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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 HOLDINGS LLC, and DOES
5 through 25,

Defendants.

Case No. RG20058229

CLASS AND REPRESENTATIVE
ACTION

ASSIGNED FOR ALL PURPOSES TO
DEPARTMENT 17

**MEMORANDUM OF POINTS AND
AUTHORITIES SUPPORTING MOTION
FOR AN ORDER AND JUDGMENT: (1)
GRANTING FINAL APPROVAL OF
SETTLEMENT; (2) AWARDING
ATTORNEYS' FEES AND COSTS TO
CLASS COUNSEL; (3) AWARDING
REPRESENTATIVE ENHANCEMENT
AWARDS; AND, (4) AWARDING
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION COSTS**

Date: April 28, 2022

Time: 3:30 p.m.

Dept.: 17

Reservation No.: A-20058229-001

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I. INTRODUCTION

By and through this Motion, which is unopposed by Defendants HOME CARE ASSISTANCE, INC., HOME CARE ASSISTANCE OF CALIFORNIA, LLC, HOME CARE ASSISTANCE, LLC, HOME CARE ASSISTANCE MANAGEMENT, LLC, HOME CARE ASSISTANCE HOLDINGS LLC (collectively “Defendant” or “HCA”), Plaintiffs MARGARET RIVERA, KAY MANALIGOD, and CHRISTINE ATENCIO (“Plaintiffs”) seek final approval of the class action settlement with Defendant. The proposed Settlement Agreement¹ (“Settlement Agreement”) provides that Defendant will pay \$2,250,000 to resolve the Class Members’ (“CMs”) claims of Labor Code violations based on the allegations in the operative complaint, including compensation to class counsel for attorneys’ fees (\$750,000) and costs (\$16,458.14), pay for third-party settlement administration costs of \$7,900, provide the class representatives with an enhancement awards of \$15,000 each, and \$112,500 to the California Labor and Workplace Development Agency for resolution of the Private Attorney General Act claims.²

The non-reversionary Settlement Agreement encompasses all claims Plaintiffs’ asserted in the operative Complaint on behalf of themselves and a class of 394 current and former California employees of Defendant in the provisionally certified settlement class who were employed by HCAC in California in the position of non-Lead Client Care Manager or on-Lead Staffing Manager or a combination of both positions from March 11, 2016 through October 28, 2021. (the “Class Period”) The Settlement Class does not include any person who settled or released any of the claims covered by this Settlement prior to March 11, 2019, or any other person who previously was paid or received awards through civil or administrative actions for the claims covered by this Settlement.”³

¹ A copy of the fully executed amended 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 Settlement Agreement at §§ 2.42 (Total Settlement Amount); 2.2 (Class Counsel Award); 2.35 (Service Award); 2.38 (Settlement Administrator Expenses); and 2.19 (PAGA Settlement Amount).

³ Settlement Agreement at §§ 2.39 (Settlement Class definition).

1 The parties have reached the final step of the settlement approval process. The Court
2 granted Plaintiff's Motion for Preliminary Approval of the Settlement on October 28, 2021, it
3 ordered the notice package to be sent to the class members and ultimately set the Final
4 Approval hearing for April 28, 2022. On January 20, 2022, Settlement Administrator
5 Simpluris, Inc. ("Simpluris" or "the Administrator") mailed notice packages to the members of
6 the class,⁴ disclosing to them the terms of the proposed Settlement and informing them that
7 if they wished to opt out of or object to the settlement, they must take action by March 7, 2022
8 ("the Exclusion/Objection Deadline"). As of the date of this filing, all of the class members
9 had been sent notice packages, with 27 initially returned as undeliverable. After performing
10 skip traces and re-mailing, the administrator has deemed 2 class notices to be undeliverable.
11 Kline Dec. at ¶¶5-7. To date only one class member opted out of the Settlement, and no class
12 member has objected. *Id.* at ¶¶11-14; Hicks Dec. at ¶61.

13 Class Counsel has prosecuted this hotly-contested litigation for over two years,
14 displayed zealous advocacy on behalf of the class members, and committed to pursue the
15 action through trial and any necessary and likely appeals. In order to compensate them for
16 those efforts, the Settlement permits Class Counsel to request attorneys' fees in the amount
17 of \$750,000, an amount that is 33.33% of the common fund.⁵ This results in a reasonable
18 multiplier of 2.44, given Counsel's adjusted lodestar of \$306,411.83 as of the week prior to
19 this filing. The Settlement also allows Class Counsel to seek reimbursement of their actual
20 and reasonable litigation costs in addition to their fees, which currently total \$16,458.14. It
21 also provides for a representative enhancement award of \$15,000 for each of the three Class
22 Representatives and reimbursement of settlement administration fees in an amount of up to
23 \$7,900. *Id.* at § 2.38. All of these requests have been clearly communicated to the class
24

25 ⁴ See Exhibit 2 to the Hicks Dec., Declaration of Lindsay Kline for Simpluris, Inc. Regarding Notice
26 Administration ("Kline Dec.") at ¶¶5-10. Notice was initially sent to 393 Class Members, and 1 other class
27 member was later identified and provided a notice. The extended opt out deadline for the latest re-mailed notice
will elapse on April 21, 2022. If the parties receive any objections or opt outs before the hearing, we will of
course notify the Court. *Id.*

28 ⁵ Settlement Agreement, at § 2.2.

1 members in the Court-approved Notice Package, and again, no class member has opted out
2 or objected. Class Counsel has provided herewith a detailed explanation of the basis for their
3 rates, how they allocated work, and a task-based summary based on contemporaneous time-
4 records in order to aid the Court in performing the required analysis.

5 Plaintiff now respectfully requests that the Court grant Final Approval to the Settlement
6 as fair, adequate and reasonable, and approve the proposed awards for attorneys' fees,
7 representative enhancement awards and settlement administration costs, and enter
8 judgment accordingly so that this complex litigation can be resolved, judgment can be
9 entered, and the settlement funds distributed to the class members as expeditiously as
10 possible.

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

12 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.⁶ 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 seek
19 penalties on behalf of the State pursuant to PAGA. On May 15, 2020, Plaintiffs filed their First
20 Amended Complaint adding a claim for (6) PAGA Penalties against HCA, Inc. and adding the
21 other HCA defendants as DOE defendants. Plaintiffs submitted an amended PAGA notice
22 adding the HCA DOEs that same day. Hicks Dec. at ¶4. Following some disputes regarding
23 service on the various HCA entities, the operative Second Amended Complaint was filed on
24 August 28, 2020 adding the other recently added HCA entities to the PAGA claim. *Id.*

25 Weeks after this action was filed (which was days before California imposed the first
26 COVID lockdown), HCA required PCMs still working there to execute arbitration agreements
27

28 ⁶ Hicks Dec. at ¶4.

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

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

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

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

1 Plaintiffs' counsel compiled the data produced by Defendants, and estimated
2 damages on all claims for the entire class during the complete Class Period. *Id.* at ¶¶9-11.
3 Plaintiffs' counsel has obtained sufficient discovery to evaluate the likelihood of success on
4 the merits and assess the potential risks facing Plaintiffs and the putative class. *Id.*

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

15 Thereafter, Plaintiffs filed their preliminary approval papers, which were set for hearing
16 on came on for hearing on September 30, 2021. The Court issued a tentative ruling identifying
17 its various concerns and continued the hearing to give the parties the opportunity to address
18 them. Thereafter the parties submitted an amended agreement and correspondingly revised
19 class notice package. The Court ultimately granted preliminary approval on October 28,
20 2021. *Id.* at ¶14.

21 Simpluris, the Settlement Administrator, sent out the class notices on January 20,
22 2022.⁷ The deadline for CMs to exclude themselves from or object to the settlement was
23 March 7, 2022. *Id.* No objections and only one opt-out have been submitted. *Id.* at ¶¶11-14.

24 Plaintiffs and their counsel remain of the opinion that the Settlement Agreement is well
25 within the range of reasonableness and is in the best interest of the proposed settlement
26

27 ⁷ Kline Dec. at ¶8. The extended opt out/objection deadline for the latest mailed notice elapses on April 21.
28 The parties will notify the Court if any opt outs or objections are received prior to the hearing. *Id.* at ¶11.

class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential appellate issues. Hicks Dec at ¶16.

III. THE SETTLEMENT MEETS ALL CRITERIA FOR FINAL APPROVAL.

A. Settlement Class Size and Determination.

Pursuant to C.R.C. 3.769, an order approving the Settlement Agreement and entering Judgment is appropriate. The proposed settlement class is sufficiently numerous, because Defendant has now identified 394 class members. Hicks Dec. at ¶17. It is also undisputed that Defendant uniformly classified all PCMs as exempt employees throughout the class period, satisfying the commonality requirement. *Id.* at ¶18. It is similarly undisputed that Plaintiffs' claims are typical of those of the PCMs. *Id.* at ¶19. Plaintiffs are aware of no conflicts among themselves and the class (*id.* at ¶20), 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. Defendant does not oppose the final approval of the Settlement Agreement.

