

HOYER & HICKS
Richard A. Hoyer (SBN 151931)
rhoyer@hoyerlaw.com
Ryan L. Hicks (SBN 260284)
rhicks@hoyerlaw.com
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
tel (415) 766-3539
fax (415) 276-1738

Attorneys for Plaintiffs
MARGARET RIVERA, KAY MANALIGOD,
and CHRISTINE ATENCIO

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

MARGARET RIVERA, KAY MANALIGOD,
and CHRISTINE ATENCIO, on behalf of
themselves and all others similarly situated,
all Aggrieved employees, and the State of
California,

Plaintiffs,

vs.

HOME CARE ASSISTANCE, INC., HOME
CARE ASSISTANCE OF CALIFORNIA,
LLC, HOME CARE ASSISTANCE, LLC,
HOME CARE ASSISTANCE
MANAGEMENT, LLC, HOME CARE
ASSISTANCE HLDINGS LLC, and DOES 5
through 25,

Defendants.

Case No. RG20058229

CLASS AND REPRESENTATIVE
ACTION

ASSIGNED FOR ALL PURPOSES TO
DEPARTMENT 17

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES
SUPPORTING MOTION FOR:
PRELIMINARY APPROVAL OF
SETTLEMENT AND PROVISIONAL
CERTIFICATION OF SETTLEMENT
CLASS; APPROVING THE NOTICE
OF PROPOSED CLASS
SETTLEMENT, APPOINTING
SETTLEMENT ADMINISTRATOR AND
SETTING FINAL APPROVAL
HEARING DATE**

(SUPPORTING MEMORANDUM AND
[PROPOSED] ORDER SUBMITTED
CONCURRENTLY HEREWITH)

Date: September 30, 2021

Time: 3:30 p.m.

Dept.: 17

Reservation No.: Preliminary Approval
of Class Settlement: R-2285277

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I. INTRODUCTION

By and through the instant motion, Plaintiffs MARGARET RIVERA, KAY MANALIGOD, and CHRISTINE ATENCIO (“Plaintiffs”) hereby request that this Court enter an Order: (1) Granting Preliminary Approval of the Settlement Agreement, provisionally certifying a class of: “all individuals who were employed by HCAC [Home Care Assistance of California, LLC] in California in the position of non-Lead Client Care Manager or non-Lead Staffing Manager or a combination of both positions from March 11, 2016 through the date of Preliminary Approval” (“PCMs”) for the purposes of settlement; (2) appointing Plaintiffs’ counsel as Class Counsel for the purposes of Settlement;¹ (3) Appointing the proposed Settlement Administrator and maximum settlement costs; and (4) Approving the Class Notice and setting a Final Approval hearing date.²

On June 1, 2021, the parties reached an agreement in principle to resolve this litigation. After further negotiations regarding the full terms of the settlement agreement, all parties and counsel had executed the agreement by August 11, 2021.

The opt-out Settlement Agreement encompasses all claims Plaintiffs assert in the operative complaint on behalf of themselves and a proposed settlement class of approximately three hundred eighty-eight (388) persons who are or were employed by the Defendant Released Parties as Client Care Managers (“CCMs”) or Staffing Managers (“SMs”) in California at any time during the period March 12, 2016 through the date this Court grants preliminary approval of the Settlement (the “Class Period”).³

Plaintiffs’ operative complaint alleges that Defendants misclassified CCMs and SMs as exempt, which resulted in derivative claims such as: unpaid overtime, failure to provide the Class with compliant meal and rest periods, and other derivative penalties under the Labor Code including unpaid wages and overtime under state. Plaintiffs seek to recover

¹ A copy of the fully executed settlement agreement, entitled “CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE” (Settlement Agreement”) is attached as Exhibit 1 to the Declaration of Ryan L. Hicks (“Hicks Dec.”) filed concurrently herewith. The terms defined in the Settlement Agreement are used herein with the definitions incorporated therefrom.

² The Proposed Class Notice is attached as Exhibit 1 to the Settlement Agreement itself.

³ Settlement Agreement at §§ 2.39 (Settlement Class definition) and 2.41 (Settlement Class Period).

1 unpaid missed break premiums, unpaid wages and overtime and resulting derivative
2 penalties on behalf of themselves and all other similarly situated putative class members
3 (“PCMs”) employed by Defendants during the Class Period, including derivative penalties
4 under the Private Attorneys General Act (“PAGA,” Labor Code § 2698, *et seq.*).

5 Plaintiffs have agreed to settle their claims and those of the putative class members
6 in exchange for Defendants’ agreement to pay the class \$2,250,000, including the costs of
7 administering the Settlement Agreement, any enhancement award to the Plaintiffs, and
8 reasonable attorneys’ fees and costs. The Settlement Agreement satisfies all the criteria for
9 preliminary class settlement approval under California Law and falls well within the range of
10 what constitutes a reasonable compromise for claims of this nature and size.

11 **II. PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS**

12 1. On March 11, 2020, Plaintiffs filed their initial Complaint in the Alameda County
13 Superior Court on behalf of all Client Care Managers (“CCMs”) and/or Staffing Managers
14 (“SMs”) who worked for Defendants in California during the four years prior to the date of
15 filing, alleging claims of (1) Failure to Provide Overtime Compensation; (2) Meal and Rest
16 Period Violations; (3) Inaccurate Wage Statements; (4) Waiting Time Penalties; and (5)
17 Unfair Business Practices.⁴ Plaintiffs concurrently provided notice by U.S. Certified Mail to
18 the Labor Workforce and Development Agency and also to Defendants of their intent to
19 seek penalties on behalf of the State pursuant to PAGA. On May 15, 2020, Plaintiffs filed
20 their First Amended Complaint adding a claim for (6) PAGA Penalties against HCA, Inc.
21 and adding the other HCA defendants as DOE defendants. Plaintiffs submitted an
22 amended PAGA notice adding the HCA DOEs that same day. Hicks Dec. at ¶14. Following
23 some disputes regarding service on the various HCA entities, the operative Second
24 Amended Complaint was filed on August 28, 2020 adding the other recently added HCA
25 entities to the PAGA claim. *Id.*

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⁴ Hicks Dec. at ¶14.

