

Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
Enzo Nabiev (SBN 332118)
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kane.moon@moonyanglaw.com
E-mail: allen.feghali@moonyanglaw.com
E-mail: enzo.nabiev@moonyanglaw.com

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Tuvia Korobkin (SBN 268066)
tkorobkin@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

*Attorneys for Plaintiffs Nubia Alvarez and
Andrea Picos*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

NUBIA ALVAREZ, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

SRG OPERATING, INC. dba COVENTRY
PLACE, a Delaware corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: CGC-20-583540

[Hon. Ethan P. Schulman, Dept. 302]

CLASS ACTION

**PLAINTIFFS NUBIA ALVAREZ AND
ANDREA PICOS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

*[Filed concurrently with the Declaration of
Kane Moon; Declaration of Paul K. Haines;
Declaration of Plaintiff Nubia Alvarez;
Declaration of Plaintiff Andrea Picos; and
[Proposed] Order]*

PRELIMINARY APPROVAL HEARING

Date: January 4, 2022

Time: 9:30 a.m.

Dept: 302

1
2 Dated: December 8, 2021
3

Respectfully submitted,
MOON & YANG, APC

4 By: 

Kane Moon
Allen Peghali
Enzo Nabiev
Attorneys for Plaintiffs

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	SUMMARY OF THE LITIGATION AND SETTLEMENT.....	1
A.	Plaintiffs' Claims	1
B.	Discovery and Investigation.....	4
C.	Settlement Negotiations	4
D.	Key Terms of the Proposed Settlement.....	5
III.	THE COURT SHOULD GRANT PRELIMINARY APPROVAL.....	7
A.	The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation	8
1.	The Settlement Is the Product of Discovery, Investigation, and Informed and Non-Collusive Arm's-Length Negotiations.....	8
2.	The Settlement Is Fair and Reasonable in Light of the Parties' Respective Legal Positions.....	9
3.	Class Counsel Has Extensive Experience in Class Action Litigation.....	10
B.	The Proposed Class Notice of Settlement Should Be Approved	10
C.	The Proposed Attorneys' Fees and Costs Are Reasonable	10
1.	Class Counsel's Request an Award Of Fees Based On The "Common Fund" Method	11
2.	The Requested Fee Award Is in Line with Typical Cases	12
3.	This Matter Involves A "Fee-Shifting" Provision of the Labor Code	12
4.	The Experience, Reputation and Ability of Class Counsel Support the Requested Fee Award	13
D.	The Service Payment To Named Plaintiffs Is Reasonable.....	13
IV.	CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED	15
A.	Legal Standard	15
B.	Plaintiffs Maintain That The Criteria For Class Certification Are Satisfied	15
1.	The Class Is Ascertainable and Numerous.....	15

2.	There are Many Common Issues of Law and Fact Which Predominate.....	16
3.	Plaintiffs' Claims Are Typical of the Claims of the Class.....	17
4.	Plaintiffs and Their Counsel Meet the Adequacy Requirement.....	17
5.	A Class Action is Superior to a Multiplicity of Litigation.....	18
V.	THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND	18
A.	The Proposed Notice Plan Satisfies Due Process	18
B.	The Notice is Accurate and Informative	19
VI.	CONCLUSION.....	19

TABLE OF AUTHORITIES

CASES

<i>Angeles v. U.S. Airways, Inc.</i> (N.D. Cal. Feb. 19, 2013) No. C 12-05860 CRB, 2013 WL 622032	3
<i>Frank v. Eastman Kodak Co.</i> (W.D.N.Y. 2005) 228 F.R.D. 174	14
<i>Leyva v. Medline Ind.</i> (9th Cir. 2013) 716 F.3d 510	18
<i>Pedroza v. PetSmart, Inc.</i> (C.D. Cal. June 14, 2012) No. ED CV 11-298 GHK (DTBx), 2012 WL 9506073	3
<i>Priddy v. Edelman</i> (6th Cir. 1989) 883 F.2d 438	8
<i>Van Vranken v. Atlantic Richfield Company</i> (N.D. Cal. 1995) 901 F.Supp. 294	12
<i>Vincent v. Hughes Air West, Inc.</i> (1977) 557 F.2d 759	11

OTHER AUTHORITIES

Theodore Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”, 53 UCLA L. Rev. 1303 (2006)	14
--	----

RULES

California Rules of Court, Rule 3.766	18
California Rules of Court, Rule 3.769(f)	10

TREATISES

Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 11.51	8
Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03	12
Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 8.39	19

STATE CASES

<i>Bowles v. Super. Ct.</i> (1955) 44 Cal.2d 574	16
<i>Cartt v. Super Ct.</i> (1975) 50 Cal.App.3d 960	18
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	12
<i>City and County of San Francisco v. Sweet</i> (1995) 12 Cal.4th 105	11
<i>Classen v. Weller</i> (1983) 145 Cal.App.3d 27	17
<i>Clothesrigger, Inc. v. GTE Corp.</i> (1987) 191 Cal.App.3d 605	16