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

The non-reversionary Settlement Agreement provides that Defendant 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, claims administrator's fees and expenses up to \$7,900, and \$150,000 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").⁸ Within fourteen (14) calendar days of the Effective Date⁹, HCAC shall provide the Total Settlement Amount (\$2,250,000) to the Settlement Administrator. (Settlement Agreement at § 5.1). Within seven

⁸ Settlement Agreement at §§ 2.42 (Total Settlement Amount); 2.16 (Net Settlement Fund).

⁹ "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 (7) calendar days of receipt of the Total Settlement Amount from HCA, the Settlement
2 Administrator will effectuate the payments of the Class Counsel Award, the PAGA Payment,
3 the Service Awards, the Settlement Administrator Expenses, and all of the payments to
4 Settlement Class Members. (*Id.* at § 5.2). Participating Class Members are eligible to receive
5 both an individual Settlement Payment and an Individual PAGA Payment. Settlement Class
6 Members whose names appear on the Opt-Out List are only eligible to receive an Individual
7 PAGA Payment (if they worked any PAGA Workweeks). (*Id.* at § 5.3). In order to account for
8 Participating Class Members who are also Post-Filing Releasees, Post-Filing Releasees will
9 receive an Individual PAGA Payment plus an Individual Settlement Payment that reflects the
10 difference between what the individual's payment would have been but for the prior
11 settlement agreement/release and the gross payment the individual received as a result of
12 signing the Post-Filing Release. The amount of the offset will be distributed among those
13 Participating Class Members who are not Post-Filing Releases. (*Id.* at § 5.4).¹⁰

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

23 ¹⁰ *Id.* Assuming the Court approves all requested deductions from the Total Settlement Amount, the Net
24 Settlement Fund will be at least \$1,318,141.86, resulting in an average payment of approximately \$3,354.05
25 per Participating Class Member (assuming 394 class members), the highest estimated payment is \$14,592.99,
and the median estimated payment is \$2,137.58. Kline Dec. at ¶¶17-18.

26 ¹¹ *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."), previously
submitted to the Court at the preliminary approval stage and re-submitted herewith as Exhibit 6 to the Hicks
Dec. See also <https://www.vlsc-acba.org/who-we-are>.

1 **C. The Value of the Proposed Settlement to the Class Is Within the Bounds**
2 **of Reasonableness.**

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

6 [T]he strength of plaintiffs' case, the risk, expense, complexity and likely
7 duration of further litigation, the risk of maintaining class action status
8 through trial, the amount 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.

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

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

13 *Kullar v. Foot Locker Retail Inc.* (2008) 168 Cal.App.4th 116, 128 (*quoting Dunk, supra*, at
14 1801); *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 799.
15 However, the *Kullar* and *Clark* courts also noted that a court must be independently satisfied
16 that the consideration being received (here \$2,250,000) is reasonable in light of the strengths
17 and weaknesses of the claims and the risks of the particular litigation. *Clark, supra*, at 452,
18 *quoting Kullar, supra*, at 129.

19 **1. The Settlement Was Reached Through Arm's-Length**
20 **Negotiations.**

21 That the settlement was reached through arm's-length negotiations is exemplified by
22 the nearly one and a half years of hotly contested litigation and motion practice and that the
23 proposed settlement was achieved only with the assistance of an experienced mediator.
24 Defendants, as evidenced in their mediation brief, other moving and opposition papers, and
25 case management conference statements, believed and maintained that a class could not
26 be certified.¹² Furthermore, the parties legitimately disputed various defenses raised by

27 _____
28 ¹² See, generally, all Case Management Conference Statements filed to date.

1 Defendants, who were faced with the prospect of lengthy and expensive litigation against
2 experienced counsel and a lengthy potential trial, and the spectre of appellate proceedings
3 regarding the use of representative testimony at trial.

4 On the other hand, while Plaintiffs' counsel remain ultimately confident in the merits of
5 their legal arguments, Plaintiffs were put in the position of negotiating a settlement at this
6 juncture with unclear case law regarding the propriety of the use of representative testimony
7 with respect to the PAGA claims possibly facing years of litigation and costs which could
8 exceed any recovery for the class in order to achieve a verdict which still may not have been
9 collectible for many years due to potential appellate issues, and/or uncertainties regarding
10 the precise amount of damages due to each PCM. It was agreed upon by Plaintiffs and their
11 counsel that a settlement at this juncture in the sum agreed upon was in the best interests of
12 the class. Hicks Dec. at ¶21.

13 **2. Sufficient Discovery and Investigation Have Been Completed to** 14 **Warrant Settlement.**

15 A court must "receive and consider enough information about the nature and
16 magnitude of the claims being settled, as well as the impediments to recovery, to make an
17 independent assessment of the reasonableness of the terms to which the parties have
18 agreed." *Kullar, supra*, at 133. Here, the parties have engaged in substantial discovery
19 regarding certification, merits, and damages issues. Plaintiffs' counsel analyzed the data
20 provided and assessed the maximum total value of the non-PAGA class claims to be
21 \$41,830,987.38. Hicks Dec. at ¶¶9-11.¹³

22
23 ¹³ 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 under
26 § 226(a) though a recent case (see fn 21 below) indicates that 226.3 penalties are only available if no wage
27 statement is provided at all) increases the total estimated exposure to \$59,569,987.38. Defendants asserted
28 that their 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 394 PCMs could have in theory
recovered \$106,170.02 for the Non-PAGA Claims, and the 272 PAGA Members could have received a
maximum of \$65,216.91 in PAGA penalties, though 75% of those would have gone to the state, leaving a
maximum of \$16,304.23 to each PAGA Member. Hicks Dec. at ¶10; Kline Dec. at ¶¶15-16 (updated counts of
Class and PAGA Members).

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

9 i. Overtime and Double-time Claims¹⁴

10 California state laws require that all non-exempt employees be compensated at time-
11 and-a-half for all hours worked over 8 hours per day and 40 hours in a week. See California
12 Labor Code section 510(a) and Industrial Welfare Commission (“IWC”) Wage Order, Order
13 No. 7-2001 section 3(A). The law also requires employers to maintain accurate time records
14 for all of the hours worked by its employees, provide accurate itemized wage statements,
15 authorize, permit and provide meal and rest periods, and pay all wages earned to an
16 employee immediately upon their termination. Plaintiffs assert that Defendants summarily
17 failed to comply with these laws by misclassifying Plaintiffs and the PCMs as exempt, willfully
18 preventing them from recording all of their overtime and straight time hours, failing to pay
19 them for all hours worked, and failing to meet the other requirements of the Labor Code and
20 applicable Wage Order described above.

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

25
26
27 ¹⁴ An in-depth analysis of the relevant case law and evidence related to the misclassification and derivative
28 claims can be found in ¶¶22-50 of the Hicks Dec. That analysis is summarized here for the sake of brevity.

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

18 However, while the majority of PCMs supported Plaintiffs’ misclassification arguments,
19 other PCMs interviewed by Plaintiffs’ outreach team reported differences in staffing levels,
20 hours worked performing various tasks, responsibilities, and even job duties depending on
21 the size of an HCA office, the number of other CCMs and/or SMs in that office, and the
22 geographic location within California. *Id.* at ¶¶28-29. Some PCMs interviewed indicated that
23 their work did qualify for the executive exemption, while others reported sales duties and
24 responsibilities that would potentially qualify them for the outside sales exemption, rendering
25 certification on the misclassification issue a very difficult proposition in light of these many
26 potential individualized issues. *Id.*

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

8 Plaintiffs estimated that Defendants' potential exposure was \$29,594,956.94 for the
9 unpaid overtime/double-time claims including prejudgment interest. Hicks Dec. at ¶10.
10 Plaintiffs' counsel were aware of these risks and took them into account when discounting
11 the claims for settlement purposes. *Id.* at ¶31.

12 ii. Meal and Rest Period Claims

13 Labor Code §§ 226.7 and 512 and the applicable wage orders require employers to
14 authorize and permit meal periods to their employees. California law prohibits employers from
15 employing an employee for more than five hours without a meal period of at least 30 minutes.
16 "[A]n employer's obligation is to provide an off-duty meal period: an uninterrupted 30-minute
17 period during which the employee is relieved of all duty." *Brinker Rest. Corp. v. Super. Ct.*,
18 53 Cal. 4th 1004, 1035 (2012).¹⁶ "An employer must relieve the employee of all duty for the
19 designated period." *Id.* at 1034. An employer cannot "impede or discourage [employees] from
20

21 ¹⁵ In light of *Wal-Mart*, and its prohibition of so-called "trials by formula," and the California Supreme Court's
22 recent opinion in *Duran*, it remains unclear as to what extent Plaintiffs would be permitted to use representative
23 testimony at trial. *But see Tyson Foods, Inc. v. Bouaphakeo* (2016) ___ U.S. ___, 136 S.Ct. 1036.

