a Class Representative Payment of up to \$5,000.00 for each of those three
24 Plaintiffs."

25 ⁵ *Id.* § III.B.2: Subject to Court approval, "Class Counsel will apply to the District Court for an
26 award of one third of the Maximum Settlement Amount, specifically Two Million Nine Hundred
27 Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$2,916,666.67), as
28 their Class Counsel Fees Payment and an amount not more than \$25,000.00, and Defendant will
not oppose their request."

⁶ *Id.* § III.B.5.

⁷ *Id.*

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND⁸

On April 3, 2020, Plaintiff Emily Nevett filed a putative class action complaint, titled *Emily Nevett v. Renown Health*, Case No. CV20-00583 (the “Action”) on behalf of herself and all other similarly situated employees who worked for Defendant from April 3, 2017, to the present, in a Covered Position. (ECF No. 1-3.) Plaintiff Nevett initially filed this case in the Second Judicial District Court for Washoe County, Nevada. (*Id.*). Defendant subsequently removed the Action to this Court. (ECF No. 1).

Plaintiff Nevett amended the initial Complaint on August 25, 2021, wherein she added co-Plaintiff Bonnie Noble and raised additional claims against Defendant. (ECF No. 9). At that time, Named Plaintiff Nevett and Noble, and Opt-In Plaintiffs Vicki Dang, Collette Finley, and Natalie King filed consents to join pursuant to 29 U.S.C. § 216(b). (ECF No. 12.) Plaintiffs subsequently amended the Complaint on May 27, 2022 (ECF No. 39) and September 21, 2022 (ECF No. 46). Plaintiffs’ Amended Complaints alleged that Defendant violated the Fair Labor Standards Act, 29 U.S.C. § 207 (the “FLSA”) by failing to pay wages as owed and violated Nevada wage and hour laws by failing to pay for all hours worked as required by Nevada Revised Statute §§ 608.016 and 608.140; failing to pay all wages as required by Nevada Revised Statute §§ 608.018 and 608.140; and failing to pay wages due and owing as required by Nevada Revised Statute §§ 608.020–.050 and 608.140. (ECF No. 46). On October 13, 2021, Plaintiffs sought to certify an “opt-in” FLSA collective action composed of themselves and similarly situated individuals in Nevada. (ECF No. 17). Named Plaintiffs Nevett and Noble and Opt-In Plaintiffs Vicki Dang, Collette Finley, and Natalie King provided sworn declarations in support. (ECF Nos. 17-4, 17-5, 17-6, 17-7, 17-8, respectively.)

On December 17, 2021, the Court granted Plaintiffs’ Motion for Circulation of Notice and conditionally certified the following class for purposes of the litigation:

All nonexempt hourly paid patient care employees who:
 (1) interacted with EPIC off the clock (as demonstrated by the comparison between the EPIC and KRONOS time data); (2) were

⁸ Defendant does not concede Plaintiffs’ allegations, nor does it concede the factual statements or characterizations of legal positions set forth herein. For purposes of this Settlement, however, Defendant does not oppose the filing of this Motion or the granting of preliminary approval.

1 subject to Defendant’s Auto Deduct Meal Break Policy; and/or
2 (3) were subject to Defendant’s On-Call Overtime policy, at any
3 time from April 3, 2017, to the present date.

(ECF No. 27).

4 On November 6, 2023, the Court granted the Parties’ stipulation to stay this action for
5 120 days to allow the Parties to engage in private mediation and determine whether they could
6 resolve Plaintiffs’ claims without further litigation. (ECF No. 60). On March 5, 2024, the Court
7 granted the Parties’ second stipulation to stay this action for ninety-seven days—until June 13,
8 2024—when they scheduled a private mediation. (ECF No. 65). On June 13, 2024, the Parties
9 participated in good-faith negotiations presided over by a private mediator but were unable to
10 reach an agreement to resolve Plaintiffs’ claims. (ECF No. 69). Although the Parties did not
11 resolve the Action at the first mediation, they agreed to hold a second mediation and subsequently
12 sought a seventy-one day stay, until August 28, 2024, to attend a second mediation. (*Id.*). During
13 the second mediation, the Parties again considered the substantial risks, the probability of lengthy
14 delays and significant additional costs of litigation. Plaintiffs and Defendant agreed to settle the
15 Action pursuant to the terms and conditions of the Settlement Agreement, subject to Court
16 approval.

17 For the purpose of settling this case, the Parties stipulate and agree to the certification of
18 the following Settlement Class:⁹

19
20 Settlement Class: All nonexempt hourly paid patient care employees
21 who: (1) interacted with EPIC off the clock (as demonstrated by the
22 comparison between the EPIC and KRONOS time data); (2) were
23 subject to Defendant’s Auto-Deduct Meal Break policy; and/or
24 (3) were subject to Defendant’s On-Call Overtime policy, at any
25 time from April 3, 2017, through final approval of settlement.

26 **III. SUMMARY OF THE SETTLEMENT’S KEY PROVISIONS**

27
28 ⁹ Defendant does not concede that class or collective certification is appropriate in this action,
but Defendant does not oppose certification of the Settlement Classes for settlement purposes
consistent with the Parties’ Settlement Agreement. *See* Settlement §§ III.G.1.

1 The Parties' Settlement provides for significant monetary recovery on behalf of the Class,
2 and releases from the Class only those claims arising out of the facts, circumstances and
3 occurrences alleged in the Complaint. *See* Settlement §§ III.E.2–3. Further, the Settlement sets
4 forth the legally appropriate mechanism for providing notice to the Class of the terms and
5 conditions of the Settlement. *Id.* §§ III.D.2–4.

