

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT  
C.A. No. 1981CV01957

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MICH KAREN PIERRE LOUIS, Individually and )  
On behalf of all others similarly situated )  
others similarly situated, )

Plaintiff, )

v. )

BAYADA HOME HEALTH CARE, INC., )  
DAVID BAIADA and J. MARK BAIADA, )  
Defendants. )

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**JOINT MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT, DIRECTING  
NOTICE TO THE CLASS, AND SCHEDULING FINAL SETTLEMENT HEARING**

Plaintiff, Mich Karen Pierre Louis (“Plaintiff”) and Defendants BAYADA Home Health Care, Inc., David Baiada, and J. Mark Baiada (“Defendants”), by and through their undersigned counsel of record, hereby move for an order (1) preliminarily certifying the Class for settlement purposes; (2) granting preliminary approval of the proposed Settlement; (3) approving the Parties’ proposed form and method of giving notice to the Class of the pendency of this action and of the Settlement; (4) directing that notice be given to the Class members as approved by the Court; (5) finding that such notice constitutes the best notice practicable under the circumstances; (6) appointing Plaintiff and her counsel, Pastor Law Office, LLP and Bottone/Reiling, as Class Representative and Class Counsel, respectively; (7) scheduling appropriate dates for requirements and/or obligations of the Parties and Class members as more fully described in the proposed Order filed concurrently herewith; and (8) scheduling a Final Settlement Hearing during which the Court will consider (a) the Parties’ request for final approval of the Settlement and entry of the proposed Final Order and Judgment, and (b) Class Counsel’s application for an award of attorneys’ fees and costs.

The grounds for this motion are set forth in the accompanying memorandum of law. This Motion is also supported by the Declaration of David Pastor in Support of Preliminary Settlement Approval and the annexed exhibits: **Exhibit 1** (Class Action Settlement Agreement and Release dated December 30, 2021);<sup>1</sup> **Exhibit 1A** (list of recipients (identified by employee number) and amounts for distributions to Settlement Class members from the Settlement Fund); **Exhibit 1B** (Class Notice); **Exhibit 1C** (Proposed Order Preliminarily Approving Settlement and Providing

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<sup>1</sup> Although the Settlement Agreement submitted herewith as **Exhibit 1** has not yet been executed by Defendants, this is merely the result of logistical difficulties. Defendants and their counsel have approved the Settlement Agreement in the form of **Exhibit 1**, and Defendants have fully and completely agreed to the terms and provisions thereof, as expressed in **Exhibit 1**. See Pastor Declaration, ¶ 2.

Notice); and Exhibit **1D** (Proposed Final Judgment and Order of Dismissal with Prejudice)).

Dated: December 31, 2021

Respectfully submitted,

PASTOR LAW OFFICE, LLC

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*Counsel for Plaintiff*

*Counsel for Defendants*

### **CERTIFICATE OF SERVICE**

I hereby certify, under penalty of perjury, that on December 31, 2021 I caused copies of the foregoing Joint Motion for Preliminary Approval of Settlement, Directing Notice to the Class, and Scheduling Final Settlement Hearing to be served via email upon counsel for Defendants as follows:

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/s/ David Pastor  
David Pastor

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT  
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MICH KAREN PIERRE LOUIS, Individually and )  
on behalf of all others similarly situated, )  
 )  
Plaintiff, )  
v. )  
 )  
BAYADA HOME HEALTH CARE, INC., DAVID )  
BAIADA and J. MARK BAIADA, )  
Defendants. )  
 )  

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**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT, DIRECTING NOTICE TO THE CLASS,  
AND SCHEDULING FINAL SETTLEMENT HEARING**

Plaintiff Mich Karen Pierre Louis, on behalf of herself and the putative Settlement Class (“Plaintiff”) respectfully submits this memorandum of law in support of entry of an Order (a) preliminarily, certifying the Settlement Class for settlement purposes with Plaintiff serving as class representatives and Plaintiff’s counsel serving as Class Counsel; (b) preliminarily approving the settlement entered into, by, and between Plaintiff and Defendants BAYADA Home Health Care, Inc. (“BAYADA”), David Baiada and J. Mark Baiada (collectively, “Defendants”) in accordance with the Class Action Settlement Agreement and Release dated December 28, 2021 (the “Agreement”), which is attached as **Exhibit 1** to the Declaration of David Pastor (the “Pastor Decl.”) filed concurrently herewith; (c) approving as to form and content the Notice of Pendency and Proposed Settlement of Class Action and Settlement Hearing Thereon (the “Notice”), annexed as **Exhibit 1B** to the Pastor Decl., and (d) scheduling a date for the Final Settlement Hearing to