24 ¹⁶ There have been numerous wage and hour cases involving California missed break claims certified after
25 *Brinker*. See *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952 (9th Cir. 2013); *Mendez v. R+L Carriers, Inc.*, 2012
26 WL 5868973 (N.D. Cal. 2012); *Faulkinbury v. Boyd & Assoc., Inc.*, (2013) 216 Cal.App. 4th 220; *Benton v.*
27 *Telecom Network Specialists, Inc.*, (2014) 220 Cal.App.4th 701; *Martinez v. Joe's Crab Shack Holdings*, (2013)
28 221 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 [taking off-duty rest periods].” *Id.* at 1040. Unless the employee is relieved of all duty during
2 the 30-minute meal period, the employee is considered “on duty” and the meal period is
3 counted as time worked under the applicable wage orders. *Augustus v. ABM Security*
4 *Services, Inc.* (2016) 2 Cal.5th 257, 264. When an employer fails to provide a meal or period
5 in accordance with the applicable wage orders, the employer must pay the employee one
6 additional hour of pay at the employee’s regular rate of pay for each workday that a compliant
7 meal period is not provided. Labor Code § 226.7.

8 Defendants failed to provide compliant meal and rest periods, as PCMs were
9 misclassified as exempt and specifically told they were not permitted to take meal or rest
10 periods, despite asking for them and complaining of long hours. Hicks Dec. at ¶¶33-35.
11 Similarly, Defendants’ meal and rest period policies applied only to non-exempt employees
12 and not the PCMs. *Id.* PCMs interviewed by and large reported that they were simply too
13 busy or otherwise not permitted to take all of the meal and rest periods to which they were
14 entitled. *Id.* However, other PCMs interviewed indicated (apart from those who reported job
15 duties and responsibilities that did qualify for an exemption) that they were able to take meal
16 and rest periods, creating an individualized question that would be a serious impediment to
17 class certification of these claims assuming the misclassification issue was also certified. *Id.*
18 at ¶¶36. Defendants also assert (in addition to being properly classified as exempt) that there
19 was enough time for PCMs to take a meal period, or that PCMs waived their meal periods
20 willingly and/or chose to take them after the fifth hour of work. *Id.*

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

24 Furthermore, as with the overtime claims discussed above, proving up individual
25 damages would likely require costly representative testimony with respect to both liability and
26 damages, and lead to multiple motions and an appeal from whichever side did not prevail at
27 certification or trial. Plaintiffs estimated that Defendants’ potential exposure was

1 \$4,626,039.01 for the meal period claims, and \$4,626,039.01 for the rest period claims. Hicks
2 Dec. at ¶10. Plaintiffs' counsel were aware of these risks and took them into account when
3 discounting the claims for settlement purposes. *Id.* at ¶37.

4
5 iii. Inaccurate Wage Statement Claims

6 Plaintiffs argue and maintain that the testimony and evidence show that Defendants'
7 wage statements did not reflect the hours worked, proper pay rates, or premium wages that
8 PCMs were owed for missed or otherwise noncompliant breaks. *Id.* at ¶38. Using the data
9 provided by Defendants, the maximum value of the inaccurate wage statement claim was
10 approximately \$653,000.00. *Id.* at ¶10. The parties have vigorously disputed whether
11 Plaintiffs and the other CMs were "injured" as a result of any inaccurate wage statements. *Id.*
12 at ¶39.¹⁷ Plaintiffs' counsel were aware of these risks and took them into account when
13 discounting the claims for settlement purposes. *Id.* at ¶40.

14 iv. Waiting Time Penalties

15 Plaintiffs assert that any failure to pay the allegedly unpaid overtime or premium wages
16 for a missed meal or rest period necessarily exposed Defendants to liability for waiting time
17 penalties. *Id.* at ¶¶41-42. However, Defendants will no doubt assert that they believed in good
18 faith that they had properly classified the PCMs as exempt, which would likely be successful
19 on the merits to the extent that some of the PCMs were actually properly so classified. *Id.*
20 Based on the data provided by Defendants, Plaintiffs estimated Defendants' exposure for the
21 Waiting Time Penalties to be approximately \$2,330,952.40. *Id.* at ¶10. Plaintiffs' counsel were
22 aware of these risks and took them into account when discounting the claims for settlement
23 purposes. *Id.* at ¶43.

24
25 ¹⁷ We also note that there is one recent California case currently under review by the California Supreme Court
26 that holds that inaccurate wage statement and waiting time penalties cannot be based on a claim for missed
27 meal or rest breaks (*Naranjo v. Spectrum Sec. Servs., Inc.* 40 Cal.App.5th 444 (2019), *review granted*, 455
28 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....")

1 v. PAGA Claims¹⁸

2 Plaintiff Plaintiffs also assert that the underlying misclassification and alleged meal
3 and rest period violations gave rise to penalties for violations of Labor Code §§ 201(a),
4 203(a), 204, 210, 226, 226.3, 226.7, 510, 512(a), 558, 1174, 1174.5, 1197, 2810.5, and
5 2699(f) available under the Private Attorneys' General Act. *Id.* at ¶44. Defendants contend
6 that no claim for PAGA penalties of any nature is valid. The PAGA claims were at issue and
7 were resolved as a part of the overall settlement of the case. In such cases, California Courts
8 have held that none of the proceeds of a settlement must necessarily be allocated and
9 distributed to the LWDA as settled PAGA penalties. *Nordstrom Commissions Cases* (2010)
10 186 Cal.App.4th 576, 589.¹⁹

11 Notwithstanding Defendants' asserted defenses based on the underlying meal and
12 rest period and unpaid wages claims, the case law regarding the wholly-derivative and
13 duplicative PAGA claims remains inconsistent at best, and downright murky and conflicted
14 at worst. The asserted § 226.3 penalties sought under PAGA derive from the same conduct
15 for which Plaintiff seeks penalties under § 226, which itself is derivative of the missed break
16 claims, and all of the asserted PAGA penalties are derivative of other underlying claims.
17 Courts have discretion to reduce any amount of penalties awarded under PAGA, and there
18 is currently no uniform guidance or authority available to predict whether this Court would
19 award all of the PAGA penalties, deem them to be wholly duplicative, or something in
20 between.²⁰ In counsel's experience, Plaintiffs always calculate potential PAGA penalties, but
21 they are given little weight in settlement negotiations, due to an expectation that a Court
22

23 ¹⁸ See ¶¶44-50 of the Hicks Dec. for a further in-depth discussion of the PAGA claims, with citations to relevant
24 authority which are summarized here for the sake of brevity.

25 ¹⁹ Plaintiffs submitted the proposed settlement agreement along with these moving papers to the LWDA on the
26 same date that they file the instant motion through the LWDA's new online submission system. Hicks Dec. at
27 ¶49.

28 ²⁰ Labor Code § 226 incorporates its own penalty provisions, so an award of the maximum penalty amount
provided by PAGA is uncertain. See Lab. Code § 2699(f); see also *Guifi Li v. A Perfect Day Franchise Inc.*,
(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 would, like the Labor Commissioner, refuse to “stack” duplicative penalties and focus instead
2 on the underlying violations. Hicks Dec. at ¶44. Using the data provided by Defendants, the
3 maximum value of the 15 derivative and duplicative asserted Labor Code violations sought
4 via the PAGA claim was approximately \$17,739,000 (roughly \$6.5 million of which were for
5 § 226.3 wage statement violations).²¹ *Id.* at ¶10. Plaintiffs’ counsel were aware of these risks
6 and took them into account when discounting the claims for settlement purposes. *Id.* at ¶50.

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

8 Experienced counsel, operating at arm’s length, have weighed the foregoing factors
9 and endorse the proposed settlement. Plaintiffs’ counsel has experience not only in class
10 actions and employment litigation, but specifically in wage and hour class actions. *Id.* at ¶¶1-
11 3. Plaintiffs’ counsel is experienced and qualified to evaluate the class claims and the viability
12 of the defenses. *Id.* The recovery for each participating class member will be reasonable,
13 given the risks inherent in litigation, the defenses asserted, the unsettled nature of wage and
14 hour and class action law with respect to representative testimony and penalties under the
15 PAGA, and the risk that all of the class claims could be compelled to individual arbitrations.²²
16 This settlement is fair, adequate and reasonable, and in the best interests of the proposed
17 settlement class.

18 **4. No Class Member Objected to Any Part of the Settlement.**

19 A court may properly infer that a class action settlement is fair, adequate and
20 reasonable when few class members object to it. *Lealao v. Beneficial California, Inc.* (2000)
21 82 Cal.App.4th 19, 51. That the class members overwhelmingly support this Settlement is
22 evident from the fact that only one of the class members opted out and no class member has
23 filed an objection to the proposed Settlement.²³ The 394 class members who were provided
24 notice and who did not opt out of the settlement represent a nearly 100% participation rate.

25 ²¹ We note that although the vast majority of cases find that any violation of § 226 gives rise to penalties under
26 § 226.3, a recent case, *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334 has held that penalties under
27 § 226.3 are only available “where the employer fails to provide wage statements or fails to keep required
28 records.” If the Court were to follow *Gunther*, it is unlikely that it would award any § 226.3 penalties.