6 **A. The Recovery.**

7 The Parties have come to a settlement in this action for a total maximum settlement
8 amount of \$8,750,000 to be paid to class members on a claims-made basis. The Settlement
9 Amount is reversionary, meaning that any unclaimed amounts will be returned to Defendant.

10 All of the terms of the Settlement have been agreed upon as follows:

- 11 • Approximately \$5,725,333.33 in estimated settlement funds to the Class;¹⁰
- 12 • Approximately \$38,000.00 in Settlement Administrator's reasonable fees and
13 expenses approved by the Court;
- 14 • \$15,000.00 each as Enhancement Awards to Plaintiffs Emily Nevett and Bonnie
15 Noble and \$5,000.00 each to Consent-to-Join Plaintiffs Vicki Dang, Collette
16 Finley, and Natalie King;¹¹
- 17 • \$2,916,666.67 in attorneys' fees;¹² and
- 18 • \$25,000.00 in costs.

19 *See* Exhibit 1, "Settlement" §§ III.B.1–4; Jones Dec. ¶ 14.

20 Subject to Court approval, Defendant agrees to pay a Maximum Settlement Amount of
21 up to \$8,750,000.00 to cover all payments arising out of this Settlement. *See* Settlement § I.R.
22 Settlement Class Members who submit a timely and valid Claim Form shall be eligible to recover
23 a Settlement Share of the Net Settlement Amount, in accordance with a plan of allocation based
24 primarily on the number of Covered Shifts worked by Class Members. *Id.* §§ III.B.4–6.

25 _____
26 ¹⁰ *See supra* note 4.

27 ¹¹ *See supra* note 3.

28 ¹² *See supra* note 4.

1 The Settlement provides that 25% of each payment to a Class Member shall constitute
2 payment of wage claims such that they shall be subject to tax withholding and reported on an
3 IRS W-2 Form, and 75% of each payment to a Class Member will be allocated to settlement of
4 claims for non-wage income and constitute remuneration for damages separate and distinct from
5 lost wages which shall not be subject to tax withholding and will be reported on an IRS 1099
6 Form, if required. *Id.* § III.B.5. The Settlement Administrator shall be responsible for issuing
7 appropriate tax forms, if any, to Approved Claimants, consistent with the Settlement Agreement.
8 *Id.* Each Approved Claimant assumes full responsibility and liability for any employee taxes
9 owed on their settlement payment. *Id.*

10 **B. The Release.**

11 The Settlement provides that, in exchange for the good and valuable consideration set
12 forth therein, all Participating Class Members shall waive any and all wage-and-hour claims,
13 rights, demands, liabilities and causes of action of every nature and description that are alleged
14 or could have been alleged in the Action, whether known or unknown, against Defendant and the
15 Released Parties based on the facts alleged in the Action. *Id.* §§ III.E.2–3. Named Plaintiffs Emily
16 Nevett and Bonnie Noble and Consent-to-Join Plaintiffs Vicki Dang, Collette Finley, and Natalie
17 King shall waive any and all claims against Defendant as of the date of the order granting
18 preliminary approval of the settlement. *Id.* § III.E.1.

19 **C. The Settlement Mechanism.**

20 The Parties have agreed to use a third-party Settlement Administrator, Simpluris, to
21 administer the claims process. *Id.* § III.C. The Settlement provides for the Settlement
22 Administrator to send out notice explaining the terms and conditions of the Settlement to all Class
23 Members. *Id.* §§ III.D.2. A copy of the Notice to be approved by the Court and sent to class
24 members is attached as Exhibit A to the Settlement. A copy of the Claim Form to be approved
25 by the Court and sent to class members is attached as Exhibit B to the Settlement. To request
26 exclusion from the Settlement, a Class Member must Opt-Out of the Settlement by submitting a
27 written request electing to exclude himself or herself from the Settlement as set forth in the
28 Settlement Agreement and in the Notice. *Id.* § III.D.4.b. Following mailing of the Notice, class

1 members then have thirty (30) days to submit a claim form and participate in the Settlement,
2 request to be excluded from the Settlement, or comment on or object to the Settlement. *Id.* §§
3 III.D.3, III.D.4.a–b.

4 The Settlement further provides that, following the notice period, the Court will hold a
5 final “fairness” hearing to provide final review and approval of the Settlement. *Id.* § III.D.7.a.
6 The Notice advises class members about the fairness hearing and their opportunity to attend the
7 hearing and make their views known. *Id.*, Exhibit A, Notice. At the fairness hearing, the Parties
8 will address any issues raised by class members or the notice process itself, and the Court will
9 have a second opportunity to review the settlement in full.

10 The Parties agree that, as a Rule 23 class action, this matter is subject to the notice
11 requirements set forth in the Class Action Fairness Act (CAFA), 28 U.S.C. § 1715(b).
12 Accordingly, pursuant to 28 U.S.C. § 1715(b), not later than ten (10) business days after filing
13 the instant Motion, Defendant shall serve upon the appropriate State official of each State in
14 which a class member resides, and the appropriate Federal official, a notice of the Settlement
15 consistent with the requirements enumerated by 28 U.S.C. § 1715(b)(1)–(8). Furthermore,
16 pursuant to 28 U.S.C. § 1715(d), the Court may not issue an order granting final approval of the
17 Settlement earlier than ninety (90) days after service of the notice of Settlement upon the
18 appropriate State and Federal official. Thus, the Parties respectfully request that the Court refrain
19 from issuing its order granting final approval of the Settlement until 100 days after the filing of
20 this Motion.