consider finally, after giving Settlement Class Members adequate time to respond to the Settlement, whether the Settlement is fair, reasonable and adequate to the Class and should be finally approved by the Court and whether to approve Plaintiff's counsel's application for attorneys' fees and reimbursement of expenses and Plaintiff's application for an incentive award.

## **I. INTRODUCTION**

Plaintiff has reached an agreement to settle above-captioned action (the "Action") against Defendants for a payment of \$22,342 in cash, plus an additional payment of \$50,000 for attorneys' fees and \$1,100 for reimbursement of expenses and the payment of an incentive award to Plaintiff in the sum of \$3,500 (the "Settlement"). The proposed Settlement was the product of extensive, arm's length negotiations. Pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure, Plaintiff now seeks this Court's approval to disseminate the Notice to members of the Settlement Class,<sup>1</sup> and to set a date for a hearing to consider the fairness of the Settlement and the reasonableness of Plaintiff's counsel's application for an award of attorneys' fees and reimbursement of litigation expenses.

As discussed below, preliminary approval is simply the first of two steps in the settlement approval process.

The preliminary approval sought by this motion merely requires that the Court make an initial fairness evaluation that the Settlement is "within the range of possible approval." *Manual for Complex Litigation*, Third, §30.41 (1995). The burden during this initial stage is low and the purpose of preliminary approval is to identify whether the Settlement is so facially invalid that it would make "notice to the class, with its attendant expenses, and a hearing...futile gestures." 4 *Newberg on Class Actions* §11:25 (4th Ed. 2007). The Court is *not* required at this point to make

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<sup>1</sup> All capitalized terms herein shall have the same meaning as set forth in the Agreement.

a final determination as to the fairness of the Settlement. Plaintiff believes that the proposed Settlement not only falls within “the range of approval,” but easily satisfies the criteria for final approval. Accordingly, preliminary approval should be granted.

Plaintiff respectfully requests that this Court enter the Preliminary Approval Order,<sup>2</sup> which will:

- (i) Preliminarily certify the Settlement Class as set forth herein;
- (ii) Preliminarily approve the Settlement on the terms set forth in the Agreement, attached to the Pastor Decl. as **Exhibit 1**;
- (iii) Approve the form, substance, and requirements of the Notice;<sup>3</sup>
- (iv) Find that the procedures established for mailing, and distribution of the Notice substantially in the manner and form set forth in the Preliminary Approval Order constitute the best notice practicable under the circumstances and are in full compliance with the notice requirements of due process and Mass. R. Civ. P. 23; and
- (v) Set forth a schedule and procedures for dissemination of the Notice, for submitting papers in support of final approval of the Settlement, for submitting papers in support of Plaintiff’s counsel’s application for attorneys’ fees and reimbursement of expenses, for objecting to the Settlement or to Plaintiff’s counsel’s application for attorneys’ fees and reimbursement of expenses, and for the Settlement Hearing.

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<sup>2</sup> **Exhibit C** to the Agreement. (Pastor Decl., **Exhibit 1C**).

<sup>3</sup> Pastor Decl., **Exhibit 1B**.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

BAYADA operates an international home health care business from its headquarters in New Jersey, with 360 offices in 23 states and 6 countries, with 10 offices in Massachusetts, and 28,000 employees. Class Action Complaint, ¶¶ 10-11.<sup>4</sup> BAYADA provides various home health care services, including adult private-duty nursing, personal care and companionship, pediatric services, hospice care, physician services, medication management and health systems solutions. *Id.*, ¶ 12. Bayada's personal home care employees include home health aides, certified nursing assistants, homemakers and personal companions. *Id.*, ¶ 14.