1 Weeks after this action was filed (which was days before California imposed the first
2 COVID lockdown), HCA required PCMs still working there to execute arbitration
3 agreements by packing them with COVID-related policies. But Plaintiffs maintain that those
4 agreements were improper and misleading communications, and argue that they are void
5 as to the claims asserted in this action. HCA also purports to have secured severance
6 releases from a number of PCMs after this action was filed. However, Plaintiffs assert that
7 those form severance agreements similarly omit essential information regarding this action,
8 the claims asserted, and the contact information of Plaintiffs' counsel, rendering them
9 unenforceable as to these claims. *Id.* at ¶5.

10 Plaintiffs propounded sets of form interrogatories, special interrogatories, and
11 requests for production of documents on June 23, 2020. *Id.* at ¶6. HCAC provided
12 responses, and the parties engaged in a lengthy meet and confer process, that resulted in
13 Plaintiff filing a motion to compel further responses that was granted in part and denied in
14 part by this Court on January 28, 2021. *Id.* As a result of the motion to compel, HCAC
15 served supplemental discovery responses in February 2021, and the parties completed a
16 *Belaire* notice process on April 23, 2021. Following the *Belaire* process, Plaintiffs engaged
17 in an extensive outreach process and contacted every PCM for whom contact information
18 was provided for the purpose of interviewing them regarding the class claims. Defendant
19 also propounded interrogatories and requests for production on all three plaintiffs, and took
20 their depositions. *Id.*

21 Throughout the litigation the parties engaged in an extensive pre-certification,
22 voluntary exchange of information, including the exchange of documents and voluminous
23 personnel and payroll data, through formal and informal discovery methods. The Parties
24 additionally each conducted independent investigations and fact-finding. *Id.* at ¶7.

25 Prior to the mediation, Defendants provided summary data for the 388 class
26 members (as of the mediation) regarding their compensation and payroll records through
27 May 13, 2021. *Id.* at ¶8. During the litigation Defendants also produced documents
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1 regarding their asserted meal and rest period, payroll, and timekeeping policies in effect
2 during the Class Period to the extent any existed. *Id.*

3 Plaintiffs' counsel compiled the data produced by Defendants, and estimated
4 damages on all claims for the entire class during the complete Class Period. *Id.* at ¶9.
5 Plaintiffs' counsel has obtained sufficient discovery to evaluate the likelihood of success on
6 the merits and assess the potential risks facing Plaintiffs and the putative class. *Id.*

7 On June 1, 2021, the parties attended an exhaustive full-day mediation session with
8 Tripper Ortman, Esq., a highly-respected mediator who specializes in wage and hour class
9 mediations. *Id.* at ¶12. Plaintiffs submitted a mediation brief summarizing the evidence that
10 counsel had marshalled and synthesized, the state of the applicable law, and potential
11 class-wide exposure. *Id.* Defendants submitted their own brief arguing that no class could
12 be certified and that they would also prevail on the merits against the individual Plaintiffs
13 and any other PCMs. *Id.* at ¶13. With Mediator Ortman's assistance, the Parties agreed, to
14 the Settlement Agreement of the Actions, which was ultimately memorialized in a
15 memorandum of understanding executed on June 1, 2021. *Id.* Thereafter the parties
16 prepared the Settlement Agreement, which was ultimately executed on August 11, 2021. *Id.*
17 at ¶13.

18 Plaintiffs and their counsel are of the opinion that the Settlement Agreement is well
19 within the range of reasonableness and is in the best interest of the proposed settlement
20 class in light of all known facts and circumstances, including the risk of significant delay,
21 defenses asserted by Defendants, and potential appellate issues.

22 **III. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**
23 **BECAUSE IT MEETS ALL OF THE REQUIRED CRITERIA.**

24 **A. Settlement Class Size and Determination**

25 Pursuant to C.R.C. 3.769(d), an order certifying a provisional settlement class is
26 appropriate. The proposed settlement class is sufficiently numerous, because Defendants
27 have identified approximately 388 class members based on their personnel records. *Id.* at
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¶14. It is also undisputed that Defendants applied the same nominal meal period policies [classified all the same as exempt], payroll practices and meal and break policies to all of the PCMs throughout the class period, satisfying the commonality requirement. *Id.* at ¶15. It is similarly undisputed that Plaintiffs' claims are typical of those of the PCMs. *Id.* at ¶16. Plaintiffs are aware of no conflicts among Plaintiffs and the class (*Id.* at ¶17), and Plaintiffs' counsel are experienced wage and hour class action attorneys and have litigated this matter in the best interests of the class (*id.*), satisfying the adequacy requirement. Defendants do not dispute the provisional certification of a class for settlement purposes.

B. This is a Non-Reversionary Common Fund Settlement.

The non-reversionary Settlement Agreement provides that Defendants will pay a total of \$2,250,000 to Plaintiffs and other Participating Class Members ("CMs") who do not opt-out of the class, including an enhancement award to each Plaintiff in an amount up to \$15,000, attorneys' fees up to 1/3 of the Settlement Fund (\$750,000) plus their reasonable costs incurred (currently estimated to be under \$20,000), claims administrator's fees and expenses up to \$7,900, and \$15,000 allocated to the PAGA claims to be divided 25% to the class (to be distributed on a *pro rata* basis) and 75% to the California Labor Workforce Development Agency ("LWDA").⁵ Within fourteen (14) calendar days of the Effective Date⁶, HCAC shall provide the Total Settlement Amount (\$2,250,000) to the Settlement Administrator. (Settlement Agreement at § 5.1). Within seven (7) calendar days of receipt of the Total Settlement Amount from HCA, the Settlement Administrator will effectuate the payments of the Class Counsel Award, the PAGA Payment, the Service Awards, the Settlement Administrator Expenses, and all of the payments to Settlement Class Members. (*Id.* at § 5.2). Participating Class Members are eligible to receive both an individual Settlement Payment and an Individual PAGA Payment. Settlement Class Members whose

⁵ Settlement Agreement at § 2.20.

⁶ "Effective Date" means the first day after the latter of: (a) 60 days after the Court grants Final Approval of the Agreement if no timely appeal is filed; (b) in the event of a timely appeal filed by a Settlement Class Member, the date of final dismissal of any appeal from the Final Order and Final Judgment or the final dismissal of any proceeding on certiorari to review the Final Order and Final Judgment. Settlement Agreement at § 2.6.