1	<i>Collins v. Rocha</i> (1972) 7 Cal.3d 232	16
2	<i>D'Amico v. Bd. of Medical Examiners</i> (1974) 11 Cal.3d 1	11
3	<i>Daar v. Yellow Cab Co.</i> (1967) 67 Cal. 2d 695	15
4	<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	7
5	<i>Gentry v. Super. Ct.</i> (2007) 42 Cal.4th 443	14
6	<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	7
7	<i>Laffitte v. Robert Half Int'l Inc.</i> (2016) 1 Cal.5th 480	11, 12
8	<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	15
9	<i>Mallick v. Super. Ct.</i> (1979) 89 Cal.App.3d 434	7
10	<i>McGhee v. Bank of America</i> (1976) 60 Cal.App.3d 442	17
11	<i>Miller v. Woods</i> (1983) 148 Cal. App. 3d 862	18
12	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	7, 13
13	<i>Quinn v. State of California</i> (1995) 15 Cal.3d 162	11
14	<i>Richmond v. Dart Indus., Inc.</i> (1981) 29 Cal. 3d 462	15
15	<i>Rodriguez v. W. Publ'g Corp.</i> (9th Cir. 2009) 563 F.3d 948	13
16	<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	16
17	<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25	11
18	<i>Stamburgh v. Super. Ct.</i> (1976) 62 Cal.App.3d 231	8
19	<i>Wershba v. Apple Computers, Inc.</i> (2001) 91 Cal.App.4th 224	9
20	<i>Wilner v. Sunset Life Ins. Co.</i> (2000) 78 Cal.App.4th 952	16
21	STATUTES	
22	Code of Civil Procedure § 382	15, 16
23	Labor Code § 90.5	14
24		
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Nubia Alvarez (“Plaintiff Alvarez”) and Andrea Picos (“Plaintiff Picos”) (collectively “Plaintiffs”) seek preliminary approval of a proposed \$2,500,000.00 non-reversionary, wage and hour class and PAGA representative action settlement with Defendant SRG Operating, Inc. (“Defendant”). The Settlement will provide substantial monetary payments to approximately 4,023 class members. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arm’s-length and were facilitated by experienced neutral mediator Tripper Ortman, Esq. through a mediation session. Accordingly, Plaintiffs request that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs’ Claims

This is a wage and hour class and PAGA representative action involving individuals employed by Defendant, which operates senior care facilities throughout California. Plaintiff Alvarez worked for Defendant as a receptionist from approximately December 2019 to January 2020 and was paid on an hourly basis. (Declaration of Kane Moon in Support of Preliminary Approval [“Moon Decl.”] ¶ 3.) Plaintiff Alvarez alleged that Defendant implemented several unlawful employment practices including, but not limited to, regularly using a system of time rounding in a manner that resulted, over a period of time, in a failure to compensate Plaintiffs, the Class, and the Aggrieved Employees properly for all the time they actually worked even though the realities of Defendant’s operations are such that it is possible, practical, and feasible to count and pay for every minute of work performed. (*Id.*) Moreover, Plaintiff Alvarez alleged that Defendant systematically failed to provide rest breaks due to Defendant’s rest break policy and practice of prohibiting Plaintiffs, the Class, and the Aggrieved Employees from leaving the premises during breaks. (*Id.*) Plaintiff Alvarez believes

1 that there are certifiable issues relating to Defendant's foregoing unlawful practices based on the
2 records that it produced. (*Id.*) In addition to these claims, Plaintiff Alvarez brings claims for
3 unpaid overtime, failure to provide meal periods, failure to timely pay final wages, failure to
4 provide accurate itemized wage statements, unfair business practices, and PAGA penalties. (Moon
5 Decl., ¶¶ 3-4.)

6 Because of Defendant's alleged violations of various provisions of the Labor Code, on
7 March 6, 2020, Plaintiff Alvarez filed a complaint alleging Defendant's systematic: (1) Failure
8 to Pay Minimum and Straight Time Wages [Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2)
9 Failure to Pay Overtime Compensation [Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal
10 Periods [Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Lab. Code §§
11 226.7]; (5) Failure to Timely Pay Final Wages at Termination [Lab. Code §§ 201-203]; (6) Failure
12 to Provide Accurate Itemized Wage Statements [Lab. Code § 226]; (7) Unfair Business Practices
13 [Bus. & Prof. Code §§ 17200, et seq.]. (Moon Decl. ¶ 4.) On May 8, 2020, Plaintiff Alvarez
14 filed a First Amended Complaint adding an eighth cause of action for civil penalties under
15 PAGA. (*Id.*)