During the period from approximately March 23, 2017 through approximately June 28, 2018, Plaintiff was employed by BAYADA as a home health aide, working out of BAYADA's office at 2000 Commonwealth Avenue, Newton, Massachusetts 02466. Plaintiff was employed at the rate of \$12.70 per hour and was paid weekly, with each pay period running from Monday through the following Sunday. *Id.*, ¶¶ 17-19. For each pay period while she was employed with BAYADA, Plaintiff received a paper Earnings Statement<sup>5</sup> by mail that described the services she provided for that week and listed her gross earnings, payroll deductions and net earnings for the current pay period and for the year to date. *Id.*, ¶ 20, Exhibit A.

In or around May of 2018, Plaintiff was reviewing her paper Earnings Statement for the most recent pay period and when she added up the listed and itemized payroll deductions and deducted that total from her gross earnings, she noticed that the difference she got was a higher amount than her net earnings (for both year-to-date and the current pay period). *See id.*, ¶¶ 20-21.

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<sup>4</sup> The individual Defendants, David Baiada and J. Mark Baiada, are, respectively, President and Treasurer of Bayada. *Id.*, ¶ 1.

<sup>5</sup> It was later revealed through discovery that Plaintiff's earnings statements were also posted online. \_\_\_\_\_.



In other words, her net earnings appeared to be less than they should be, given the total amount of deductions that were itemized on her earnings statement. This, together with further review and investigation, led Plaintiff to the conclusion that BAYADA was taking payroll deductions that were not listed or itemized on her Earnings Statements and that Plaintiff was not being paid the full amount of wages earned. Thus, Plaintiff believed that BAYADA violated the Massachusetts Wage Act (“Wage Act”) in two ways: 1) its failure to pay Plaintiff her full wages earned; and 2) its failure to furnish Plaintiff with an earnings statement<sup>6</sup> that listed and itemized all payroll deductions taken for the applicable pay periods as required by law. *See* M.G.L., C. 149, § 148.

On June 24, 2019, Plaintiff filed a complaint against Bayada for violations of the Wage Act with the Fair Labor Division of the Massachusetts Attorney General’s Office (as statutorily required), and on June 27, 2019, the Attorney General’s office responded with a letter authorizing Plaintiff to pursue a private civil action (referred to as a “right to sue” letter). *See* Complaint, ¶ 43, Ex. B. Plaintiff then filed the Complaint in this Court on July 9, 2019, alleging violations of the Wage Act (failing to pay full wages owed, and failing to properly list and itemize all earnings deductions on the Earnings Statements). *See id.*, ¶¶ 1, 39. Plaintiff brought this action as a class action under Mass. R. Civ. P. 23 and M.G.L., c. 148, § 150, on behalf of a class defined as “all Home Care Employees employed by Bayada in Massachusetts who were not paid their full wages earned and who had deductions that were not itemized on the employees’ earnings statements taken from their earnings during the applicable limitations period.” *Id.*, ¶¶ 29-37.

After the suit was filed, Plaintiff’s counsel engaged in discussions with Defendants’ counsel about the substance of the allegations in the Complaint and the investigation undertaken by BAYADA. During these discussions, counsel for Defendants told Plaintiff’s counsel that

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<sup>6</sup> The statute uses the terms, “pay slip, check stub or envelope.” M.G.L., c. 149, § 148.

according to BAYADA's investigation, the failure to list certain itemized deductions on Plaintiff's paper earnings statements (and the paper earnings statements of other BAYADA home care employees who were employed in Massachusetts) was not intentional but was inadvertent and due to a glitch in Bayada's payroll management system. Defendants' counsel also explained that according to BAYADA's investigation, all of the unlisted deductions were legitimate and properly assessed deductions and that none of the affected employees were improperly denied any wages as a result of the facts alleged in the Complaint. Defendants' counsel further stated that electronic/online earnings statements for Plaintiff and the affected employees included the deductions that were not listed on the paper earnings statements. During these conversations between counsel, the possibility of settlement was also discussed.

Plaintiff then conducted discovery, both formal and informal, to test and verify the statements and explanations provided by Defendants' counsel as to the unlisted deductions and to prepare the case for resolution, either by settlement or trial. On October 4, 2019, Plaintiff served written discovery requests (interrogatories and document requests) on Defendants. Defendants did not provide formal responses to those discovery requests. Instead, over the next several months, the parties discussed and negotiated the production of documents by Defendants concerning the unlisted deductions and the BAYADA employees affected by this issue. As part of this process, BAYADA produced a number of documents, including a copy of Plaintiff's online earnings statement, a spreadsheet showing the affected employees (identified by employee number only),<sup>7</sup> and other related materials. The parties, after further discussions and negotiation, agreed on a sampling procedure whereby Defendants would provide backup documentation for the unlisted deductions and related documents for 20 of the affected employees, to be selected by

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<sup>7</sup> There were 118 unique employees listed on the spreadsheet provided by Defendants.