1 names appear on the Opt-Out List are only eligible to receive an Individual PAGA Payment
2 (if they worked any PAGA Workweeks). (*Id.* at § 5.3). In order to account for Participating
3 Class Members who are also Post-Filing Releases, Post-Filing Releases will receive an
4 Individual PAGA Payment plus an Individual Settlement Payment that reflects the
5 difference between what the individual's payment would have been but for the prior
6 settlement agreement/release and the gross payment the individual received as a result of
7 signing the Post-Filing Release. The amount of the offset will be distributed among those
8 Participating Class Members who are not Post-Filing Releases. (*Id.* at § 5.4).⁷

9 The sum of any settlement checks returned as undeliverable or otherwise un-cashed
10 within 90 days after being mailed will be distributed in accordance with the requirements of
11 CCP § 384 and transmitted to a non-profit organization to projects that will either: benefit
12 the class or similarly situated persons, or promote the law consistent with the objectives
13 and purposes of the underlying Class Action. The parties propose to the Court that any
14 unclaimed funds be transmitted to Legal Access Alameda as a *cy pres* beneficiary.⁸

15 **C. The Value of the Proposed Settlement to the Class Is Within the Bounds**
16 **of Reasonableness.**

17 The well-recognized factors that a trial court should consider in evaluating the
18 reasonableness of the value of a class action settlement agreement include, but are not
19 limited to:

20 [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of
21 further litigation, the risk of maintaining class action status through trial, the amount
22 offered in settlement, the extent of discovery completed and stage of proceedings,
the experience and views of counsel, the presence of a governmental participant,
and the reaction of the class members to the proposed settlement.

23 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.

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25 ⁷ *Id.* Assuming the Court approves all maximum deductions from the Total Settlement Amount, the Net
Settlement Fund will be at least \$1,412,100, resulting in an average payment of approximately \$3,640 per
Participating Class Member (assuming 388 class members).

26 ⁸ *Id.* at § 10.3. Legal Access Alameda's qualifications to be designated as the *cy pres* beneficiary of this
27 proposed settlement are discussed in the Declaration of Chirstina Wiellette Dec. ("Wiellette Dec."), submitted
herewith as Exhibit 3 to the Hicks Dec. See also <https://www.vlsc-acba.org/who-we-are>.

1 [A] presumption of fairness [of a proposed class action settlement] exists where: (1)
2 the settlement is reached through arm's-length bargaining; (2) investigation and
3 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
4 is experienced in similar litigation; and (4) the percentage of objectors is small.

5 *Kullar v. Foot Locker Retail Inc.* (2008) 168 Cal.App.4th 116, 128 (*quoting Dunk, supra*, at
6 1801); *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 799.
7 However, the *Kullar* and *Clark* courts also noted that a court must be independently
8 satisfied that the consideration being received (here \$2,250,000) is reasonable in light of
9 the strengths and weaknesses of the claims and the risks of the particular litigation. *Clark*,
10 *supra*, at 452, *quoting Kullar, supra*, at 129.

11 **1. The Settlement Was Reached Through Arm's-Length** 12 **Negotiations.**

13 That the settlement was reached through arm's-length negotiations is exemplified by
14 the nearly one and a half years of hotly contested litigation and motion practice and that the
15 proposed settlement was achieved only with the assistance of an experienced mediator.
16 Defendants, as evidenced in their mediation brief, other moving and opposition papers, and
17 case management conference statements, believed and maintained that a class could not
18 be certified.⁹ Furthermore, the parties legitimately disputed various defenses raised by
19 Defendants, who were faced with the prospect of lengthy and expensive litigation against
20 experienced counsel and a lengthy potential trial, and the spectre of appellate proceedings
21 regarding the use of representative testimony at trial.

22 On the other hand, while Plaintiffs' counsel remain ultimately confident in the merits
23 of their legal arguments, Plaintiffs were put in the position of negotiating a settlement at this
24 juncture with unclear case law regarding the propriety of the use of representative
25 testimony with respect to the PAGA claims possibly facing years of litigation and costs
26 which could exceed any recovery for the class in order to achieve a verdict which still may
27 not have been collectible for many years due to potential appellate issues, and/or
28 uncertainties regarding the precise amount of damages due to each PCM. It was agreed

⁹ See, generally, all Case Management Conference Statements filed to date.
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1 upon by Plaintiffs and their counsel that a settlement at this juncture in the sum agreed
2 upon was in the best interests of the class. Hicks Dec. at ¶18.

3 **2. Sufficient Discovery and Investigation Have Been Completed to**
4 **Warrant Settlement.**

5 A court must “receive and consider enough information about the nature and
6 magnitude of the claims being settled, as well as the impediments to recovery, to make an
7 independent assessment of the reasonableness of the terms to which the parties have
8 agreed.” *Kullar, supra*, at 133. Here, the parties have engaged in substantial discovery
9 regarding certification, merits, and damages issues. Plaintiffs’ counsel analyzed the data
10 provided and assessed the maximum total value of the non-PAGA class claims to be
11 \$41,830,987.38. Hicks Dec. at ¶¶10-12.¹⁰

12 The “recovery represents a reasonable compromise, given the magnitude and
13 apparent merit of the claims being released” and Plaintiff took into account “the risks and
14 expenses of attempting to establish and collect on those claims by pursuing them in the
15 future,” when discounting the value of the claims being settled here. *Clark, supra*, at 800
16 (*quoting Kullar, supra*, at 129, emphasis omitted). Plaintiffs assert that Defendants
17 implemented the following common policies and practices which resulted in
18 misclassification of the PCMs as exempt employees, and violations of the overtime, and
19 meal and rest period requirements of the Labor Code:

20 i. **Overtime and Double-time Claims**¹¹

21 California state laws require that all non-exempt employees be compensated at time-
22 and-a-half for all hours worked over 8 hours per day and 40 hours in a week. See California

23 ¹⁰ Including the estimated \$17,739,000.00 in duplicative PAGA penalties for 15 separate duplicative and
24 derivative alleged violations, including nearly \$6.5 million in penalties for inaccurate wage statements under
25 Labor Code § 226.3 (which provides for penalties of five times the amount available directly to employees
26 under § 226(a)) increases the total estimated exposure to \$59,569,987.38. Defendants asserted that their
27 maximum potential liability was only a fraction of that amount, though it maintained that Plaintiffs would
recover nothing. Based on the maximum potential exposure, each of the 388 PCMs could have in theory
recovered \$107,811.82 for the Non-PAGA Claims, and the 240 PAGA Member could have received a
maximum of \$73,912.50 in PAGA penalties, though 75% of those would have gone to the state, leaving a
maximum of \$18,478.13 to the PAGA Member. Hicks Dec. at ¶10.