21 **IV. THE LEGAL FRAMEWORK WEIGHS IN FAVOR OF GRANTING** 22 **PRELIMINARY APPROVAL OF THE SETTLEMENT**

23 FRCP 23(e) provides that settlement of the claims of a certified class is subject to the
24 court’s approval. In general, settlement of class actions is favored as a matter of “strong judicial
25 policy.” *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 658 (E.D. Cal. 2008) (citing *Class Plaintiffs v.*
26 *City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)).

27 Procedurally, the reviewing court’s evaluation is conducted in two stages. *Alberto*, 252
28 F.R.D. at 658. At the first stage, the court conditionally certifies a class for settlement purposes,

1 preliminarily approves the settlement pending the “fairness hearing,” and authorizes notice of the
2 proposed class settlement to be given to the class. *Id.* (citations omitted); *see also Manual for*
3 *Complex Litigation (Fourth)* § 21.632 (2004) (“Manual for Complex Litigation”) (summarizing
4 “preliminary fairness review”). Stage two is the fairness hearing, which is set for a time after
5 notice has been provided to the class and class members have had an opportunity to submit
6 claims, comments, or objections to the proposed settlement or to opt out of it, and the court
7 reaches a final determination about whether the proposed settlement should be approved as a fair,
8 adequate, and reasonable resolution of the dispute. *Id.* at 659 (citations omitted).

9 Here, because the Parties’ Joint Motion initiates the first stage of the Court’s evaluation
10 of the Settlement, Plaintiffs submit that: (A) the Class should be certified; (B) the Settlement
11 should be preliminary deemed fair, reasonable, and adequate; and (C) notice should be sent out
12 as set forth in the Settlement.

13 **A. The Proposed Settlement Class.**

14 Pursuant to the Settlement, the Parties seek to certify the following class for settlement
15 purposes under Rule 23 of the Federal Rules of Civil Procedure and the FLSA:

16 All nonexempt hourly paid patient care employees who:
17 (1) interacted with EPIC off the clock (as demonstrated by the
18 comparison between the EPIC and KRONOS time data); (2) were
19 subject to Defendant’s Auto-Deduct Meal Break policy; and/or
20 (3) were subject to Defendant’s On-Call Overtime policy, at any
21 time from April 3, 2017, through final approval of settlement.

22 **B. The Proposed Settlement Should be Preliminarily Approved.**

23 In the Ninth Circuit, settlements of complex class action lawsuits are strongly favored.
24 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Speed Shore Corp., v.*
25 *Denda*, 605 F.2d 469, 473 (9th Cir. 1979) (“It is well recognized that settlement agreements are
26 judicially favored as a matter of sound public policy. Settlement agreements conserve judicial
27 time and limit expensive litigation.”). It is within the broad discretion of the trial court to approve
28 a class action settlement. *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir.
1982). The approval of a class action settlement takes place in two stages: preliminary approval

1 and final approval. *West v. Circle K Stores, Inc.*, No. 04-0438, 2006 WL 1652598, at *2 (E.D.
2 Cal. June 13, 2006). Preliminary approval of a class action settlement and notice to the class is
3 appropriate if the proposed settlement: (1) appears to be the product of serious, informed, non-
4 collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential
5 treatment to class representatives or segments of the class; and (4) falls within the range of
6 possible approval. FRCP 23(e)(2); *Bellinghausen v. Tractor Supply Co.*, 303 F.R.D. 611, 619
7 (N.D. Cal. 2014) (citing *Cruz v. Sky Chefs, Inc.*, No. C-12-02705 DMR, 2014 WL 2089938, at
8 *7 (N.D. Cal. May 19, 2014) (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078,
9 1079 (N.D. Cal. 2007)).

10 At the preliminary approval stage, the Court “must make a preliminary determination on
11 the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation
12 of the notice of the certification, proposed settlement, and date of the final fairness hearing.” *See*
13 *In Re M.L. Stern Overtime Litigation*, No. 07-CV-0118-BTM (JMA), 2009 WL 995864 at *3
14 (S.D. Cal. April 13, 2009) (quoting Manual on Complex Litigation Fourth § 21.632 (2004)).
15 During the preliminary process, the Court simply determines “whether there is any reason to
16 notify the class members of the proposed class settlement and to proceed with the fairness
17 hearing.” *Gatreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982). The Court’s review is
18 “limited to the extent necessary to reach a reasoned judgment that the agreement is not the
19 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
20 settlement, taken as a whole, is fair, reasonable, and adequate to all concerned.” *Officers for*
21 *Justice*, 688 F.2d at 625. If there are no obvious deficiencies, and the settlement falls into the
22 range of possible approval, it should be preliminarily approved. *See Hanlon v. Chrysler Corp.*,
23 150 F.3d 1011, 1057 (9th Cir. 2008); *Alaniz v. California Processing, Inc.*, 73 F.R.D. 269, 273
24 (C.D. Cal. 1976).

25 In this matter, an expeditious decision on the papers would promote a fair, effective, and
26 efficient administration of Notice and is in line with the past practice of this Court. While a
27 hearing is required for final approval of a potential Settlement, no such hearing is required at the
28 earlier preliminary approval stage. *See, e.g., Nelson v. Wal-Mart Associates, Inc.*, Case No. 3:21-

1 cv-00066-MMD-CLB (August 15, 2023 Order Granting Motion for Preliminary Approval of
2 Class and Collective Action Settlement); *DeWeese v. ITS National, LLC*, Case No. 3:18-cv-
3 00375-MMD-WGC (March 20, 2019 Order Granting Preliminary Approval of Class Action
4 Settlement) (attached to the Jones Dec. at ¶ 27, as Exhibits 3 and 4, respectively). As set forth
5 below, the proposed Settlement satisfies the standard for preliminary approval.