²² Hicks Dec. at ¶¶55-60 (further testimony regarding the value of the settlement).

²³ The administrator has received one opt out and no objections. Kline Dec. at ¶¶11-14.

1 **D. The Scope of the Release Provisions Corresponds Only to Claims**
2 **Related to the Class Claims.**

3 Pursuant to the Settlement Agreement, the CMs would release Defendants and their
4 corporate parents, owners, subsidiaries and affiliates from any claims which could have been
5 asserted based on the allegations of the operative complaint, i.e. claims based on being
6 misclassified as exempt employees during the Class Period.²⁴ The settlement did not ask the
7 Court to enjoin CMs from filing related claims until Final Approval and does not purport to
8 release any claims of the LWDA or contain any Civil Code § 1542 waiver.

9 **IV. THE AWARD FOR ATTORNEYS' FEES AND COSTS REQUESTED IS FAIR,**
10 **REASONABLE, AND CONSISTENT WITH THE "COMMON FUND PERCENTAGE" AND**
11 **"LODESTAR/MULTIPLIER" METHODS.**

12 Under California law, attorneys' fees may be awarded to class counsel in a Class
13 Action Settlement based on the common fund percentage method utilizing the
14 lodestar/multiplier method as a cross-checking device. *Laffitte v. Robert Half International,*
15 *Inc.* (2016) 1 Cal.5th 480; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26.
16 Moreover, Labor Code §§ 218.5, 226, 1194, 2699 and CCP §1021.5 all specifically provide
17 for attorneys' fees to prevailing plaintiffs as Plaintiffs would be here were they to prevail at
18 trail.²⁵ Plaintiffs have successfully secured the monetary relief that they set out to obtain.

19 ²⁴ Settlement Agreement at § 2.25 ("Participating Class Members' Released Claims"). Specifically, the released
20 claims are: "[A]ll claims under state, federal, and local law arising out of the allegations made in the Action, and
21 that reasonably arise or could have arisen out of the facts alleged in the Action as to all Class Members during
22 the time they worked for Defendant as a non-lead CCM and/or SM within California, including California Labor
23 Code sections 200, 201, 202, 203, 204, 210, 216, 218.5, 225.5, 226, 226.3, 226.7, 256, 500, 512, 516, 558,
24 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699, 2699.3, 2699.5, 2926, 2927, California
25 Industrial Commission Wage Orders, Cal. Code Regs., tit. 8, section 11040, *et seq.*, Business and Professions
26 Code section 17200, *et seq.*, and all class claims, representative claims, aggrieved employee claims, meal or
27 rest periods, meal or rest period premiums, unpaid wages, overtime, double time, minimum wages, regular rate
28 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.

²⁵ CCP §1021.5 provides that attorneys' fees are recoverable "(1) by a successful party, (2) in an action that
has resulted in the enforcement of an important right affecting the public interest, (3) if a significant benefit has
been conferred on the general public or a large class of persons, and (4) if the necessity and financial burden
of private enforcement are such as to make the award appropriate." *Bowman v. City of Berkeley* (2005) 131
Cal.App.4th 173, 176. In this context, the "significant benefit" that justifies a fee award "need not be a 'tangible'

1 Plaintiffs have enforced the Labor Code and provided benefits to a class of workers who,
2 because of the relatively modest individual sums at issue in comparison to the complexity of
3 the applicable and unsettled law (combined with challenged arbitration agreements with class
4 waivers purportedly signed by one-third of the class), likely would not otherwise have been
5 able to secure relief. Therefore, Class Counsel should be awarded fees and as demonstrated
6 below, Plaintiffs' fee request is reasonable, appropriate and supported by admissible
7 evidence under either approach and should be approved by the Court.

8 **A. 33 1/3% of the Common Fund is A Reasonable Attorneys' Fees Award.**

9 As the California Supreme Court recently confirmed, a court can utilize "the
10 percentage method to calculate a fee in a common fund case, where the award serves to
11 spread the attorney fee among all the beneficiaries of the fund." *Laffitte, supra*, at 503. In
12 reaching that conclusion, the high Court noted that the percentage method is "typically used
13 when a common fund is created." *Spann v. JC Penney Corporation* (N.D.Cal. Sept. 30, 2016)
14 307 F.R.D 508, *citing Laffitte, supra*, at 502. Courts determine the reasonableness of a
15 percentage fee "'by obtaining additional information from class counsel on the risks and
16 potential value of the litigation;" the "contingency, novelty and difficulty" of the case; and "the
17 skill shown by counsel." *Id.* at 504.

18 The equity of the common fund approach is confirmed by the fact that it mirrors the
19 legal marketplace. The typical contingency fee contract ranges from 33 1/3 to 40% of the
20 total recovery. See Alba Conte, *Attorney Fee Awards* § 2:8 (3rd ed. 2013). Thus, common

21 _____
22 asset or a 'concrete' gain, but in some cases, may be recognized simply from the effectuation of a fundamental
23 constitutional or statutory policy." *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917,
24 939; *Calif. Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 745 [§1021.5 applies to statutory rights as well
25 as important public policies]. It is also "not significant that the 'benefits' found were achieved by settlement of
26 plaintiffs' action rather than by final judgment." *Fletcher v. A. J. Indus., Inc.* (1968) 266 Cal.App.2d 313, 325;
27 *accord Hogar v. Cmty. Dev. Com. Of City of Escondido* (2007) 157 Cal.App.4th 1358, 1365 ("In determining
28 whether a plaintiff is a successful party for purposes of §1021.5, '[t]he critical fact is the impact of the action ,
not the manner of its resolution."); *McGuigan v. City of San Diego* (2010) 183 Cal.App.4th 610, 625-626, *review*
denied (July 14, 2010), *as modified on denial of reh'g* (Apr. 27, 2010). Accordingly, courts have awarded fees
to plaintiffs that have reached a settlement agreement on behalf of class members enforcing important public
policies regarding overtime and meal and rest periods. *E.g. Perez v. Safety-Kleen Sys., Inc.* (N.D.Cal. Mar. 15,
2010) 2010 WL 934100, *6-7, *aff'd* 446 Fed. Appx. 707 (9th Cir. 2011); *Slayton v. Pomona Unified Sch.*
Dist. 1984) 161 Cal.App.3d 538, 551-552 (awarding fees though benefit conferred on only 23 individuals).

1 fund fee awards of 33 1/3% are more than a reasonable charge to a class, because that is
2 what an individual class member would be expected to pay if she decided to assert her claims
3 individually. See *Vizcaino v. Microsoft Corp.*, 142 F.Supp.2d 1299, 1304 (W.D. Wash. 2001)
4 *aff'd* 290 F.3d 1043 (9th Cir. 2002). Specifically, “the common fund doctrine is properly
5 applied if (1) the class of beneficiaries is sufficiently identifiable, (2) the benefits can be
6 accurately traced, and (3) the fee can be shifted with some exactitude to those benefiting.”
7 *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989). These
8 requirements are met where “each member of a certified class has an undisputed and
9 mathematically ascertainable claim to part of a lump-sum [settlement] recovered on his
10 behalf.” *Id.* The California Supreme Court recently noted the recognized advantages of the
11 percentage method: “including relative ease of calculation, alignment of incentives between
12 counsel and the class, a better approximation of market conditions in a contingency case,
13 and the encouragement it provides counsel to seek an early settlement and avoid
14 unnecessarily prolonging the litigation.” *Laffitte, supra*, at 503 (citations omitted).

15 “Empirical studies show that, regardless of whether the percentage method or the
16 lodestar method is used, fee awards in class actions average around one-third of the
17 recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n11; see also *Van Vranken*
18 *v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294, 297-298 (“Class Counsel have
19 also cited 73 district court opinions in which fees in the range of 30-50 percent of the common
20 fund were awarded.”)

21 Here, the result achieved for the class, \$2,250,000 is compelling given the risks
22 involved in this case. The total exposure for the Labor Code period claims was approximately:
23 unpaid overtime (\$29,594,956.90), meal period premiums (\$4,626,039.01), rest period
24 premiums (\$4,626,039.01), inaccurate wage statement penalties (\$653,000.00), and waiting
25 time penalties (\$2,330,952.40 for a total of \$41,830,987.38 in non-PAGA exposure).²⁶ The
26 remainder of the exposure was for PAGA claims (approximately \$17,739,000.00, nearly \$6.5

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28 ²⁶ Hicks Dec. at ¶10.

1 million of which were for § 226.3 wages statement violations,²⁷ on top of those already sought
2 pursuant to § 226 of penalties duplicative of the underlying claims, and 75% of which would
3 be paid to the state and not the class), of which approximately \$4,434,750 could have been
4 awarded to PAGA Collective members assuming the Court stacked all *thirteen* asserted sets
5 of penalties.