Plaintiff. Defendants then provided the documentation as agreed, including backup documentation for the sample employees, online earnings statements listing the payroll deductions at issue, and a complete set of Plaintiff's online earnings statements. After the Court entered a jointly-proposed confidentiality protective order, Defendants also produced another version of the spreadsheet of data for the proposed Class Members that included their employee names. At or around the end of October, 2020, Defendants' document production was completed (or at least substantially completed), and on November 5, 2020, Plaintiff took a 30(b)(6) deposition of BAYADA. After the conclusion of the deposition, Plaintiff's counsel realized that there were certain questions that were unanswered (*i.e.*, that BAYADA's designated representative was unable to answer) and that some clarification was needed. The parties discussed this issue, and it was agreed that Plaintiff would serve a set of additional interrogatories to elicit the desired information. The interrogatories were served and answered.

After a diligent and comprehensive review, including a review of the documentation and testimony provided by Defendants, Plaintiff concluded that the statements and assertions Defendants' counsel made regarding the earnings statements were accurate. *i.e.*, that the failure to list certain payroll deductions on employees' paper earnings statements was unintentional and inadvertent (the result of Bayada transitioning to a new payroll system in January of 2018), that the unlisted deductions on the paper statements were legitimate and properly assessed against the employees' wages, that no employees lost any wages as a result of the alleged acts or omissions, and that online earnings statements listing all itemized deductions were available to the affected employees. Stated another way, it became apparent that BAYADA's failure to list certain deductions on the paper earnings statements was a technical violation (failure to provide earnings statements showing all deductions taken from the employee's wages for the applicable pay period)

that did not result in any lost wages to Plaintiff or the putative Class Members. According to BAYADA's deposition testimony, there were several types of payroll deductions that were affected by this situation, such as deductions for payroll advances, employee loans, wage garnishments, and insurance premiums for coverage elected by the employee. BAYADA's deposition testimony also revealed that it was Plaintiff's discovery of the discrepancy in her earnings statement and the resulting lawsuit that led Bayada to discover the unlisted deduction issue.

After the completion of discovery, the parties engaged significant settlement negotiations that ultimately resulted in the settlement being presented for approval.

Plaintiff and her counsel believe that they have conducted a thorough investigation of the claims asserted in the Litigation and that they are in an appropriate position to evaluate the merits of the case and the strengths and weaknesses of the parties' positions in order to achieve a fair and reasonable settlement.

### **III. THE PROPOSED SETTLEMENT SHOULD BE PRELIMINARILY APPROVED AND NOTICE SHOULD BE DISSEMINATED TO THE SETTLEMENT CLASS**

#### **A. The Proposed Settlement Warrants Preliminary Approval Because It Is Within the Range of Possible Approval**

Public policy generally favors settlement as a means of resolving disputes. *E.g.*, *Hotel Holiday Inn de Isla Verde v. NLRB*, 723 F.2d 169, 173 (1st Cir. 1983). Indeed, "the law favors class action settlement." *In re Lupron Mktg. & Sales Practice Litig.*, 228 F.R.D. 75, 88 (D. Mass. 2005). By favoring the settlement of class action litigation, the law seeks to minimize the litigation expense on both sides, and to reduce the strain on judicial resources. *E.g.*, *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995). "Because settlement of a class action, like settlement of any litigation, is basically a bargained exchange between the

litigants, the judiciary's role is properly limited to the minimum necessary to protect the interests of the class and the public.” *Sniffin v. Prudential Ins. Co. of America*, 395 Mass. 415, 421 (1985).