6 **1. The Settlement Falls Within the Range of Possible Approval Given**
7 **the Strengths and Weaknesses of the Claims and Defenses.**

8 To grant preliminary approval, this Court must decide that the Settlement falls within the
9 approved range for preliminary approval. *Zepeda*, 2015 WL 6746913, at *4; *Fraley*, 2012 WL
10 5838198, at *1 n.1; *Tableware*, 484 F. Supp. 2d at 1079. To determine whether a settlement “falls
11 within the range of possible approval,” courts consider “substantive fairness and adequacy” and
12 “plaintiffs’ expected recovery balanced against the value of the settlement[.]” *Tableware*, 484
13 F.Supp.2d at 1080. In making a determination of whether the Settlement is adequate and
14 reasonable, the Court must ultimately balance the following factors: “the strength of the
15 plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation; the risk of
16 maintaining class action status throughout the trial; the amount offered in settlement; the extent
17 of discovery completed, and the stage of the proceedings; the experience and views of counsel
18 ...” *Hanlon*, 150 F.3d at 1026.

19 Here, the Settlement represents a significant recovery on behalf of the Class given the
20 risks associated with this case. *See* Jones Dec. ¶¶ 13, 17, 20. Class Counsel represents that they
21 have conducted a thorough investigation into the facts of this case and have diligently pursued
22 an investigation of the claims against Defendant, including, but not limited to: (i) speaking with
23 numerous opt-in plaintiffs and putative class members; (ii) reviewing relevant documents; (iii)
24 analyzing time and pay data provided by Defendant for a representative sample of the overall
25 class; (iv) researching the applicable law and the potential defenses; (v) developing the arguments
26 for class and conditional certification and other significant issues; and (vi) advocating for the
27 rights of the putative class and collective. *Id.* Based on their own independent investigation and
28 evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate

1 and that it is in the best interest of the Settlement Class Members in light of all known facts and
2 circumstances, including the risk of significant delay, the defenses asserted by Defendant, trial
3 risk, and appellate risk. *Id.*

4 Defendant denies any liability or wrongdoing of any kind associated with the claims
5 alleged and contend that, but for the Settlement, this Litigation is not appropriate for class or
6 collective certification pursuant to the FLSA, FRCP 23, or any other federal or state rule, statute,
7 law, or provision. *See* Settlement § III.G.1.a. Defendant continues to assert that the Litigation
8 fails to meet the prerequisites necessary for class or collective action treatment under applicable
9 law. *Id.* Defendant further asserts that it has complied with all applicable provisions of federal or
10 state statutory and common law. *Id.* Defendant further states that, despite its good-faith belief
11 that it is not liable for any of the alleged claims, and despite its good-faith belief that certification
12 is not appropriate, Defendant will not oppose the District Court’s certification of the Settlement
13 Class contemplated by this Agreement solely for purposes of effectuating this Settlement. *Id.*
14 Other than for purposes of this Settlement, Defendant does not waive its objections to
15 certification of the Settlement Class, or any other class, in this Litigation.

16 Thus, the Settlement represents a compromise between experienced counsel for Plaintiffs
17 and Defendant based upon each Party’s honest assessment of the legal and factual strengths and
18 weaknesses of their respective position. *See* Settlement, § II.F-G; Jones Dec. ¶ 28; *see also*, Paek
19 Dec. ¶¶ 9-11.

20 **2. All four criteria of FRCP 23(a) are met.**

21 ***FRCP 23(a)(1): The class is so numerous that joinder of all members is impracticable.***
22 “As a general rule, classes numbering greater than forty individuals satisfy the numerosity
23 requirement.” *Quintero v. Mulberry Thai Silks, Inc.*, No. 08-2294, 28 I.E.R. Cas. (BNA) 607,
24 2008 U.S. Dist. LEXIS 84976, at *7 (N.D. Cal. Oct. 22, 2008) (citation omitted). Here, the
25 settlement Class consists of approximately 9,079 individuals. *See* Settlement, § I.E. Plainly, the
26 numerosity criterion is satisfied.

27 ***FRCP 23(a)(2): There are questions of law or fact common to the Class.*** The
28 commonality requirement is construed liberally. *Alberto v. GMRI, Inc.*, 252 F.R.D. at 660

1 (citation omitted); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998) (Rule
2 23(a)(2) construed “permissively”). The class members’ claims must share some substantial
3 issues of law or fact but need not be identical. *Quintero*, 2008 U.S. Dist. LEXIS 84976, at *8.
4 Either “shared legal issues with divergent factual predicates” or “a common core of salient facts
5 coupled with disparate legal remedies within the class” satisfies this criterion. *Hanlon*, 150 F.3d
6 at 1019.

7 Plaintiffs and Class Members assert common factual and legal questions, which include
8 whether Class Members were compensated for all hours worked at the appropriate legal rate
9 pursuant to state and federal law and whether class members who are former employees were
10 paid all their wages due and owing at the time of their termination. *See, e.g., In re Wells Fargo*
11 *Home Mortgage Overtime Pay Litig.*, 527 F. Supp.2d 1053, 1062-63 (N.D. Cal. 2007); *Wang v.*
12 *Chinese Daily News, Inc.*, 231 F.R.D. 602, 607 (C.D. Cal. 2005). Based on these common issues,
13 this criterion is met. For purposes of approving this Settlement only, Defendant does not oppose
14 Plaintiffs’ assertion that sufficient commonality exists.