6 That the fund constitutes a reasonable discount on the overtime, and meal and rest
7 period claims is a testament to the favorable result obtained for the class. Furthermore,
8 shortly after this action was commenced, Defendant indicated it would be revisiting the job
9 duties of the PCMs, bringing Defendant into compliance with the law, the precise injunctive
10 relief sought here. These complex issues weigh in favor of granting the requested fee.

11 If this case were to go to trial as a class action, Class Counsel estimates that fees and
12 costs would exceed \$1,250,000.00. Hoyer Dec. at ¶32. Litigating the representative claims
13 would require substantial additional preparation and discovery. *Id.* It would require
14 depositions of experts, the presentation of percipient and expert witnesses at trial, as well as
15 the consideration, preparation, and presentation of voluminous documentary evidence and
16 the preparation and analysis of expert reports. *Id.* Recovery of the damages and penalties
17 previously referenced would also require complete success and certification of all of Plaintiffs'
18 claims, a questionable feat in light of recent developments in wage and hour and class and
19 collective action law as well as the legal and factual grounds that Defendant has asserted to
20 defend this action. *Id.* Despite all of these risks, Class Counsel persevered, on a contingency
21 basis, and brought this case to a fast, efficient, and valuable resolution for the CMs, justifying
22 the award.

23 Class Counsel have demonstrated their experience, as discussed in their declarations
24 and herein. Counsel also diligently and efficiently litigated this case with skill with respect to
25 claims for which the case law is not well-settled, and performed high quality work, as reflected
26 in the results obtained, which weighs in favor of granting the requested fee.

27
28 ²⁷ As discussed above, *Gunther, supra*, calls into doubt whether 226.3 penalties would be available at all.

1 The risks of non-payment in the event that the litigation were unsuccessful also weighs
2 heavily in favor of approving the requested fee. The contingent nature of the work performed
3 by class counsel here, including the risk they took in advancing costs, also weighs in favor of
4 granting the fee request. See *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 580
5 (“A contingent fee must be higher than a fee for the same legal services paid as they are
6 performed. The contingent fee compensates the lawyer not only for the legal services he
7 renders but for the loan of those services.”); *Barbosa v. Cargill Meat Solutions Corp.* (E.D.Cal
8 2013) 297 F.R.D. 431, 449 (“Like this case, where recovery is uncertain, an award of one-
9 third of the common fund as attorneys’ fees has been found to be appropriate.”)

10 It is also important to note that the legislative policies underlying a plaintiff’s suit to
11 enforce the Labor Code sections containing mandatory fee-shifting provisions, as here “favor
12 . . . recovery of all attorney fees reasonably expended, without limiting the fees to a proportion
13 of [plaintiff’s] actual recovery.” *Graciano v. Robinson Ford Sales* (2006) 144 Cal.App.4th 140,
14 164 (reversing court for linking fee-shifted award to size of recovery); see also *Durham v.*
15 *Continental Cent. Credit* (S.D.Cal., Dec. 27, 2011) 2011 WL 6783193 at *4 (“A requirement
16 of proportionality between attorney’s fees and damages would discourage attorneys from
17 accepting representation of . . . plaintiffs and would be inconsistent with the . . . statutory
18 scheme.”) All of the work performed by counsel would have been necessary regardless of
19 the recovery obtained for the class, and the time expended was reasonable. The basis for
20 evaluating the fee request is whether the fees incurred were reasonable, not how
21 proportionate they are, and Class Counsel’s request for fees in the amount of \$750,000
22 should be granted.

23 Class Counsel’s request for attorneys’ fees in the amount of one-third (33 1/3%) of the
24 Total Settlement Amount²⁸ is entirely reasonable when viewed against analogous California
25 cases, where awards of one-third to 45% are not uncommon.²⁹ The fee request for an award

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27 ²⁸ Settlement Agreement at § 2.2.

28 ²⁹ See, e.g., *Van Vranken v. Atl. Richfield Co.* (N.D.Cal. 1995) 901 F. Supp. 294, 297-98 (citation to 73 district
court opinions in which fees awarded ranged from 30 to 50%); *Cristman v. Good Guys, Inc.* (San Diego Super.

1 of 33 1/3% of the common fund is well within the reasonable range of attorneys' fees in
2 common fund cases.³⁰

3 **B. The Requested Fee Award is Appropriate.**

4 California Courts, in exercising their broad discretion to determine the appropriate fee
5 pursuant to a fee-shifting statute, may also base their calculations on the "lodestar/multiplier"
6 method. See, e.g. *Lafitte, supra*; *PCLM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095
7 ("*Drexler*")("trial court has broad authority to determine the amount of a reasonable fee,"
8 ordinarily using lodestar/multiplier approach); *Lealao, supra*, at 26 ("In so-called 'fee shifting'
9 cases, in which the responsibility to pay attorney fees is statutorily or otherwise transferred
10 from the prevailing plaintiff or class to the Defendants, the primary method for establishing
11 the amount of 'reasonable' attorney fees is the lodestar method."); *Chavez v. City of Los*
12 *Angeles* (2010) 47 Cal.App.4th 970, 985 (same under CCP § 1021.5).

13 Under the lodestar approach, "[i]n defining a 'reasonable fee' in such representative
14 actions the law should 'mimic the market'" *Lealao*, 82 Cal.App.4th at 47 (citation and footnote
15 omitted). A trial court using this approach should "ensure that the fee awarded is within the

16
17 Ct. 2007) Case No. GIS21929 (33.33% fee award plus costs); *BCI Overtime Cases*, (San Bernadino Super. Ct.
18 2007) J.C.C.P.4280 (same); *Menchyuk v. Beverages & More, Inc.* (Alameda Super. Ct. 2006) Case No.
19 RG05196918 (same); *O'Hara v. Factory 2-U Stores, Inc.* (Alameda Super. Ct. 2002) Case No. 834123-5
20 (same); *Davis v. The Money Store, Inc.* (Sacramento Super. Ct. 2000) Case No. 99AS01716 (same); *In Re Milk*
21 *Antitrust Litigation* (L.A. Super. Ct. 1998) Case No. BC070061 (33.33% award); *In Re Facsimile Paper Antitrust*
22 *Litigation* (S.F. Super. Ct. 1995) Case Nos. 961814, 963201 and 963590 (33.33% award plus costs); *In Re*
23 *Liquid Carbon Dioxide Cases* (S.D. Super. Ct. 1996) J.C.C.P. 3012 (same); *Big Lots Overtime Cases*, JCC
24 Proceeding No. 4283 (San Bernardino Super. Ct., Feb. 4, 2004) (same); *Barela v. Ralph's Grocery Co.*, No.
25 BC070061 (Los Angeles Super. Ct., June 5, 1998) (same); *Davis v. The Money Store, Inc.*, No. 99AS01716,
26 (Sacramento Super. Ct., Dec. 26, 2000) (same); *Ellmore v. Ditech Funding Corp.*, No. SAVC 01-0093 (C.D.
27 Cal., Sept. 12, 2002) (same); *Miskell v. Auto. Club of S. Cal.* (Orange County Super. Ct., No. 01CC09035, May
28 27, 2003) (same); *Sconce/Lamb Cremation Cases*, JCC Proceeding No. 2085, (Los Angeles Super. Ct., Mar.
24, 1992) (same). *Birch v. Office Depot, Inc.*, Case No. 06 cv1690 (S.D.Cal. Sept. 28, 2007) (awarding a 40%
fee on a \$16 million wage and hour class action); *Rippee v. Boston Mkt. Corp.*, Case No. 05 cv1359 (S.D.Cal.
Oct. 10, 2006) (awarding a 40% fee on a \$3.75 million wage and hour class action); *Wren v. RGIS Inventory*
Specialists, WL 1230826, (N.D.Cal.,2011) (approving attorneys' fee award of just under 42% of common fund);
Abzug v. Kerkorian (L.A. Super. Ct. 1990) Case No. CA-000981 (45% award plus costs); *Haitz v. Meyer*
(Alameda Super. Ct. 1990) Case No. 572968-3 (45% award); *Regino Primitivo Gomez, et al. v. H&R Gunlund*
Ranches, Inc., No. CV F 10-1163 LJO MJS, 2011 WL 5884224 (E.D. Cal. 2011) (approving attorneys' fees
award equal to 45% of the settlement fund).

³⁰ Class Counsel was awarded attorneys' fees (\$250,000) that constituted 41.67% of the total settlement fund
of \$600,000 by Judge Spero in *Palm v. Sur La Table, Inc.* (November 22, 2013, N.D.Cal. Case No. 12-cv-1250-
JCS). See also *Coronado v. R. E. Maher* (Alameda County Case No. RG11594956) (Approving attorneys' fee
award of \$250,000 (56.8%) of \$590,000 class wage and hour settlement).