28 ¹¹ An in-depth analysis of the relevant case law and evidence related to the misclassification and derivative
claims can be found in ¶¶19-42 of the Hicks Dec. That analysis is summarized here for the sake of brevity.

1 Labor Code section 510(a) and Industrial Welfare Commission (“IWC”) Wage Order, Order
2 No. 7-2001 section 3(A). The law also requires employers to maintain accurate time
3 records for all of the hours worked by its employees, provide accurate itemized wage
4 statements, authorize, permit and provide meal and rest periods, and pay all wages earned
5 to an employee immediately upon their termination. Plaintiffs assert that Defendants
6 summarily failed to comply with these laws by misclassifying Plaintiffs and the PCMs as
7 exempt, willfully preventing them from recording all of their overtime and straight time
8 hours, failing to pay them for all hours worked, and failing to meet the other requirements of
9 the Labor Code and applicable Wage Order described above.

10 The IWC wage orders specify three exemptions for (1) executive, (2) administrative,
11 and (3) professional employees. The exemptions are strictly defined and narrowly
12 construed, and the employer bears the burden of proving the applicability of an exemption
13 as an affirmative defense. *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 794.

14 Plaintiffs maintain that none of the exemptions apply to the PCMs. Plaintiffs and the
15 PCMs are not “primarily engaged in duties which meet the test of the exemption.”
16 According the applicable regulations interpreting the Wage Order, in order to qualify for the
17 exemption, the PCMs must have spent more than fifty percent of their time performing
18 exempt (that is, supervisory or managerial) tasks which require the exercise of discretion
19 and independent judgment. Hicks Dec. at ¶22. Based on the testimony of Plaintiffs and
20 PCMs, they maintain that PCMs were not permitted to exercise independent judgment
21 regarding *significant* matters, but were instead just carrying out the routine affairs of the
22 business. *Id.* at ¶23. If a client wanted to change services, a PCM forwarded that
23 information on and made the appropriate notations in the ClearCare database. *Id.* If a client
24 wanted a different caregiver, the PCMs would then begin the process of trying to find
25 someone to take the shifts. *Id.* If the client wanted to just sit and tell the PCM stories during
26 a site visit, the PCM would sit and listen. *Id.* If a client wanted the PCM to have the day’s
27 care notes scanned each day and then emailed to them around midnight, that’s what the
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1 PCM did. *Id.* PCMs testified that they were not supervising the work of the caregivers or the
2 SMs, and certainly not for more than 50% of the time, which was reported to be between 60
3 and 80 hours per week among the PCMs interviewed. *Id.* at ¶23.

4 However, while the majority of PCMs supported Plaintiffs' misclassification
5 arguments, other PCMs interviewed by Plaintiffs' outreach team reported differences in
6 staffing levels, hours worked performing various tasks, responsibilities, and even job duties
7 depending on the size of an HCA office, the number of other CCMs and/or SMs in that
8 office, and the geographic location within California. *Id.* at ¶¶25-26. Some PCMs
9 interviewed indicated that their work did qualify for the executive exemption, while others
10 reported sales duties and responsibilities that would potentially qualify them for the outside
11 sales exemption, rendering certification on the misclassification issue a very difficult
12 proposition in light of these many potential individualized issues. *Id.*

13 Furthermore, proving up individual damages would likely require costly
14 representative testimony analyzed by experts on both sides, and Defendants would likely
15 dispute the application of *Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338, and *Duran v.*
16 *U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1 regarding any evidentiary showing and Trial Plan
17 with respect to both liability and damages. Defendants would undoubtedly move for class
18 decertification thereafter, making appellate proceedings almost certain regardless of which
19 side prevailed at trial.¹²

20 Plaintiffs estimated that Defendants' potential exposure was \$29,594,956.94 for the
21 unpaid overtime/double-time claims including prejudgment interest. Hicks Dec. at ¶10.
22 Plaintiffs' counsel were aware of these risks and took them into account when discounting
23 the claims for settlement purposes. *Id.* at ¶28.

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27 ¹² In light of *Wal-Mart*, and its prohibition of so-called "trials by formula," and the California Supreme Court's
28 recent opinion in *Duran*, it remains unclear as to what extent Plaintiffs would be permitted to use
representative testimony at trial. *But see Tyson Foods, Inc. v. Bouaphakeo* (2016) __ U.S. __, 136 S.Ct.
1036.

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ii. Meal and Rest Period Claims

Labor Code §§ 226.7 and 512 and the applicable wage orders require employers to authorize and permit meal periods to their employees. California law prohibits employers from employing an employee for more than five hours without a meal period of at least 30 minutes. “[A]n employer’s obligation is to provide an off-duty meal period: an uninterrupted 30–minute period during which the employee is relieved of all duty.” *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1035 (2012).¹³ “An employer must relieve the employee of all duty for the designated period.” *Id.* at 1034. An employer cannot “impede or discourage [employees] from [taking off-duty rest periods].” *Id.* at 1040. Unless the employee is relieved of all duty during the 30-minute meal period, the employee is considered “on duty” and the meal period is counted as time worked under the applicable wage orders. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 264. When an employer fails to provide a meal or period in accordance with the applicable wage orders, the employer must pay the employee one additional hour of pay at the employee’s regular rate of pay for each workday that a compliant meal period is not provided. Labor Code § 226.7.