15 ***FRCP 23(a)(3): The claims or defenses of the representative parties are typical of the***
16 ***claims or defenses of the class.*** Like commonality, the typicality standard is applied
17 “permissive[ly].” *See Staton*, 327 F.3d at 957 (quoting *Hanlon*, 150 F.3d at 1020). It is satisfied
18 if the representatives’ claims are “‘reasonably coextensive with those of absent class members;
19 they need not be substantially identical.’” *Id.*

20 Here, the claims or defenses of class representatives Plaintiffs Emily Nevett and Bonnie
21 Noble are typical of the claims or defenses of the class because all Class Members were classified
22 as non-exempt hourly paid employees who worked for Defendant or other Released Parties in
23 Nevada between April 3, 2017, through September 30, 2024. *See Settlement* § I.E. Accordingly,
24 Named Plaintiffs and the Class Representatives Emily Nevett and Bonnie Noble have asserted
25 the same alleged wage and hour violations as all other members of the Class. Thus, their claims
26 are typical to those of the Class.

27 ***FRCP 23(a)(4): The representative parties will fairly and adequately protect the***
28 ***interests of the class.*** Courts have interpreted this requirement as posing two questions: (1)

1 whether either the named plaintiffs or their counsel has any conflicts of interest with other class
2 members, and (2) whether the named plaintiffs and their counsel will vigorously prosecute the
3 action on behalf of the class. *See id.* (citing *Hanlon* and other cases). Here, the current and
4 Proposed Plaintiffs and Class Representatives share with absent Class Members an interest in
5 recovering compensation that Defendant allegedly denied them due to Defendant's alleged
6 failure to include all hours worked at the appropriate legal rate pursuant to state and federal law.
7 And Plaintiffs' counsel has extensive experience in wage and hour class actions, as well as class
8 action litigation more generally, and the proposed settlement was reached only after arm's-length
9 direct settlement discussions. *See Jones Dec.* ¶¶ 3, 6-8, 20.

10 **3. The criteria of FRCP 23(b)(3) are met.**

11 To certify a class under FRCP 23(b)(3), a court must find that common questions of fact
12 or law predominate over questions affecting only individual members of the proposed class, and
13 that a class action is the superior method for fairly and efficiently adjudicating the controversy.
14 FRCP 23(b)(3).

15 ***The predominance requirement is met.*** The predominance inquiry "focuses on the
16 relationship between the common and individual issues. When common questions present a
17 significant aspect of the case and they can be resolved for all members of the class in a single
18 adjudication, there is clear justification for handling the dispute on a representative rather than
19 on an individual basis." *Local Joint Exec. Bd. of Culinary/Bartender Tr. Fund v. Las Vegas*
20 *Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001), *cert. denied*, 534 U.S. 973, 122 S. Ct. 395 (2001)
21 ("Local Joint Executive Bd.") (quoting *Hanlon*, 150 F.3d at 1022).

22 As in numerous other wage and hour class actions, the fact that this litigation arises from
23 Defendant's uniform wage-and-hour and overtime policies strongly supports a finding that
24 common issues of law and fact predominate such that this requirement is satisfied. *See, e.g., In*
25 *re Wells Fargo Home Mortgage Overtime Pay Litig.*, 527 F. Supp.2d at 1068; *In re Wells Fargo*
26 *Home Mortg. Overtime Pay Litigation*, 571 F.3d 953, 958 (C.A.9 2009).

27 ***The superiority requirement is met.*** Determining whether a class action is the superior
28 method of adjudicating a controversy involves "comparing alternative mechanisms of dispute

1 resolution” as applied to the facts and claims. *Wang v. Chinese Daily News, Inc.*, 231 F.R.D. 602,
2 614 (C.D. Cal. 2005). The Parties submit that the situation here is comparable to that of the Las
3 Vegas Sands’ former casino employees who sought damages for failure to provide a statutorily
4 required 60-day notice before closure:

5 This case involves multiple claims, some for relatively small
6 individual sums. Counsel for the would-be class estimated that,
7 under the most optimistic scenario, each class members would
8 recover about \$1,330. If plaintiffs cannot proceed as a class, some -
9 perhaps most - will be unable to proceed as individuals because of
the disparity between their litigation costs and what they hope to
achieve.

10 *Local Joint Executive Bd.*, 244 F.3d at 1163 (“Class actions ... may permit the plaintiffs to pool
11 claims which would be uneconomical to litigate individually.”) (citing *Phillips Petroleum Co. v.*
12 *Shutts*, 472 U.S. 797, 809, (1985)). In such a situation, the superiority requirement is “easily
13 satisfied.” *Id.* Because the sums per employee are relatively small, the Plaintiffs’ litigation costs
14 high, and Defendant’s alleged conduct uniform, a class action is superior to filing nearly two-
15 thousand individual actions concerning the same facts and legal issues.

16 **C. The Proposed Settlement Is Fair, Reasonable, and Adequate.**

17 The *Manual for Complex Litigation* § 21.62 identifies several factors that courts may
18 weigh in determining whether a settlement is fair, reasonable, and adequate (FRCP 23(e)(2)),
19 summarizing the inquiry as follows: Fairness calls for a comparative analysis of the treatment of
20 class members vis-a-vis each other and vis-a-vis similar individuals with similar claims who are
21 not in the class. Reasonableness depends on an analysis of the class allegations and claims and
22 the responsiveness of the settlement to those claims. Adequacy of the settlement involves a
23 comparison of the relief granted relative to what class members might have obtained without
24 using the class action process. *Id.* § 21.62 at 315.