1 range of fees freely negotiated in the legal marketplace in comparable litigation.” *Id.* at 50.
2 The California Supreme Court explained that “fee awards should be fully compensatory” and
3 “adjusted in some manner to reflect the fact that the fair market value of legal services
4 provided on that basis [of the fair market value] is greater than the equivalent non-contingent
5 hourly rate.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133. Thus, attorneys’ fee
6 awards often apply a substantial lodestar multiplier to reflect the actual value of the services
7 rendered by counsel. In class actions, “[m]ultipliers can range from 2 to 4 or even higher.”
8 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 (emphasis added).³¹

9 Here, Class Counsel seek a modest multiplier of only 1.35. Hoyer Dec. at ¶¶14.

10 **1. Class Counsel’s Rates Are Consistent with Relevant Market**
11 **Rates.**

12 Class Counsel seek approval of the following hourly rates: partner Richard Hoyer
13 (\$725, 31 years’ experience), partner Ryan L. Hicks (\$550, 14 years’ experience), associate
14 Nicole Gage (\$375, 4 years’ experience), former associate Eisha Perry (\$350, 2 years’
15 experience, and a rate of \$150 for law clerks and support staff; and a lodestar (as of the week
16 prior to this filing) totaling over \$306,411.³² When determining whether a request for
17 attorneys’ fees is appropriate, a Court is required to review information regarding counsel’s
18 hourly rate and time spent on the case. *Robbins v. Alibrandi* (2005) 127 Cal.App.4th 438, 450-
19 451. Class Counsel focus almost exclusively on litigating the rights of employees, have years
20 of experience in complex litigation and have achieved many significant settlements against
21 the nation’s largest corporations to enforce employment and other statutory rights.³³ The
22 significant experience and high qualifications of Class Counsel justify their hourly rates.
23 Those rates are consistent with the prevailing market rates charged by attorneys with similar

24 ³¹ In *Spann*, the first published order to cite to *Laffitte*, that court approved “a 3.07 multiplier, which is well within
25 the range for reasonable multipliers.” *Spann, supra*, at *14. See also *Vizcaino*, 290 F.3d at 1052–1054
26 (surveying multipliers in 23 class action suits and recognizing that courts applied multipliers of 1.0 to 4.0 in 83%
27 of surveyed cases); *Parkinson v. Hyundai Motor Am.* (C.D.Cal.2010) 796 F.Supp.2d 1160, 1170 (observing
28 that “multipliers may range from 1.2 to 4 or even higher”); *Hopkins v. Stryker Sales Corp.*, 2013 (N.D.Cal. 2013)
2013 WL 496358, *4 (“Multipliers of 1 to 4 are commonly found to be appropriate in complex class action
cases.”).

³² Hoyer Dec. at ¶¶6-13.

³³ See Hoyer Dec. at ¶¶1-4; Hicks Dec. at ¶¶2-4.

1 levels of experience and who are doing comparable work. Indeed, Courts have previously
2 found Class Counsel's rates to be reasonable in *Neu-Helms v. UHS of Delaware, Inc.*
3 (Alameda County Case No. RG08425516 Aug. 30, 2011) and *Asghari v. Friendly Cab*
4 *Company, Inc.* (Alameda County Case No. AG11556435, Dec. 5, 2013). See also *Palm v.*
5 *Sur La Table, Inc.* (N.D.Cal. Case No. 13-cv-1250-JCS, Nov. 22, 2013); *In Re Bank of*
6 *America Wage and Hour Litigation* (multidistrict litigation D.Kan. Case No. 10-md-2138-JWL-
7 KGS, December 18, 2013); *Shaghafi v. ValleyCare Health System* (Alameda County Case
8 No. 12618899, January 24, 2014); *Jenkins v. Goodwill Industries of the Greater East Bay,*
9 *Inc.* (Alameda County Case No RG12659632); *Guilbaud v. Sprint/United Management Co.*
10 *Inc.* (N.D.Cal. Case Nos. 3:13-cv-04357-VC and 3:14-cv-02642-VC) , *Javier et al. v. Eat24*
11 *LLC* (San Francisco Superior Court Case No. CGC-15-545485), *Thomas v. Sonoma Mission*
12 *Inn Mgmt Co. Inc.* (Sonoma Co. Superior Court Case No. SCV-257470), *D'sa v. Amber India*
13 *Inc.* (San Francisco Superior Court Case No. CGC-15-544578), and *Coppernoll v. Hamcor*
14 *Inc.* (Alameda Co. Case No. RG16843171), in Monterey County in *Morgan-Cervantes v.*
15 *Custom House Hotel L.P.* Case No. 18CV000321 (Hon. Lydia Villarreal, presiding), and most
16 recently in December 2021 Chief Judge Philip Gutierrez of the Central District of California
17 approved Class Counsel's then-rates as reasonable in *Martinez v. Helzberg's Diamond*
18 *Shops, Inc.*, (C.D.Cal. Case No. 5:20-cv-01085).

19 In determining the reasonableness of hourly rates, courts consider the experience,
20 reputation and ability of, and skill required by the attorneys. See *Blum v. Stenson* (1984) 465
21 U.S. 886, 894-895 (hourly rates for public interest attorneys must equal prevailing private
22 market rates); *Missouri v. Jenkins by Agyei* (1989) 491 U.S. 274, 283-284 (fee awards should
23 be based on current hourly rates). Counsel's hourly rates conform with the prevailing market
24 rates for attorneys' in California with comparable experience, reputation, ability and skill, and
25 should be approved by the Court.³⁴

26
27 ³⁴ See, e.g. See *Luquetta v. The Regents of the Univ. of California*, San Francisco Superior Ct. No. CGC-05-
28 443007 (rate of \$750 per hour reasonable for attorney admitted in 1991); *Cals for Disability Rights v. Cal. Dep't*
of Transp., 2010 WL 8746910 at *10, *13 (N.D. Cal. 2010) (awarding hourly rate of \$350 for associate with three

1 **2. Counsel's Lodestar is Supported by Contemporaneous Billing**
2 **Records and Task-Based Summaries.**

3 Class Counsel's declarations describe Class Counsel's billing procedures, allocation
4 of projects, and categories of work performed by task.³⁵ Class Counsel have also
5 consolidated their detailed billing records and summarized them (the actual records
6 themselves have not been submitted, but are available if necessary).³⁶ Counsel's
7 declarations also provide a task-based summary of the various categories of work which was
8 undertaken to effectively prosecute the case based on the guidelines currently in use in the
9 complex litigation departments in California.³⁷ Counsel also describe how work for each type
10 of work was allocated within the firm and also identifies what percentage of the total lodestar
11 each category of work accounts for. Hoyer Dec. ¶¶20-29. Counsel's task-based summaries
12 and sworn declarations describing their billing procedures provide ample support for the
13 lodestar. See *Horsford, supra*, at 396 (counsel's verification of their hours is entitled to
14 credence in the absence of a clear indication that the testimony is erroneous).

15 **3. Counsel Exercised Reasonable and Efficient Judgment in Staffing**
16 **this Case and Deducting Duplicative Billing Where Appropriate.**

17 Class Counsel has efficiently allocated work within the firm throughout the prosecution
18 of this class action. Class Counsel coordinated their work assignments on a regular basis to

19 _____
20 years of experience, \$475 for attorney with five years of experience); *Armstrong v. Brown*, 805 F.Supp. 2d 918,
21 921 (N.D. Cal. 2011) (hourly rate of \$325 reasonable for attorney with four years of experience); *Stonebrae v.*
22 *Toll Bros.* 2011 U.S.Dist.LEXIS 39832 (N.D. Cal. 2011) (hourly rate of \$330 reasonable for attorney with two
23 years of experience); *Sierra Club v. E.P.A.*, 625 F.Supp.2d 863, 867 (N.D. Cal. 2007) (finding prevailing hourly
24 rate for experienced attorney in to be \$450.00 per hour six years ago); *Rosenfeld v. U.S. Dept. of Justice*, 2012
25 WL 4936047, *11 (N.D. Cal. 2012) (noting that prevailing rates demonstrate that an attorney with 28 years of
26 experience "would likely command between \$640 and \$875.00" per hour and that a reasonable rate for student
27 interns and law clerks in would be \$100 to \$260 per hour); *Wren v. RGIS Inventory Specialists*, 2011 WL
28 1838562 (N.D.Cal. 2011) (2010 rates of \$730 an hour for an attorney with 26 years of experience, \$650 for an
attorney with 17 years of experience, \$365–\$450 for an attorney with five years of experience, \$400 for an
attorney with four years of experience, and \$350–\$375 for attorneys with three years of experience are
reasonable prevailing rates).

³⁵ Hoyer Dec. at ¶¶6-29.

³⁶ Hoyer Dec. at ¶¶13-15. In conducting the cross-check, the court need not "closely scrutinize each claimed attorney-hour, but [may] instead use[] information on attorney time spent to focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys." *Laffitte, supra*, at 505.

³⁷ Hoyer Dec. at ¶¶20-29.