Defendants failed to provide compliant meal and rest periods, as PCMs were misclassified as exempt and specifically told they were not permitted to take meal or rest periods, despite asking for them and complaining of long hours. Hicks Dec. at ¶130. Similarly, Defendants’ meal and rest period policies applied only to non-exempt employees and not the PCMs. *Id.* PCMs interviewed by and large reported that they were simply too busy or otherwise not permitted to take all of the meal and rest periods to which they were

¹³ There have been numerous wage and hour cases involving California missed break claims certified after *Brinker*. See *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952 (9th Cir. 2013); *Mendez v. R+L Carriers, Inc.*, 2012 WL 5868973 (N.D. Cal. 2012); *Faulkinbury v. Boyd & Assoc., Inc.*, (2013) 216 Cal.App. 4th 220; *Benton v. Telecom Network Specialists, Inc.*, (2014) 220 Cal.App.4th 701; *Martinez v. Joe's Crab Shack Holdings*, (2013) 221 Cal.App.4th 1148; *Jones v. Farmers Ins. Exch.*, (2014) 221 Cal.App.4th 986; *Bradley v. Net. Inter'l*, (2012) 2012 WL6182473; *Wang v. Chinese Daily News, Inc.*, No. 2:04-CV-01498- CBM, 2014 WL 1712180 (C.D. Cal. Apr. 15, 2014); *Bickley v. Schneider Nat'l*, No. C 08-05806 JSW (N.D. Cal.); *Schulz v. Qualxserv*, No. 09-CV-17-AJB (MDD) (S.D. Cal.); *Paige v. Consumer Programs*, No. CV-07-2498-MWF(RCx) (C.D. Cal.); *Munoz v. Giumarra Vineyards*, No. 1:09-cv-00703-AWI-JLT (E.D. Cal.); *Cubillas v. Dav-El Los*, No. BC 427918 (Cal. Sup. Ct., LA County); *Membreno v. Intern'l House of Pancakes*, No. 488181 (Cal. Super. Ct., San Mateo County); *Drake v. John Stewart Co.*, No.CGC-11-507902 (Cal. Sup. Ct., San Francisco County).

1 entitled. *Id.* at ¶31. However, other PCMs interviewed indicated (apart from those who
2 reported job duties and responsibilities that did qualify for an exemption) that they were
3 able to take meal and rest periods, creating an individualized question that would be a
4 serious impediment to class certification of these claims assuming the misclassification
5 issue was also certified. *Id.* at ¶32. Defendants also assert (in addition to being properly
6 classified as exempt) that there was enough time for PCMs to take a meal period, or that
7 PCMs waived their meal periods willingly and/or chose to take them after the fifth hour of
8 work. *Id.*

9 The area of law regarding the propriety of class treatment of meal period
10 requirements remains unsettled, notwithstanding the California Supreme Court's ruling in
11 *Brinker v. Superior Court* (2012) 54 Cal.4th 1004.

12 Furthermore, as with the overtime claims discussed above, proving up individual
13 damages would likely require costly representative testimony with respect to both liability
14 and damages, and lead to multiple motions and an appeal from whichever side did not
15 prevail at certification or trial. Plaintiffs estimated that Defendants' potential exposure was
16 \$4,626,039.01 for the meal period claims, and \$4,626,039.01 for the rest period claims.
17 Hicks Dec. at ¶10. Plaintiffs' counsel were aware of these risks and took them into account
18 when discounting the claims for settlement purposes. *Id.* at ¶34.

19 iii. Inaccurate Wage Statement Claims

20 Plaintiffs argue and maintain that the testimony and evidence show that Defendants'
21 wage statements did not reflect the hours worked, proper pay rates, or premium wages that
22 PCMs were owed for missed or otherwise noncompliant breaks. *Id.* at ¶35. Using the data
23 provided by Defendants, the maximum value of the inaccurate wage statement claim was
24 approximately \$653,000.00. *Id.* at ¶10. The parties have vigorously disputed whether
25 Plaintiffs and the other CMs were "injured" as a result of any inaccurate wage statements.
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1 *Id.* at ¶36.¹⁴ Plaintiffs' counsel were aware of these risks and took them into account when
2 discounting the claims for settlement purposes. *Id.* at ¶37.

3 iv. Waiting Time Penalties

4 Plaintiffs assert that any failure to pay the allegedly unpaid overtime or premium
5 wages for a missed meal or rest period necessarily exposed Defendants to liability for
6 waiting time penalties. *Id.* at ¶¶38-39. However, Defendants will no doubt assert that they
7 believed in good faith that they had properly classified the PCMs as exempt, which would
8 likely be successful on the merits to the extent that some of the PCMs were actually
9 properly so classified. *Id.* Based on the data provided by Defendants, Plaintiffs estimated
10 Defendants' exposure for the Waiting Time Penalties to be approximately \$2,330,952.40.
11 *Id.* at ¶10. Plaintiffs' counsel were aware of these risks and took them into account when
12 discounting the claims for settlement purposes. *Id.* at ¶40.

13 v. PAGA Claims¹⁵

14 Plaintiffs also assert that the underlying misclassification and alleged meal and rest
15 period violations gave rise to penalties for violations of Labor Code §§ 201(a), 203(a), 204,
16 210, 226, 226.3, 226.7, 510, 512(a), 558, 1174, 1174.5, 1197, 2810.5, and 2699(f)
17 available under the Private Attorneys' General Act. *Id.* at ¶41. Defendants contend that no
18 claim for PAGA penalties of any nature is valid. The PAGA claims were at issue and were
19 resolved as a part of the overall settlement of the case. In such cases, California Courts
20 have held that none of the proceeds of a settlement must necessarily be allocated and
21 distributed to the LWDA as settled PAGA penalties. *Nordstrom Commissions Cases* (2010)
22 186 Cal.App.4th 576, 589.¹⁶

23 ¹⁴ We also note that there is one recent California case currently under review by the California Supreme
24 Court that holds that inaccurate wage statement and waiting time penalties cannot be based on a claim for
25 missed meal or rest breaks (*Naranjo v. Spectrum Sec. Servs., Inc.* 40 Cal.App.5th 444 (2019), review
26 granted, 455 P.3d 702 (Jan. 2, 2020), contrary to the vast majority of cases reaching the opposite conclusion.
See *In re: Autozone, Inc.* (N.D.Cal. Aug. 10, 2016) 2016 WL 4208200 (disagreeing with *P.F. Chang's*
"[b]ecause the Court is persuaded by the numerous [courts] recognizing that section 203 penalties are
available for wage payments under section 226.7....")

27 ¹⁵ See ¶¶41-47 of the Hicks Dec. for a further in-depth discussion of the PAGA claims, with citations to
relevant authority which are summarized here for the sake of brevity.