The preliminary approval sought by this motion merely requires that the Court make an initial fairness evaluation that the Settlement is “within the range of possible approval.” *Manual for Complex Litigation*, Third, §30.41 (1995). The burden during this initial stage is low, and the purpose of preliminary approval is to identify whether the Settlement is so facially invalid that it would make “notice to the class, with its attendant expenses, and a hearing...futile gestures.” 4 *Newberg on Class Actions* §11:25 (4th Ed. 2007). The Court is *not* required at this point to make a final determination as to the fairness of the Settlement. At this preliminary stage, “the judge reviews the proposal preliminarily to determine whether it is sufficient to warrant public notice and a hearing. If so, the final decision on approval is made after the hearing.” *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 57 (D. Mass. 2005). “Where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations and falls within the range of possible approval, preliminary approval is granted.” *In re IPO Sec. Litig.*, 226 F.R.D. 186, 191 (S.D.N.Y. 2005).

The proposed Settlement here plainly satisfies the standards for preliminary approval. It provides the sum of \$22,342 in cash for distribution Settlement Class Members, plus additional payments for attorneys’ fees in the amount of \$50,000 and expenses in the amount of \$1,100, and a Plaintiffs’ incentive award of \$3,500 (and the payment by Defendants of the cost of settlement administration); therefore, the settlement is clearly beneficial to the Settlement Class. This sum will provide each Class member with 50% of the amount of his or her unlisted deductions. In addition, the payments to Class members will be direct-Class members will not need to file claim in order to obtain payment. Among other advantages, this process will minimize the amount of

unclaimed funds; the only unclaimed funds will be those amounts that remain in the settlement fund after distribution due to uncashed settlement checks.

While Plaintiff continues to believe in the merits of her claims, she recognizes that there were risks in continued litigation, including that: Plaintiff might not be able to establish liability on her Massachusetts Wage Act claims; even if liability is established, Plaintiff and the Class may not be able to establish damages (particularly in the absence of any lost wages); the class might not be certified; and even if Plaintiff were able to establish liability and obtain judgment on behalf of a certified class, that judgment might be vacated or reversed on appeal.<sup>8</sup> *See, e.g., In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 539-40 (D.N.J. 1997) (“Because establishing liability at trial and prevailing on appeal is not, and never can be, guaranteed, and because the Proposed Settlement is certain and avoids many of the obstacles potentially implicated by a trial, on balance the risks of establishing liability weigh in favor of approving the settlement.”). The proposed Settlement ensures the Settlement Class a substantial benefit, while eliminating further uncertainty, expense, and delay.

Moreover, the other factors described above that courts often consider in connection with preliminary approval of class action settlements lend support to the proposition that the Settlement is well within the range of possible approval. First, the terms of the proposed Settlement are the product of arm’s length negotiations. Second, Plaintiff has conducted sufficient discovery in order to fully understand the strengths and weaknesses of the claims and to be able to represent the fairness, adequacy and reasonableness of the Settlement. Indeed, the nature of the claims asserted in the Complaint and Plaintiff’s understanding of the facts and circumstances underlying the claims were shaped, and in some ways modified by the information obtained from discovery in this case.

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<sup>8</sup> Although such things are impossible to predict, given the unique, or at least unusual nature of this case, a judgment in favor of Plaintiff and the Class would almost certainly be appealed.

Accordingly, this settlement is clearly the product of serious, informed, non-collusive negotiations between the parties.

Furthermore, Plaintiff's counsel have significant experience in class action litigation and have negotiated many substantial class action settlements in state and federal courts in Massachusetts and elsewhere. Here, Plaintiff's counsel have conducted a thorough investigation and, as noted above, substantial discovery and thus, comprehend "the relative merits of the[] factual and legal contentions," as well as the "considerable risks associated with further litigation...." *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 509 (W.D. Pa. 2003). It is Plaintiff's counsel's informed opinion that, given the uncertainty and further substantial risk and expense of pursuing the Action through contested class certification proceedings, trial and appeal, the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

At the Final Approval Hearing, the Court will have before it a more extensive record and will be in a position to make an ultimate determination as to whether the Settlement is fair, reasonable, and adequate under all of the relevant circumstances. At this juncture, Plaintiff requests only that the Court grant preliminary approval of the Settlement so that notice of the Settlement may be sent to the Settlement Class and a Settlement Hearing scheduled. It is at the Settlement Hearing that Settlement Class Members "may come in and present claims and defenses if they so desire." Mass. R. Civ. P. 23(d).