1 prevent unnecessary duplication of work.³⁸ In doing so, Class Counsel assigned initial
2 drafting of all pleadings and discovery to attorneys who bill at lower rates, with editing by
3 senior attorneys as appropriate. *Id.* All class member interviews, document review, and data
4 analysis were performed by Mr. Hicks, associates, and support staff. *Id.*

5 On the occasions where the senior counsel spent time on legal research or drafting
6 motions, these exceptions were justified by the complexities and stakes of the subject matter
7 at issue. In the experience and judgment of Class Counsel this allocation was necessary, but
8 Class Counsel generally assigned projects such as research, drafting, discovery and
9 communications with class members to associates in the first instance. Overall, Class
10 Counsel assigned as much work as was efficient and appropriate to attorneys with lower
11 billing rates. *Id.* Class counsel reviewed their billing records, reduced or eliminated
12 unnecessary duplication of work, and made other appropriate deductions, like deleting time
13 records of tasks later deemed of limited utility. *Id.*

14 **4. The Difficulty of the Case Combined with Defendant's Vigorous**
15 **and Skillful Defense Required Class Counsel to Work Skillfully,**
16 **Effectively and Intensely in Order to Achieve the Most Favorable**
result for the Class.

17 The substantial work Class Counsel have submitted in their task-based summaries
18 based on contemporaneous billing records was necessary due to the difficulty and complexity
19 of the case, meeting and conferring regarding discovery and vigorous opposition to the
20 claims, the experience and sophistication of defense counsel in opposing those claims and
21 certification efforts, the novelty of the application of wage and hour law to the positions at
22 issue here, and the lengthy negotiation process required to come to a favorable resolution
23 with a resistant Defendant.

24 Defense counsel ultimately availed themselves as well-resourced and formidable
25 adversaries who skillfully defended their clients.³⁹ Defendant resisted formal discovery
26 (including disputes regarding the production of class member contact information,

27 ³⁸ Hoyer Dec. at ¶28.

28 ³⁹ Hoyer Dec. at ¶32.

1 timekeeping records and other information). *Id.* Counsel also had to obtain, analyze and
2 synthesize *voluminous* data from multiple sources for the CMs and prepare a damages
3 assessment based on the information available to it.⁴⁰ The time and effort expended by
4 counsel in these activities was essential to the successful prosecution and mediation of this
5 case to settlement. *Id.*

6 **5. The Proposed Multiplier of 2.44 is Reasonable.**

7 Class Counsel's lodestar as of the week prior to this filing, after deductions for billing
8 judgment, is approximately \$306,411.83. Hoyer Dec. ¶¶13-14; 29. Thus, Class Counsel seek
9 a reasonable multiplier of 2.44 in order to provide them with compensation for their work in
10 prosecuting this hard-fought and risk-laden case. *Id.* at ¶29. In California, courts regularly
11 use a multiplier of 2.0 or greater in statutory fee cases to approximate market fees. *See, e.g.,*
12 *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 82-85 (court approved
13 lodestar multiplier of 2.34). In this case, the reasonable multiplier of 2.44 is well within the
14 range of those regularly approved by courts when awarding attorneys' fees in class actions.⁴¹

15 This case carried a very real risk of little or no recovery at all for Plaintiff, the class, or
16 the attorneys representing them. Awarding the requested and appropriate multiplier would
17 encourage Class Counsel to continue to represent employees who are denied wages, but
18 whose cases are time-consuming and difficult to prove, and are based in unsettled areas of
19 law.⁴² Class Counsel take nearly all of their cases on a contingent fee basis and rely on
20 awards of attorneys' fees with appropriate multipliers in order to continue their work
21 representing plaintiffs against defendants with comparatively inexhaustible resources. *Id.*
22 Class Counsel believe that prosecuting such cases furthers the "clear public policy . . . that
23

24 ⁴⁰ Hicks Dec. at ¶¶9-11.

25 ⁴¹ *Wershba, supra*, 91 Cal.App.4th at 255 ("multipliers can range from 2 to 4 or even higher"); *Otero v. Rent-A-*
26 *Center*, Los Angeles Cty. Case No. BC217038 (2000) (awarding 2.43 multiplier in wage and hour case);
27 *Glendora Community Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465 (12x multiplier awarded);
28 *In Re Cenco, Inc. Secs. Litig.* (N.D. Ill. 1981) 519 F.Supp 322 (4x multiplier awarded); *In Re Beverly Hills Fire*
Litig. (E.D. Ky. 1986) 639 F.Supp. 915 (5x multiplier awarded); *Arenson v. Board of Trade of City of Chicago*
(N.D. Ill. 1974) 372 F.Supp. 1349 (4x multiplier awarded). *See also* footnote 34, *supra*.

⁴² Hoyer Dec. at ¶¶16-18.

1 is specifically directed at the enforcement of California's [wage and hour] laws for the benefit
2 of workers." *Sav-on Drug Stores, Inc.* (2004) 34 Cal.4th 319, 340 (citations omitted); *see also*
3 *Earley v. Superior Ct.* (2000) 79 Cal.App.4th 1420, 1429-1430.

4 In addition to the underlying contingent risk inherent to plaintiff-side employment and
5 class action practice, this case carried particular risk due to the novelty and complexity of the
6 claims, another factor in the multiplier analysis. *Ketchum*, 24 Cal.4th at 1132. Plaintiff's claim
7 is that Defendant misclassified the PCMs as exempt employees, thus violating various
8 sections of the Labor Code related to breaks, overtime and unpaid wages. Misclassification
9 claims are inherently more difficult to successfully certify than minimum wage claims, for
10 example. These claims would require representative testimony for proof at trial per *Duran*,
11 *supra*, which has not completely clarified the law. The risk associated with the case
12 notwithstanding, Class Counsel committed themselves and the resources of their firms to
13 pressing these legal claims in order to enforce the class members' rights and to maximize
14 the class recovery. Defense counsel's vigorous and skillful representation of their clients
15 compounded the risks and complexities of the case as they staunchly opposed Plaintiff's
16 discovery efforts.

17 These challenges and risks absorbed by Class Counsel on behalf of the Class are
18 precisely the justification for multipliers in contingency fee cases. As the Supreme Court
19 explained in *Ketchum*:

20 A contingent fee must be higher than a fee for the same legal services paid as
21 they are performed. The contingent fee compensates the lawyer not only for the
22 legal services he renders but for the loan of those services. The implicit interest
23 rate on such a loan is higher because the risk of default (the loss of the case,
which cancels the debt of the client to the lawyer) is much higher than that of
conventional loans.

24 *Ketchum*, 24 Cal. 4th at 1132-1133 (quoting Posner, *Economic Analysis of the Law* (4th Ed.
25 1992) at 534, 567); *see also Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th
26 140, 154 ("the purpose of such adjustment is to fix a fee at the fair market value for the
27 particular action. In effect the court determines, retrospectively, whether the litigation involved

1 a risk or required extraordinary skill justifying augmentation of the unadorned lodestar in order
2 to approximate the fair market rate for such services.”) (Citing *Ketchum*); see also *In Re*
3 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556.

4 Here, Class Counsel seeks a reasonable multiplier of 2.44. As discussed above, Class
5 Counsel displayed considerable skill in effectively prosecuting and favorably resolving this
6 class action. They were persistent and resilient in their laborious efforts to obtain formal and
7 informal discovery, while also gathering evidence to support their planned motion for class
8 certification. Despite Defendant’s forceful opposition every step of the way, counsel’s legal
9 analysis and presentation throughout the litigation and during the mediation process were
10 crucial to secure the substantial benefit obtained for the class.

11 Moreover, as a testament to the favorable view the class members have to the
12 proposed settlement, *none* has objected to the amount of the settlement, to the attorneys’
13 fees requested by counsel, to the proposed enhancement awards, or to the settlement
14 administration costs. This favorable result achieved by this Settlement strongly supports
15 Class Counsel’s request for attorneys’ fees.

16 The Court should grant Class Counsel’s appropriate and reasonable request for a fee
17 award of \$750,000 in order to compensate for class counsel for prosecuting this case for
18 nearly a year and a half.

19 **V. CLASS COUNSEL’S REQUEST FOR REIMBURSEMENT OF ACTUAL**
20 **REASONABLE COSTS INCURRED TO BENEFIT THE CLASS SHOULD BE**
21 **APPROVED.**

22 In the course of this litigation Class Counsel incurred substantial costs in the form of
23 delivery and service, the complex filing and other filing fees, approximately \$16,458.14 prior
24 to this filing, and will continue to incur additional expenses through the completion of the
25 distribution process.⁴³ Such costs are reasonable and are appropriate for reimbursement in
26 complex litigation. See *In re United Energy Corp. Sec. Litig.*, (C.D. Cal. 1989) 1989 WL 73211
27 at *6 (“An attorney who creates or preserves a common fund by judgment or settlement for

28 ⁴³ Hoyer Dec. at ¶34.

1 the benefit of a class is entitled to reimbursement of reasonable fees and expenses
2 involved.”).

3 **VI. THE COURT SHOULD APPROVE THE COSTS OF SETTLEMENT**
4 **ADMINISTRATION.**

5 Administrator Simpluris provided a capped fee quote of \$7,900 to administer this
6 settlement. (See Kline Dec. at ¶19; Settlement Agreement at § 2.38). This amount is quite
7 reasonable and less than the \$15,000 or more usually permitted in class settlements of a
8 similar size and complexity.