25 At the preliminary approval stage, courts do not make a final determination of fairness,
26 reasonableness, and adequacy. Instead, the key question at this point is only whether the
27 settlement is “potentially fair, as the Court will make a final determination of [the settlement’s]
28 adequacy at the hearing on Final Approval, after such time as any party has had a chance to object

1 and/or opt out.” *Acosta v. Equifax Info. Servs. LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007). Thus,
2 the inquiry should focus on whether the proposed settlement falls within the “range of possible
3 approval” and appears to be sufficiently fair, reasonable, and adequate to warrant distributing
4 notice to class members informing them about the proposed settlement and their options for
5 responding and participating. *Molski v. Gleich*, 318 F.3d 937,944 (9th Cir. 2003); *see also*
6 *Manual for Complex Litigation* § 21.632. “Once the judge is satisfied as to the ... results of the
7 initial inquiry into the [1] fairness, [2] reasonableness and [3] adequacy of the settlement,” the
8 court should direct notice to issue and schedule a final approval hearing. *Id.* § 21.633 at 321. The
9 Parties submit that all inquiries are preliminarily satisfied as follows:

10 **1. The Settlement Is Fair.**

11 **Fairness of distribution among Class Members.** A plan of distribution that
12 compensates class members based on the type and extent of their injuries is generally considered
13 reasonable. *Gaudin v. Saxon Mortg. Servs., Inc.*, No. 11-cv-01663, 2015 WL 7454183, at *8
14 (N.D. Cal. Nov. 23, 2015) (“Such a plan ‘fairly treats class members by awarding a pro rata
15 share’ to the class members based on the extent of their injuries.”) (Internal citation omitted.).
16 Here, all Class Members will receive a proportionate share of the Settlement fund primarily based
17 upon the total number of Covered Shifts that they worked for Defendant. Since the calculation
18 of each Class Member’s settlement share is based upon the number of actual shifts worked, the
19 Settlement’s proposed plan of allocation equitably bases the distribution of Settlement funds on
20 the type and extent of damages actually suffered by Class Members. *See* Settlement § III.B.4–6.

21 **Fairness of proposed attorneys’ fees.** The allocation of total settlement funds between
22 Class Members and Class Counsel is also fair, in that the Settlement provides for Plaintiffs’
23 counsel to seek an amount that is no more than one-third of the Maximum Settlement Amount in
24 fees. *See* Settlement, § III.B.2; Jones Dec. ¶ 14. The requested fees are fair compensation for
25 undertaking complex, risky, expensive, and time-consuming litigation solely on a contingency
26 basis. Further, the request is in line with other attorneys’ fees awards for wage and hour class
27 actions, particularly given that each of the 9,079 Class Member here will be entitled to receive a
28 substantial claim payment, based on their shifts worked. *See* Jones Dec. at ¶ 18. Indeed, courts

1 have recognized that an appropriate method for awarding attorneys' fees in class action is to
2 award a percentage of the "common fund" created as a result of the settlement. *Vincent v. Hughes*
3 *Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The purpose of the common fund/percentage
4 approach is to "spread litigation costs proportionally among all the beneficiaries so that the active
5 beneficiary does not bear the entire burden alone." *Id.*

6 Moreover, several courts have expressed frustration with the alternative "lodestar"
7 approach for deciding fee awards, which usually involves wading through voluminous and often
8 indecipherable time records. Commenting on the loadstar approach, Chief Judge Marilyn Hall
9 Patel wrote in *In re Activision Securities Litigation*, 723 F. Supp. 1373, 1375 (N.D. Cal. 1989):
10 This court is compelled to ask, "Is this process necessary?" Under a cost-benefit analysis, the
11 answer would be a resounding, "No!" Not only does the *Lindy Kerr-Johnson* analysis consume
12 an undue amount of court time with little resulting advantage to anyone, but in fact, it may be in
13 the detriment of the class members. They are forced to wait until the court has done a thorough,
14 conscientious analysis of the attorneys' fees petition. Or class members may suffer a further
15 diminution of their fund when a special master is retained and paid from the fund. Most
16 important, however, is the effect the process has on the litigation and the timing of settlement.
17 Where attorneys must depend on a lodestar approach, there is little incentive to arrive at an early
18 settlement. Indeed, the percentage approach is preferable to the lodestar because: (1) it aligns the
19 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
20 litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
21 demands on judicial resources. *In re Activision Securities Litigation*, 723 F. Supp. at 1378–79.

22 Courts now routinely use the percentage of the common fund approach to determine the
23 award of attorneys' fees. (See, e.g., *In re Pacific Enterprises Securities Litigation*, 47 F.3d 373,
24 378–79 (9th Cir. 1994) (approving attorneys' fees of one-third of settlement fund). Class
25 Counsel's application for less than one-third of the Settlement Funds in this case is within the
26 range of reasonableness. Historically, courts have awarded percentage fees in the range of 20%
27 to 50% of the common fund, depending on the circumstances of the case. *Newberg on Class*
28 *Action* § 14:6 (4th ed. 2008); see also *In re Activision Securities Litigation*, 723 F. Supp. 1373,

1 1378 (N.D. Cal. 1989). According to *Newberg*: “No general rule can be articulated on what is a
2 reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a
3 reasonable fee award from a common fund in order to assure that the fees do not consume a
4 disproportionate part of the recovery obtained for the class, although somewhat larger
5 percentages are not unprecedented.” *Newberg*, § 14:6. Accordingly, the attorneys’ fees sought in
6 this case are fair and reasonable.