28 ¹⁶ Plaintiffs submitted the proposed settlement agreement along with these moving papers to the LWDA on
the same date that they file the instant motion through the LWDA's new online submission system. Hicks Dec.
MEMORANDUM SUPPORTING MOTION FOR PRELIMINARY APPROVAL

1 Notwithstanding Defendants' asserted defenses based on the underlying meal and
2 rest period and unpaid wages claims, the case law regarding the wholly-derivative and
3 duplicative PAGA claims remains inconsistent at best, and downright murky and conflicted
4 at worst. The asserted § 226.3 penalties sought under PAGA derive from the same conduct
5 for which Plaintiff seeks penalties under § 226, which itself is derivative of the missed break
6 claims, and all of the asserted PAGA penalties are derivative of other underlying claims.
7 Courts have discretion to reduce any amount of penalties awarded under PAGA, and there
8 is currently no uniform guidance or authority available to predict whether this Court would
9 award all of the PAGA penalties, deem them to be wholly duplicative, or something in
10 between.¹⁷ In counsel's experience, Plaintiffs always calculate potential PAGA penalties,
11 but they are given little weight in settlement negotiations, due to an expectation that a Court
12 would, like the Labor Commissioner, refuse to "stack" duplicative penalties and focus
13 instead on the underlying violations. Hicks Dec. at ¶44. Using the data provided by
14 Defendants, the maximum value of the 15 derivative and duplicative asserted Labor Code
15 violations sought via the PAGA claim was approximately \$17,739,000 (roughly \$6.5 million
16 of which were for § 226.3 wage statement violations). *Id.* at ¶10. Plaintiffs' counsel were
17 aware of these risks and took them into account when discounting the claims for settlement
18 purposes. *Id.* at ¶47.

19 **3. Class Counsel is Experienced and Endorses the Settlement.**

20 Experienced counsel, operating at arm's length, have weighed the foregoing factors
21 and endorse the proposed settlement. Plaintiffs' counsel has experience not only in class
22 actions and employment litigation, but specifically in wage and hour class actions. *Id.* at
23 ¶¶1-3. Plaintiffs' counsel is experienced and qualified to evaluate the class claims and the
24 viability of the defenses. *Id.* The recovery for each participating class member will be

25 at ¶46.

26 ¹⁷ Labor Code § 226 incorporates its own penalty provisions, so an award of the maximum penalty amount
27 provided by PAGA is uncertain. See Lab. Code § 2699(f); see also *Guifi Li v. A Perfect Day Franchise Inc.*,
28 (N.D. Cal. 2012) 2012 WL 2236752 at *17. Moreover, even assuming Plaintiff's remaining claims qualify for
PAGA penalties, any such award is not automatic. Cal. Lab. Code § 2699(e)(2); see also *Thurman v.*
Bayshore Transit Mgmt., Inc., (2012) 203 Cal.App.4th 1112, 1135-36.

1 reasonable, given the risks inherent in litigation, the defenses asserted, the unsettled
2 nature of wage and hour and class action law with respect to representative testimony and
3 penalties under the PAGA, and the risk that all of the class claims could be compelled to
4 individual arbitrations.¹⁸ This settlement is fair, adequate and reasonable, and in the best
5 interests of the proposed settlement class.

6 **4. No Objections Can Be Made Until the Final Approval Hearing.**

7 It is impossible to address the fourth factor in the reasonableness assessment
8 unless and until after the class is notified of the proposed settlement. Should any proposed
9 settlement CMs file objections, the Court can evaluate such concerns at the Final Approval
10 Hearing.

11 **D. The Scope of the Release Provisions Corresponds Only to Claims**
12 **Related to the Class Claims.**

13 Pursuant to the Settlement Agreement, the CMs would release Defendants and their
14 corporate parents, owners, subsidiaries and affiliates from any claims which could have
15 been asserted based on the allegations of the operative complaint, i.e. claims based on
16 being misclassified as exempt employees during the Class Period.¹⁹ The settlement does
17 not ask the Court to enjoin CMs from filing related claims until Final Approval.

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20 ¹⁸ Hicks Dec. at ¶¶48-49 (further testimony regarding the value of the settlement).

21 ¹⁹ Settlement Agreement at § 2.25 ("Participating Class Members' Released Claims"). Specifically, the
22 released claims are: "[A]ll claims under state, federal, and local law arising out of the allegations made in the
23 Action, and that reasonably arise or could have arisen out of the facts alleged in the Action as to all Class
24 Members during the time they worked for Defendant as a non-lead CCM and/or SM within California,
25 including California Labor Code sections 200, 201, 202, 203, 204, 210, 216, 218.5, 225.5, 226, 226.3, 226.7,
26 256, 500, 512, 516, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699, 2699.3, 2699.5,
27 2926, 2927, California Industrial Commission Wage Orders, Cal. Code Regs., tit. 8, section 11040, *et seq.*,
28 Business and Professions Code section 17200, *et seq.*, and all class claims, representative claims, aggrieved
employee claims, meal or rest periods, meal or rest period premiums, unpaid wages, overtime, double time,
minimum wages, regular rate of pay, timely and complete payment of wages at separation, failure to provide
accurate and itemized wage statements, failure to maintain accurate payroll records, unfair competition, unfair
business practices, unlawful business practices, fraudulent business practices, PAGA penalties, waiting-time
penalties, civil penalties, penalties of any nature, interest, fees, costs, failure to pay additional 401(k) or
employee stock option plan benefits and/or deferred compensation benefits and/or matching benefits for
payments received under the Settlement, and any other claims alleged in the Action through the Release
Period." Notably, the release is narrowly tailored to the facts asserted in the operative Complaint.

1 **E. The Plaintiffs' Proposed Enhancement Awards Are Fair and Reasonable.**

2 Named Plaintiffs in class action litigation are eligible for reasonable service awards.
3 See *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977.²⁰ The settlement agreement
4 provides for a Class Representative Service Award of up to \$15,000 to each Plaintiff
5 subject to the Court's approval, in recognition of their efforts and work in prosecuting the
6 class action.²¹ If approved, the \$15,000 enhancement awards would constitute 2% of the
7 Total Settlement Amount. In counsel's experience, the enhancement awards will be
8 reviewed at the Final Approval stage, and Plaintiffs will submit declarations at that time
9 which detail the time they put into the case, and the risks that they faced in doing so.

10 **F. The Obligations Placed Upon PCMs Are Reasonable and Clearly**
11 **Explained in the Notice Package.**

12 The proposed Class Notice (Exhibit 1 to the Settlement Agreement) clearly identifies
13 the options available to PCMs under the Settlement Agreement. (1) request exclusion from
14 the lawsuit and not be bound by the settlement and be free to file their own lawsuit; (2) file
15 an objection to and be bound by the proposed settlement; or (3) do nothing, and be bound
16 by the settlement and receive a *pro rata* share of the settlement proceeds.