9 **VII. THE REQUESTED REPRESENTATIVE ENHANCEMENT AWARDS ARE**
10 **REASONABLE AND SUPPORTED BY EVIDENCE.**

11 Plaintiff now seeks, as contemplated and agreed to in the Settlement, a \$15,000
12 incentive/enhancement award for each of the three class representatives, that constitutes
13 less than 1% of the total settlement fund.⁴⁴ Public policy favors compensating (via incentive
14 awards) class representatives for the “expense” which they incur on behalf of the class, lest
15 individuals become insufficiently induced to offer their names and services to a class action.
16 Incentive, also known as “enhancement,” awards must of course be reasonable and not
17 unfair to the rest of the class. Here, Plaintiffs’ enhancement requests are reasonable given
18 the work that they performed on behalf of the class, the risks they faced and may continue to
19 face for their participation in the litigation (e.g., retaliation from future employers), and the
20 potential that they would be forced to pay the Defense costs in the event that they did not
21 prevail at trial. Moreover, the class reps agreed to a general release of all claims against
22 Defendant, as opposed to the more limited release applicable to the PCMs.

23 *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, provides the
24 factors courts consider in determining whether a class representative is entitled to an
25 enhancement:

26 Those factors include the actions the plaintiff has taken to protect the
27 interests of the class, the degree to which the class has benefited [sic] from
28 those actions, and the amount of time and effort the plaintiff expended in

⁴⁴ Settlement Agreement at § 2.35.

1 pursuing the litigation. Federal district courts have identified other factors as
2 well, including the risk to the class representative in commencing suit, both
3 financial and otherwise, the notoriety and personal difficulties encountered
4 by the class representative,” the duration of the litigation, and the personal
5 benefit (or lack thereof) enjoyed by the class representative as a result of
6 the litigation.

7 *Id.* at 804 (internal citations and quotations omitted). As is detailed in the Plaintiffs’
8 declarations submitted herewith, Plaintiffs had to take time off work to attend meetings with
9 counsel in their initial attempts to retain counsel, to seek out other potential class members,
10 to discuss pre-litigation strategy, sit for deposition, and then to attend the mediation session.⁴⁵
11 Plaintiffs spent significant time attempting to contact putative class members and assisted
12 counsel in securing the declarations that were essential to the successful litigation of this
13 matter. Plaintiffs communicated with counsel hundreds of times via telephone, email, and
14 text message.⁴⁶ Altogether, the Class Representatives estimate that they spent
15 approximately 175 (Rivera), 80 (Manaligod), and 108 (Atencio) hours, respectively, serving
16 as the Class Representatives of this action, which ultimately resulted in the instant
17 Settlement.⁴⁷

18 As the requested incentive awards each constitute under 1% of the settlement,
19 Plaintiffs’ requested awards are appropriate and should be approved.⁴⁸ Moreover, had
20 Plaintiffs failed at the certification stage and had their individual claims been dismissed, they
21 would each have been liable for ruinous amounts of legal costs. Indeed, had Plaintiffs brought
22 this case to trial and lost, they would have no doubt been liable to Defendant for costs in the
23 six-figure range at minimum, resulting in bankruptcy. Finally, Plaintiffs themselves were
24 estimated to receive individual pre-tax *pro rata* shares of the settlement in the amounts of
25 \$5,962.65 (Rivera), \$3,825.05 (Manaligod), and \$6,261.33 (Atencio).⁴⁹

26 ⁴⁵ See the Declarations of Plaintiffs Rivera, Manaligod, and Atencio submitted concurrently herewith as Exhibit
27 3-5, respectively, to the Hicks Dec.

28 ⁴⁶ Hicks Dec. ¶¶51-52.

⁴⁷ Rivera Dec. at ¶24; Manaligod Dec. at ¶24; Atencio Dec. at ¶24.

⁴⁸ In *Asghari v. Friendly Cab*, *supra*, the Alameda County Superior Court approved the plaintiffs’ request for
enhancement awards that each constituted 5.16% of the total settlement fund for the five plaintiffs in that case
(over 25% combined of the total settlement amount in that case), a percentage much higher than the 4.76%
award sought here.

⁴⁹ Kline Dec. at ¶18.

1 Plaintiffs were also approached by other current and former HCA employees who have
2 had questions about the case or their own potential claims against Defendant, and since the
3 parties reached a preliminary agreement in mid 2021, they have been compelled to rebuff or
4 re-direct all such questions to class counsel pending approval of the Settlement Agreement.
5 Furthermore, as the named Plaintiff in a class action lawsuit, they faced (and continue to
6 face) the risk of unfavorable references from Defendant when seeking other employment,
7 and the disclosure to potential employers that they had filed a class action against their prior
8 employer. Furthermore, that the class representatives filed this action is publicly available
9 information that is easily located on the internet.

10 No class member has objected to the proposed enhancement awards, which is well
11 within the range of reasonableness under the existing authorities.⁵⁰ Thus, the Court should
12 approve the enhancement awards.

13 **VIII. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT.**

14 For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant
15 Final Approval of the Settlement and approve the awards for attorneys' fees and cost
16 reimbursement, settlement administration costs, and class representative incentive award,
17 and enter Judgment as contemplated by the Settlement. The Settlement and Notice process
18 have complied with all requirements under applicable law.

19 Plaintiffs further propose that if the Court sets a compliance hearing, it should be set
20 at least 175 days after the final approval hearing (if the Court enters Judgment the day of the
21 Final Approval hearing, 175 days would be Thursday, October 20, 2022). This provides
22 ample time for: Defendant to deposit the Total Settlement Fund with Simpluris within fourteen
23 days of the Effective Date (65 days after Final Approval assuming no appeals); for Simpluris

24 ⁵⁰ See e.g. *Mann & Co. v. C-Tech Indus., Inc.* (D.Mass. Feb 5, 2010) 2010 WL 457572 at *2 (approving \$15,000
25 incentive award); *Barcia v. Contain-a-way, Inc.* (S.D.Cal. Mar. 6, 2009) 2009 WL 587844 at *5 (approving
26 incentive awards of \$12,000 to each representative plaintiff); *Van Vranken v. Atlantic Richfield Co.*,
27 (N.D.Cal.1995) 901 F.Supp. 294, 299–300 (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs.*
28 *Customer Litig.*, (S.D.Ohio 1990) 130 F.R.D. 366 (two incentive awards of \$ 55,000, and three incentive awards
of \$ 35,000); *Glass v. UBS Fin. Servs.*, (N.D.Cal. Jan. 27 2007) 2007 U.S. Dist. LEXIS 8476 at *51–52 (awarding
\$25,000 service award in FLSA overtime wages class action). The plaintiff in *Coronado*, *supra*, was awarded a
\$10,000 award in a case in which he put in approximately 85 hours.

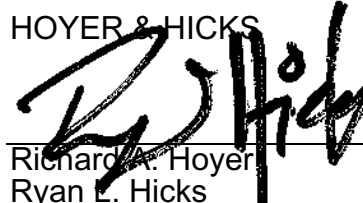
1 to within seven days of the Deposit issue payments to the Settlement Class Members, Class
2 Counsel, the LWDA, and the Class Representatives; and 90 days for the checks to be cashed
3 prior to any *cy pres* distribution.

4 The parties assume that the Court will require them to present a compliance status
5 report within one week of that compliance hearing with a proposed amended judgment per
6 CCP § 384.5 and a declaration from the Settlement Administrator which specifies the total
7 amount paid to class members, and the residual amount of unclaimed funds that will be paid
8 to the *cy pres* recipient so that the Court may transmit the amended judgment containing that
9 information to the California Judicial Council pursuant to CCP § 384.5.

10 Respectfully submitted,

11
12 Date: April 6, 2022

HOYER & HICKS



Richard A. Hoyer
Ryan L. Hicks
*Attorneys for Plaintiffs MARGARET
RIVERA, KAY MANALIGOD,
CHRISTINE ATENCIO,
and the Settlement Class*

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 **MEMORANDUM OF POINTS AND AUTHORITIES SUPPORTING MOTION FOR AN**
7 **ORDER AND JUDGMENT:**

- 8 (1) GRANTING FINAL APPROVAL OF SETTLEMENT;
9 (2) AWARDING ATTORNEYS' FEES AND COSTS TO CLASS COUNSEL;
10 (3) AWARDING REPRESENTATIVE ENHANCEMENT AWARDS; AND,
11 (4) AWARDING REIMBURSEMENT OF SETTLEMENT ADMINISTRATION COSTS

12 to:

13 Marlene Muraco
14 mmuraco@littler.com
15 LITTLER MENDELSON P.C.
16 50 West San Fernando Street, 7th Floor
17 San Jose, CA 95113-2434

18 on:

19 April 6, 2022

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

24 
25 Ryan L. Hicks
26
27
28