7 **Fairness of proposed “enhancement” awards for Named Plaintiffs Nevett and Noble**
8 **and Consent-to-Join Plaintiffs Vicki Dang, Collette Finley, and Natalie King.** The principle
9 of fairness is also well-served by the enhancement awards proposed for the Named Plaintiffs and
10 Opt-In Plaintiffs. Plaintiffs Nevett, Noble, Dang, Finley, and King each provided invaluable
11 assistance to their counsel in explaining Defendant’s alleged compensation policies and
12 procedures and in providing information to assist in the settlement negotiations. *See* Declaration
13 of Emily Nevett ¶¶ 4-11; Declaration of Bonnie Noble ¶¶ 4-11; Declaration of Vicki Dang ¶¶ 4-
14 7; Declaration of Collette Finley ¶¶ 4-7; and Declaration of Natalie King ¶¶ 4-7. Further,
15 Plaintiffs Nevett and Noble incurred personal risk in bringing this lawsuit on behalf of the other
16 persons in the Class. *See, e.g., Koehl v. Verio*, 142 Cal. App. 4th 1313, 1328 (2006) (in wage and
17 hour action where the defendant prevailed at trial, the named plaintiffs were held liable, jointly
18 and severally, for the defendant’s attorneys’ fees). *See* Nevett Dec. ¶¶ 11-12; Noble Dec. ¶¶ 11-
19 12. Moreover, Plaintiffs could have been held liable for Defendant’s costs if they were ultimately
20 unsuccessful in resolving the case. *Id.* In recognition of these risks as well as the time-consuming
21 and valuable role that class representatives play in class action litigation, service payments are
22 recognized as serving an important function in promoting class action settlements. In *League of*
23 *Martin v. City of Milwaukee*, 588 F. Supp. 1004 (E.D. Wis. 1984), the court held that the proposed
24 settlement properly granted the named plaintiff additional relief, explaining that it is “not
25 uncommon for class ... members to receive special treatment in settlement” when they have been
26 instrumental in prosecuting the lawsuit. *Id.* at 1024. Accordingly, the proposed enhancement
27 payments are fair.

28 **2. The Settlement Is Reasonable.**

1 At \$8,750,000.00, the proposed Settlement is reasonable. This is not a settlement where
2 the aggregate figure is large simply because the size of the class is in the tens or hundreds of
3 thousands. Instead, the Class size in this case is relatively small in comparison, and Settlement
4 Class Members are eligible for substantial individual financial benefits. These considerations
5 indicate that the proposed settlement falls within the range of reasonableness, warranting
6 preliminary approval.

7 This conclusion is reinforced by considering such factors as the risk that a Class might
8 not be certified pursuant to FRCP 23, decertified pursuant to the FLSA, or might be significantly
9 smaller than proposed, and the time, expense, and complexity of the litigation, including the
10 possibility of additional appellate proceedings. Of particular relevance to the reasonableness of
11 the proposed Settlement are the numerous potentially dispositive defenses advanced by
12 Defendant including, among other things, the arguments that the claims are individualized and,
13 therefore, not susceptible to class or collective treatment; that all Class Members fall within state
14 and federal exemptions from overtime requirements; and the applicability of penalties for the
15 alleged violations. Given the significant legal and factual uncertainty relating to these defenses,
16 the \$8,750,000.00 Settlement represents a reasonable recovery based on the alleged violations.
17 *See* Jones Dec. ¶¶ 18; *see also* Paek Dec. ¶¶ 9-11.

18 Furthermore, while Class Counsel believe that Plaintiffs' claims are meritorious, they are
19 experienced class action litigators and understand that the outcome of class certification, trial,
20 and any attendant appeals are inherently uncertain, as well as likely to consume many more
21 months or years. *Id.* Having reviewed relevant compensation data and employment information,
22 counsel for the Parties—all experienced class action litigators well versed in wage and hour
23 law—arrived at a reasonable resolution through a protracted arm's-length direct negotiation
24 process, which continued through the negotiation of all details of the Settlement agreement and
25 ancillary documents. *Id.*

26 Another factor considered in approving a settlement is the complexity, expense, and
27 likely duration of the litigation. *Officers for Justice*, 688 F.2d at 625. The Court must weigh the
28 benefits of the proposed settlement against the expense and delay involved in achieving an

1 equivalent or more favorable result at trial. *See, e.g., Young v. Katz*, 447 F.2d 431, 433–34 (5th
2 Cir. 1971). Employment cases, and specifically wage and hour cases, are expensive and time
3 consuming. That this is a class action further amplifies the economies of time, effort, and expense
4 achieved by the Settlement. Inevitably, the certification process alone would add time and
5 expense to the litigation process. The Settlement, on the other hand, provides Class Members
6 substantial, prompt and efficient relief. The Settlement in this case is therefore consistent with
7 the “overriding public interest in settling and quieting litigation” that is “particularly true in class
8 action suits.” *See Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976) (footnote
9 omitted); *see also 4 Newberg on Class Actions* § 11.41 (citing cases).