**B. The Settlement Class Should Be Conditionally Certified**

Plaintiffs respectfully request that the Court conditionally certify the following Settlement Class for purposes of settlement:

All BAYADA employees who provided home care services on BAYADA's behalf in Massachusetts and who had deductions reflected on their paper earning statements that

were not properly itemized on such paper earnings statements from January 1, 2018, through August 2, 2019 (the “Settlement Class”).

A class may be certified when all four of the prerequisites for class certification are met – (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation – and the Court determines that questions of law and fact predominate over any questions affecting class members individually, and that a class action is superior to other methods of adjudicating the claims. *See* Mass. R. Civ. P. 23(a), 23(b); *see also Weld v. Glaxo Wellcome Inc.*, 434 Mass. 81, 86 (2001); *Carpenter v. Suffolk Franklin Sav. Bank*, 370 Mass. 314, 318 (1976).

Here, the Class is sufficiently numerous to qualify for certification. The numerosity requirement is satisfied where joinder of all parties would be impractical, unwise or imprudent. *See Brophy v. School Comm. of Worcester*, 6 Mass. App. Ct. 731, 735 (1978). According to information provided by Bayada, there are 118 Class members, resulting in a more than sufficient number of Class Members to satisfy numerosity. Joinder of all class members is impractical, and, accordingly, the numerosity standard is met in this case.

In addition, the claims of the Class satisfy both the commonality requirement<sup>9</sup> and the requirement that issues common to Class members must predominate over any individual issues. To satisfy these requirements, it is not essential that the interests of each Class member be identical; they need only arise out of a “common relationship to a definite wrong.” *Godfrey v. Mass. Med. Serv.*, 359 Mass. 610, 620 (1971). Nevertheless, here, the interests of all Settlement Class Members are identical. They all relate to deductions taken from their gross weekly pay that

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<sup>9</sup> The commonality requirement dictates that plaintiffs seeking class certification must demonstrate that “all persons whom they profess to represent have a common interest in the subject matter of the suit and a right and interest to ask for the same relief.” *Spear v. H.V. Greene Co.*, 246 Mass. 259, 266 (1923). The commonality test is qualitative rather than quantitative, that is, there need only be a single issue common to all members of the class.” *In re American Medical Systems, Inc.*, 75 F. 3d 1069, 1080 (6<sup>th</sup> Cir. 1996), *quoting* 1 H. Newberg & A. Conte, *Newberg on Class Actions*, § 3.10 at 3-50 (3<sup>rd</sup> ed. 1992).



were not listed or itemized on their paper earnings statements during the applicable time period. The information provided by Defendants through discovery confirms that all Class members were affected in the exact same manner by the practice alleged in the Complaint; the only difference among the Class members would be the **amount** of unlisted deductions for each person. However, it is well-settled that individual damages issues are not sufficient to defeat predominance and prevent class certification. *See DaSilva v. Border Transfer of MA, Inc.*, 296 F. Supp. 3d 389, 406 (D. Mass. 2017); *Salvas v. Wal-mart Stores, Inc.*, 452 Mass. 337, 364 (2007) (“Class certification may be appropriate where common issues of law and fact are shown to form the nucleus of a liability claim, even though the appropriateness of class action treatment in the damages phase is an open question”). In addition, the claims of all Class members arise out of the same legal issue: whether the failure to list or itemize these deductions on the earnings statements mailed to employees constituted a violation of the Massachusetts Wage Act, M.G.L., C. 149, § 148. Moreover, the factual questions are also common to the class, as Plaintiff’s claims relate to the common conduct of Defendants. Thus, the claims asserted and factual questions in this litigation are sufficiently common such that common issues predominate, and class certification is warranted.

The requirement of typicality is met when the alleged injuries to the named plaintiffs arise from the same events and involve the same legal theories as do the claims of the class members in general. *See In re Bank of Boston Corp. Sec. Litig.*, 762 F. Supp. 1525, 1532 (D. Mass. 1991). In this case, the gravamen of the class-wide claims arises from the unlisted and un-itemized deductions, affecting all Settlement Class Members equally. As noted above, the Class claims are all based on the same underlying theories, *i.e.*, that the failure to list and itemize these deductions on the mailed earnings statements was in violation of the Wage Act. In addition, Plaintiff, as a

Class representative, has no interests that are adverse or antagonistic to the interests of the Settlement Class. Accordingly, the Court should find that the typicality requirement is met.