17 **G. Method of Notice.**

18 California law vests the Court with broad discretion in fashioning an appropriate
19 notice program so long as it satisfies all due process requirements. Civil Code § 1781; *Cartt*
20 *v. Superior Court* (1975) 50 Cal.App.3d 960, 970-974; C.R.C. 3.769. The actual form and
21 contents of the notice are within the Court's discretion. *Wershba v. Apple Computer* (2001)
22 91 Cal.App.4th 224, 251.

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25 ²⁰ See, e.g. *Castellanos v. The Pepsi Bottling Group*, No. RG07332684 (Alameda Super Ct., Mar. 11, 2010)
26 (award of \$12,500); *Novak v. Retail Brand Alliance, Inc.*, No. RG 05-223254 (Alameda Super. Ct., Sept. 22,
27 2009) (award of \$12,500); *Hasty v. Elec. Arts, Inc.*, No. CIV 444821 (San Mateo Super. Ct., Sept. 22, 2006)
28 (award of \$30,000); *Meewes v. ICI Dulux Paints, No. BC265880* (Los Angeles Super. Ct. Sept. 19, 2003)
 (service awards of \$50,000, \$25,000 and \$10,000 to the plaintiffs); *Mousai v. E-Loan, Inc.*, No. C 06-01993 SI
 (N.D. Cal. May 30, 2007) (service award of \$20,000); *Guilbaud v. Sprint/United Management Company*,
 N.D.Cal. Case No. 3:13-cv-4357-VC (April 15, 2016, \$10,000 awards).

²¹ Settlement Agreement at § 2.28.

1 The parties have drafted a Class Notice document based upon the general form
2 proposed by the Federal Judicial Center and in “Plain English,” and have incorporated
3 information discussed in the Court’s guidance documents for class settlements and notices
4 available on the Court’s website. Plaintiffs’ counsel have utilized this same general format
5 in multiple Class Notices approved by Courts in California, including multiple actions before
6 this Court. The notice explains to the PCMs the meaning and nature of the action and the
7 proposed settlement class, the key terms of provisions of the Settlement Agreement, the
8 manner in which payments to PCMs will be calculated, the minimum estimated amount that
9 a PCM will receive during the class period if they do not opt out of the class, the number of
10 workweeks that the PCM worked during the Class Period, the proposed amounts of
11 attorneys’ fees, the Plaintiffs’ proposed enhancement awards, the time, date and place of
12 the Final Approval Hearing (once set by the Court), and the procedures and deadlines for
13 requesting exclusion from the Class and/or objecting to the settlement.

14 Within fourteen (14) calendar days of this Court granting Preliminary Approval of the
15 Settlement Agreement, Defendants will provide the Class List to the proposed settlement
16 administrator, Simpluris, Inc. (<http://www.simpluris.com/>).²² The administrator will then
17 perform a Reasonable Address Verification Measure, or “skip trace” to obtain the most
18 current mailing addresses of the PCMs. *Id.* at § 6.6. No later than twenty-eight (28) days
19 after the Court grants Preliminary Approval, the administrator will send the PCMs by First-
20 Class U.S. Mail the Class Notice. *Id.* at § 6.4. The Opt Out Period will last forty-five (45)
21 days from the date Notice is mailed. *Id.* at § 6.3. A copy of the Class Notice will also be
22 available on Simpluris’ website. Plaintiffs are unaware of any method available to provide
23 greater notice to the PCMs.

24 **H. Explanation of Settlement Payment Calculations and Procedures**

25 A CM’s *pro rata* share of the Settlement Agreement’s common fund will be
26 determined based on the number of weeks that he or she worked as a PCM during the

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²² Settlement Agreement at § 6 (notice procedures). The Class List includes: full name, phone number, last
28 four digits of Social Security Number, employment start and end dates, and last known address.

1 Class Period as compared to all CMs (subject to the exception for those PCMs who had
2 executed a purported release and received a payment from HCAC after the date that this
3 action was filed). *Id.* at §§ 5.3-5.4; 2.16. As discussed above, in order to account for the
4 disputed Individual Releases Defendants obtained from some PCMs, Post-Filing Releasees
5 will receive an Individual PAGA Payment plus an Individual Settlement Payment that
6 reflects the difference between what the individual's payment would have been but for the
7 prior settlement agreement/release and the gross payment the individual received as a
8 result of signing the Post-Filing Release. For the avoidance of doubt, if a Post-Filing
9 Releasee was paid \$5,000 in exchange for a severance agreement, his or her Individual
10 Settlement Payment under this agreement will be \$5,000 less than it would have been in
11 the absence of the prior severance agreement. The amount of the offset (i.e. \$5,000 in the
12 example) will be distributed among those Participating Class Members who are not Post-
13 Filing Releasees. Any Participating Class Member for whom the calculation described in
14 this paragraph results in a \$0 or negative Individual Settlement Payment will receive no
15 Individual Settlement Payment, but will nonetheless be bound by the Participating Class
16 Member Release. *Id.* at § 5.4. If a CM disputes the Qualifying Workweeks identified in their
17 Class Notice, they can provide documentation and/or some explanation of the disputed
18 number of workweeks to the administrator. *Id.* at §§ 6.3, 6.11; *See also* Proposed Notice at
19 p. 4.

20 **I. Cy Pres Beneficiary Process**

21 This Settlement Agreement tracks the requirements of CCP § 384. In the event that
22 there are uncashed checks after the 90 days for cashing them has expired, then the
23 residue will be distributed to a non-profit organization—the parties propose Legal Access
24 Alameda as the *cy pres* beneficiary of this settlement.²³

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27 ²³ Settlement Agreement at § 10.3. Submitted concurrently herewith is the Declaration of Christina Wiellette of
28 Legal Access Alameda which describes that entity's qualifications to be designated as the *cy pres* beneficiary
of this class settlement.