10 Here, the Settlement represents a compromise between experienced counsel for Plaintiffs
11 and Defendant based upon each Party’s honest assessment of the legal and factual strengths and
12 weaknesses of their respective position. After accounting for all anticipated fees, costs, and
13 enhancements requested herein, each of the 9,079 Class Member who submit a valid Claim Form
14 will receive a settlement share based on the shifts the Class Member worked. Basing the Class
15 Member’s recovery on shifts worked is a fair and reasonable means to calculate settlement shares
16 because Class Members who worked more shifts will receive a larger payout. *See Jones Dec.* at
17 ¶ 18. Further, each Class Member’s individualized Claim Form will set forth the number of shifts
18 worked on which the settlement share will be calculated, and how the Class member can
19 challenge the number of shifts, warranting preliminary approval. *See Settlement Agreement*
20 Exhibit A, Notice at § 3(d) and Exhibit B, Claim Form at § 2. This conclusion is reinforced by
21 considering such factors as the risk that a class might not be certified or might be significantly
22 smaller than proposed; and the time, expense, and complexity of the litigation. Defendant asserts
23 that it timely paid the Class Members all wages and overtime at the correct rate, that various
24 overtime exemptions apply to the Class Members, and that penalties are not applicable to the
25 alleged violations. Defendant further asserts that the matter is not appropriate for class or
26 collective treatment. The claims and defenses at issue in this case would likely result in protracted
27 litigation, extensive class-wide discovery, and a likelihood of appellate proceedings. Ultimately,
28 there were significant remaining risks for both Parties, and the Parties’ Settlement represents an

1 adequate and reasonable compromise that falls within the range necessary to support preliminary
2 approval and notification to members of the potential Class for their consideration and response.
3 See Buck Dec. ¶¶ 17-18, 20; see also, Paek Dec. ¶¶ 9–11.

4 **3. The Settlement Is Adequate.**

5 As previously mentioned, in a somewhat similar class action the court aptly observed that
6 it would have been irrational for most, and probably all, class members to pursue their claims on
7 an individual basis “because of the disparity between their litigation costs and what they hope to
8 recover.” *Local Joint Executive Bd.*, 244 F.3d at 1163.

9 The recovery provided through the Settlement is reasonable, especially as its adequacy
10 must be judged as “a yielding of absolutes and an abandoning of highest hopes.... Naturally, the
11 agreement reached normally embodies a compromise; in exchange for the saving of cost and
12 elimination of risk, the parties each give up something they might have won had they proceeded
13 with litigation....” *Officers for Justice*, 688 F.2d at 634 (citation omitted). Accordingly, a
14 settlement is not to be judged against a speculative measure of what might have been achieved.
15 *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). An additional
16 consideration is that a settlement provides for payment to the class now, rather than a payment
17 many years down the road, if ever. See *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d
18 Cir. 1974).

19 Here, considering the present value of the Settlement sum, the probability of lengthy
20 litigation in the absence of a settlement, and the risks that the Class might not have prevailed at
21 trial, it is no exaggeration to predict that without using the class action process, the relief that
22 members of the Class were likely to achieve individually ranged from negligible to zero.
23 Consequently, the \$8,750,000.00 Settlement satisfies the criterion of adequacy. See *Manual for*
24 *Complex Litigation* § 21.62 (“Adequacy of the settlement involves a comparison of the relief
25 granted relative to what class members might have obtained without using the class action
26 process.”).

27 **D. The Notice Adequately Informs Class Members of the Settlement.**

28

1 The Notice explains the claim process; how to request to be excluded or object; and the
2 consequences of the action the Class Member takes (filing a claim, doing nothing, opting out, or
3 objecting), in terms of both financial benefit and release of state claims. *See* Exhibit A, Notice.
4 The Notice advises Class Members about the final approval hearing, their rights with respect to
5 that hearing, and how to get more information. *Id.* Likewise, the Claim Form and exclusion
6 process are simple and straightforward. *See* Claim Form and Consent to Join attached as Exhibit
7 B to the Settlement Agreement; *see also*, Settlement Agreement § III.D.4 (opt-out procedure).
8 The 30-day time frame for returning a claim is reasonable, allowing Class Members to digest the
9 information in the notice and obtain answers to questions before deciding on the action they want
10 to take. Accordingly, in addition to approving the Settlement agreement as a whole, the Parties
11 respectfully ask that the Court approve the Notice and other ancillary forms in substantially the
12 format presented with the Settlement.

13 As discussed in Section III(C), *supra*, the Parties will also comply with the separate
14 CAFA notice requirements of 28 U.S.C. § 1715(b)(1)–(8), including service of notice of the
15 Settlement upon the appropriate State official of each State in which a class member resides, and
16 the appropriate Federal official, not later than ten (10) business days after filing this Motion.
17 Thus, the Parties will provide adequate notice to both the pertinent State and Federal officials in
18 a manner that provides opportunity to State and Federal officials to review the Settlement’s terms
19 and conditions and furthers the purpose of CAFA. *See California v. IntelliGender, LLC*, 771 F.3d
20 1169, 1172–1173 (9th Cir. 2014) (discussing purpose of CAFA notice requirements is to give
21 states a role in ensuring equitable class action settlements).

22 **E. Approval and Appointment of Simpluris as Settlement Administrator.**

23 Simpluris should be appointed as the Settlement Administrator in this case and instructed
24 to carry out the terms of the Settlement. Simpluris has committed to effectuate the administration
25 of the Settlement within the costs allocated under the Settlement. Accordingly, Simpluris should
26 be appointed as Settlement Administrator and their fees and costs of \$38,000.00 should be
27 preliminarily approved.

28 **V. CONCLUSION**

1 Based on the information and reasons provided above, the Parties respectfully request
2 that the Court enter the proposed order granting preliminary approval of the class action
3 Settlement attached hereto.

4
5 Dated: October 4, 2024

6
7 By: /s/ Leah L. Jones
8 Joshua D. Buck
9 Leah L. Jones
10 THIERMAN BUCK, LLP

11
12 *Attorneys for Plaintiffs and all others
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