It is also clear that Plaintiff is an adequate representative of the Settlement Class, and that Plaintiff's counsel have adequately represented the interests of the Class. Plaintiff's counsel are highly experienced in class action litigation. Plaintiff's counsel have negotiated with Defendant at arm's length and achieved for the Plaintiff and the Class a significant cash settlement, plus an additional amount for attorneys' fees.<sup>10</sup> Accordingly, the representative parties have fairly and adequately protected the interests of the other Settlement Class Members. Thus, the adequacy requirement is satisfied. *See Cohen v. DiPaolo*, 1995 WL 419942, at \*4 (Mass. Super. July 13, 1995). Plaintiff's role in discovering the issue at the heart of this action by examining her earnings statement is, without more, sufficient evidence of her commitment to vigorously prosecute this Action.

Finally, a class action is superior to other available means of adjudicating this controversy because the potentially small financial interests of absent Settlement Class Members may not justify the financial burden of individually prosecuting claims on their own. Moreover, the expense of the litigation would make it impractical for many individual Settlement Class Members to prosecute claims on their own.

In addition, the Wage Act has its own class action provision. M.G.L. c. 149, § 150, provides, in pertinent part, that an "employee claiming to be aggrieved by a violation of section[] . . . 148 . . . may . . . institute and prosecute in his own name and on his own behalf, **or for himself and for others similarly situated**, a civil action for injunctive relief, for any damages incurred, and for any lost wages and other benefits" (emphasis added). This provision has been held to

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<sup>10</sup> The amount of attorneys' fees to be paid by Defendants was not discussed or negotiated until after the class compensation was agreed upon by the parties.

evidence an essential Massachusetts policy favoring class actions for employment claims. *See Waithaka v. Amazon.com, Inc.*, 966 F. 3d 10, 32 (1<sup>st</sup> Cir. 2020) (“the SJC would conclude that the right to pursue class relief in the employment context represents the fundamental public policy of the Commonwealth . . . the statutory right to pursue class relief reflects the Commonwealth’s desire to allow one or more courageous employees the ability to bring claims on behalf of other employees who are too intimidated by the threat of retaliation and termination to exercise their rights”) (internal quotation marks and citations omitted).

**C. The Form and Content of the Proposed Notice to the Settlement Class Are Sufficient**

Here, both the form and content of the Notice to the Settlement Class are sufficient and should be approved by the Court. As outlined in the Proposed Order Preliminarily Approving Settlement and Providing Notice, Plaintiff, through the Notice Administrator selected by the Parties, will notify Settlement Class Members of the Settlement by sending the Notice to Settlement Class Members no later than ten (10) business days after entry of the Order for Notice and Hearing.<sup>11</sup> The Notice will advise Settlement Class Members of the essential terms of the Settlement, of information regarding Plaintiff’s counsel’s anticipated fee application, and of the proposed allocation of the Settlement proceeds among Settlement Class Members.<sup>12</sup> It also will set forth the procedure for objecting to the Settlement and the request for an award of attorneys’ fees and reimbursement of litigation expenses, and also will provide specifics on the date, time, and place of the Settlement Hearing. Plaintiff’s counsel believe that, because the Notice fairly apprises Settlement Class Members of their rights with respect to the Settlement, it represents the best notice practicable under the circumstances and should be approved by the Court.

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<sup>11</sup> The notice will be disseminated to Class members by mail and email, where postal and email addresses are available.

<sup>12</sup> In addition, each notice will include an individual statement informing the class member of the amount he or she will receive from the Settlement Fund.

#### **IV. PROPOSED SCHEDULE OF EVENTS**

In connection with preliminary approval of the Settlement, the Court should set a Settlement Hearing Date, as well as the following additional dates and deadlines. All of the following dates run from either the date of the entry of the Preliminary Approval Order or the date of the Settlement Hearing: dates for mailing of the Notice and deadlines for objecting to the Settlement and filing papers in support of the Settlement. The Preliminary Approval Order establishes the following schedule:

Defendants to provide class member information	Three (3) business days after entry of Preliminary Approval Order
Notice sent to Settlement Class and settlement website to be activated	Ten (10) business days after receipt by Settlement Administrator of class member information
Last day for Settlement Class Members to object to the Settlement	14 calendar days before Final Settlement Hearing
Plaintiffs file their papers in support of final approval of the Settlement and Plaintiffs' Counsel file their application for award of attorneys' fees and reimbursement of expenses	7 days before Final Settlement Hearing
Settlement Hearing	To be set by the Court

In order to provide sufficient time for Settlement Class Members to respond to the Notice, Plaintiffs request that the Court set the Settlement Hearing for a date approximately 75 days from entry of the Preliminary Approval Order.