1 **J. Tax Consequences**

2 As for the settlement payments, one-third (33.33%) of each CM's *pro rata* Individual
3 Settlement Award payment will be treated as non-wage alleged unpaid penalties for which
4 an IRS Form 1099 will be issued, if required; one-third (33.33%) will be treated as non-
5 wage alleged unpaid interest for which an IRS Form 1099 will be issued, if required; and
6 one-third (33.33%) will be treated as wages for which an IRS Form W-2 shall be issued.
7 Individual PAGA Payments made to Settlement Class Members will be designated as
8 alleged unpaid penalties in their entirety, for which an IRS Form 1099 will be issued, if
9 required. *Id.* at § 4.2. This allocation is appropriate because the potential damages arise out
10 of the underlying misclassification and meal and rest period claims for premiums, but a
11 substantial portion of the potential damages are made up of prejudgment interest on the
12 unpaid wages, and all of the potential derivative penalties. Hicks Dec. at ¶51. A CM's *pro*
13 *rata* share of the twenty-five (25%) of the PAGA payment to be distributed to the Settlement
14 Class will also be treated as penalty. *Id.*; Defendant will pay the employer's share of payroll
15 taxes, such as FICA. *Id.* at § 4.1. The Settlement Administrator will issue tax forms to all
16 individuals receiving a payment. *Id.* at §5.8.

17 **K. Estimated Administration Costs**

18 Simpluris, Inc. has provided a capped estimate of \$7,900 for administration costs
19 (Hicks Dec. at ¶52, Ex. 2). In the event that Simpluris does not incur the full \$7,900 of
20 estimated costs permitted by the Settlement Agreement, any costs not incurred will be
21 distributed to the participating Class Members. (Settlement Agreement at § 10.2.5.)

22 **L. Class Counsel's Request for Attorneys' Fees and Costs.**

23 Class Counsel seeks fees in the amount of \$750,000 (one-third of the total amount
24 of the settlement) plus reasonable costs incurred,²⁴ which is well within the range of
25 reasonable attorneys' fees awards. Plaintiffs' counsel will address that request at the final
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28 ²⁴ Settlement Agreement at § 2.2.

1 approval stage, as is counsel's experience with the California Complex Litigation
2 departments.²⁵

3 **M. The Proposed Settlement Will Have No Effect on Any Other Cases.**

4 Plaintiffs are aware of no case pending in any other jurisdiction in which similar
5 claims are asserted on behalf of any PCMs against this Defendant.²⁶

6 **IV. THE COURT SHOULD APPOINT SIMPLURIS AS THE SETTLEMENT**
7 **ADMINISTRATOR AND APPROVE THE COSTS OF SETTLEMENT ADMINISTRATION.**

8 The settlement contemplates that the parties would jointly select a Settlement
9 Administrator who will be responsible for mailing and re-mailing class notices, processing
10 claim forms and requests for exclusion, calculating settlement awards, preparing reports,
11 and verifying payments. Simpluris, Inc. is well qualified to serve as the Administrator and
12 has administered hundreds of settlements in the state of California alone. The parties
13 nominate Simpluris to be the Settlement Administrator and request that the Court
14 preliminarily approve the payment of up to \$7,900 to Simpluris to administer the settlement,
15 noting of course that Simpluris has agreed not to charge for any work not performed, and
16 such leftover funds will be distributed to the participating Class Members. (Settlement
17 Agreement at § 10.2.5.)

18 **V. THE COURT SHOULD SET A SCHEDULE FOR FINAL APPROVAL.**

19 Where a court grants preliminary approval to a class settlement, the court's order
20 must include the time, date and place of the final approval hearing, and any other matters
21 deemed necessary for the proper conduct of a settlement hearing. C.R.C. 3.769(e). The
22 parties respectfully propose the following schedule for the final approval hearing:

23 14 Days after Entry of
24 Preliminary Approval Order

HCAC to Provide Class Information to
Administrator.

25 28 Days After Entry of
26 Preliminary Approval Order
27 ("Notice Date")

Mailing of the Class Notice to Settlement Class
Members

28 ²⁵ See Hicks Dec. at ¶¶54-61.

²⁶ *Id.* at 62.

45 Days after Notice Date	Exclusion/Objection Deadline. The last day for PCMs to request exclusion or submit objections.
21 Days Before Final Approval Hearing	Declaration of Due Diligence and Proof of Dissemination of Class Notice
10 Business Days After Exclusion/Objection Deadline	Opt-Out List and Requests Provided to Counsel
100 Days after Preliminary Approval	Proposed date for Final Approval hearing. ²⁷
14 Days After Effective Date	HCAC to Provide Total Settlement Amount to Administrator
7 Days After Receipt of Total Settlement Amount	Payments of Class Counsel Award, PAGA Payment, Service Awards, Settlement Administrator Expenses, and Payments to Settlement Class Members
90 Days after Checks Mailed	Disbursement of uncashed funds per CCP § 384

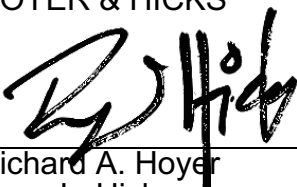
VI. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant the instant motion in its entirety and preliminarily approve the Settlement Agreement.

Respectfully submitted,

Date: September 2, 2021

HOYER & HICKS


 Richard A. Hoyer
 Ryan L. Hicks
 Attorneys for Plaintiffs

²⁷ Motion for Final Approval, Attorneys' Fees and Enhancement Awards filed no later than one week before the Final Approval Hearing.

1 **PROOF OF SERVICE BY EMAIL**

2 I declare that I am employed in the City and County of San Francisco, State of
3 California. I am over eighteen years of age and not a party to the within entitled cause. My
4 business address is 4 Embarcadero Center, Suite 1400, San Francisco, California 94111.

5 On the date below, I served:

6 **NOTICE OF MOTION AND MOTION FOR: PRELIMINARY APPROVAL OF**
7 **SETTLEMENT AND PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS;**
8 **APPROVING THE NOTICE OF PROPOSED CLASS SETTLEMENT, APPOINTING**
9 **SETTLEMENT ADMINISTRATOR AND SETTING FINAL APPROVAL HEARING DATE**

10 to:

11 Marlene Muraco
12 mmuraco@littler.com
13 LITTLER MENDELSON P.C.
14 50 West San Fernando Street, 7th Floor
15 San Jose, CA 95113-2434

16 on:

17 September 2, 2021

18 BY EMAIL: I served the document(s) on the person(s) listed above by emailing them
19 pursuant to the parties' written e-service agreement. I declare under penalty of perjury that
20 the foregoing is true and correct, and that this declaration was executed at San Francisco,
21 California, on the date above.
22

23 
24 Ryan L. Hicks
25
26
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