#### **V. CONCLUSION**

For all of the foregoing reasons, Plaintiff respectfully submits that the Settlement Class be preliminarily certified and that the proposed Settlement be preliminarily approved by the Court allowing notification to be sent to Settlement Class Members of the terms of the Settlement and the date of the Settlement Hearing.

Dated: December 31, 2021

Respectfully submitted,

/s/ David Pastor  
David Pastor (BBO# 391000)  
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(617) 742-9700  
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/s/ Richard B. Reiling  
Richard B. Reiling (BBO # 629203)  
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*Attorneys for Plaintiff*

### **CERTIFICATE OF SERVICE**

I hereby certify, under penalty of perjury, that on December 31, 2021 I caused copies of the foregoing Plaintiff's Memorandum of Law In Support of Motion for Preliminary Approval of Class Action Settlement, Directing Notice to the Class, and Scheduling Final Settlement Hearing to be served via email upon counsel for Defendants as follows:

Joseph J. Centeno  
BUCHANAN INGERSOLL & ROONEY, P.C.  
50 South 16<sup>th</sup> Street, Suite 3200  
Philadelphia, PA 19107  
Email: [joseph.centeno@bipc.com](mailto:joseph.centeno@bipc.com)

Thomas G. Collins  
BUCHANAN INGERSOLL & ROONEY, P.C.  
409 N. Second Street, Suite 500  
Harrisburg, PA 17101  
Email: [Thomas.collins@bipc.com](mailto:Thomas.collins@bipc.com)

/s/ David Pastor  
David Pastor

MIDDLESEX, ss.

MICH KAREN PIERRE LOUIS,  
Individually and on behalf of all others  
similarly situated,

V.

Civil Action No. 1981CV01957

BAYADA HOME HEALTH CARE, INC.,  
DAVID BAIADA, and J. MARK BAIADA,

Defendants.

**DECLARATION OF DAVID PASTOR IN SUPPORT OF MOTION FOR  
PRELIMINARY SETTLEMENT APPROVAL**

David Pastor, on oath, hereby declares as follows:

1. I am an adult, I have personal knowledge of the facts stated herein, and I am competent to so testify.

2. Annexed to this Declaration as **Exhibit 1** is a true and correct copy of the Settlement Agreement and Release dated December 30, 2021 (“Settlement Agreement”). Although the attached copy of the Settlement Agreement has not yet been executed by Defendants, Defendants and their counsel have approved the Settlement Agreement in the form of **Exhibit 1**, and Defendants have fully and completely agreed to the terms and provisions thereof, as expressed in **Exhibit 1**. The absence of Defendants’ signatures at this time is simply the result of logistical difficulties.

3. Annexed to this Declaration as **Exhibit 1A** is a true and correct copy of a list of recipients (identified by employee number) and amounts for distributions to Settlement Class members from the Settlement Fund.

4. Annexed to this Declaration as **Exhibit 1B** is a true and correct copy of the parties’ proposed Class Notice.

5. Annexed to this Declaration as **Exhibit 1C** is a true and correct copy of the Proposed Order Preliminarily Approving Settlement and Providing Class Notice.

6. Annexed to this Declaration as **Exhibit 1D** is a true and correct copy of the Proposed Final Judgment and Order of Dismissal with Prejudice.

I hereby certify that the foregoing is true and correct. Executed on December 31, 2021.

/s/ David Pastor  
David Pastor

## **CERTIFICATE OF SERVICE**

I hereby certify, under penalty of perjury, that on December 31, 2021, I caused copies of the foregoing Declaration of David Pastor in Support of Motion for Preliminary Settlement Approval to be served via email upon counsel for Defendants as follows:

Joseph J. Centeno  
BUCHANAN INGERSOLL & ROONEY, P.C.  
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Thomas G. Collins  
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Email: [Thomas.collins@bipc.com](mailto:Thomas.collins@bipc.com)

/s/ David Pastor  
David Pastor