16 Plaintiff Picos worked for Defendant as a Caregiver from February 2019 through
17 March 2020. (Moon Decl. ¶ 5.) Plaintiff Picos, alleged that Defendant systematically failed to
18 provide rest breaks, did not provide uninterrupted meal periods, failed to calculate employees'
19 overtime wages correctly, failed to reimburse employee expenses, and regularly used a system
20 of time-rounding in a manner that resulted, over a period of time, in a failure to compensate
21 Plaintiffs and the Aggrieved Employees properly for all the time they actually worked. (*Id.*)
22 Because of Defendant's alleged violations of various provisions of the Labor Code, on August
23 3, 2020, Plaintiff Picos filed a representative action complaint alleging a single cause of action
24 for violations of the PAGA, premised upon Defendant's violations of Labor Code sections
25 201-204, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198,
26 2802, and 2804. (*Id.*) On December 8, 2021, Plaintiff Alvarez filed a stipulation to file a
27 Second Amended Complaint adding Plaintiff Picos as an additional plaintiff. (*Id.*)

28 Defendant ardently opposes the merits of this case and denies Plaintiffs' factual

1 allegations. (Moon Decl., ¶ 6.) Defendant maintains that it complied with all its meal and rest
2 period obligations, and that it compensated Plaintiffs, Class Members, and Aggrieved
3 Employees for all hours worked. (*Id.*) Moreover, to the extent that Plaintiffs received wage
4 statements that were allegedly inaccurate, Defendant asserted that Plaintiffs suffered no actual
5 damage or harm as a result. (*See, e.g., Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013)
6 No. C 12-05860 CRB, 2013 WL 622032, at *10 [“A plaintiff must adequately plead an injury
7 arising from an employer’s failure to provide full and accurate wage statements, and the
8 omission of the required information alone is not sufficient.”].) With respect to Plaintiffs’
9 claims for waiting time penalties, Defendant alleged that its good-faith belief that it paid all
10 wages precluded the imposition of waiting time penalties since Plaintiff could not prove that
11 Defendant’s alleged failure to pay all final wages at the time of separation was “willful.”
12 (*See, e.g., Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012) No. ED CV 11–298 GHK
13 (DTBx), 2012 WL 9506073, *5.) For these reasons, Defendant claimed that it did not engage
14 in any unfair business practices. (*Id.*) Defendant also maintained that Plaintiffs’ claims were
15 improper for class treatment because of an enforceable arbitration agreement that prohibited
16 class actions. (*Id.*)

17 Defendant denies any liability or wrongdoing of any kind whatsoever associated with the
18 claims alleged in Plaintiffs’ complaints, and Defendant further denies that, for any purpose other
19 than settling this lawsuit, the action is appropriate for class or representative treatment.
20 Defendant further argues the existence of an enforceable arbitration agreement that would
21 prohibit all of Plaintiffs’ class claims. With respect to Plaintiffs’ claims, Defendant contends,
22 among other things, that Plaintiffs and the Class Members have been paid proper wages, have
23 been provided meal periods, have been authorized and permitted rest periods, have been paid
24 timely wages upon separation of employment, and have been provided with accurate itemized
25 wage statements. Defendant contends, among other things, that it has complied at all times with
26 the California Labor Code and the applicable Wage Orders of the Industrial Welfare
27 Commission. Furthermore, with respect to all claims, Defendant contends that its has complied
28 at all times with the California Business and Professions Code.

1 **B. Discovery and Investigation**

2 Following the filing of this action, the Parties agreed to mediate this matter. (Moon
3 Decl., ¶ 7.) Thereafter, the Parties agreed to a mediator and a protocol for exchanging
4 documents and information before the mediation. (*Id.*) Defendant produced a sample of pay
5 and time records for class members, as well as policy manuals in effect during the statutory
6 period, and additional documents. (*Id.*) Defendant also provided information regarding the
7 total number of current and former employees. (*Id.*)

8 After reviewing documents regarding Defendant's wage and hour policies and
9 practices, and analyzing Defendant's pay and time records, Class Counsel was able to evaluate
10 the probability of class certification, success on the merits, and Defendant's maximum
11 monetary exposure for all claims. (Moon Decl., ¶ 8.) Class Counsel reviewed these records
12 and prepared a damage analysis prior to mediation. Class Counsel also investigated the
13 applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Moreover,
14 Class Counsel retained an expert to analyze the records produced. (*Id.*) Thus, Plaintiffs and
15 their counsel are familiar with the facts of the case and the legal issues raised by the pleadings
16 and were able to act intelligently in negotiating the settlement. (*Id.*)

17 **C. Settlement Negotiations**

18 On May 19, 2021, the Parties participated in private mediation with professional
19 neutral mediator Tripper Ortman, Esq. (Moon Decl., ¶ 9.). After extensive negotiations and
20 discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's
21 defenses, a mediator's proposal was made and accepted by the Parties, the material terms of
22 which are encompassed within the Settlement. (Moon Decl., Ex. A [Settlement].)

23 Class Counsel has conducted a thorough investigation into the facts of this case. (Moon
24 Decl., ¶¶ 15-25.) Based on the foregoing discovery and their own independent investigation
25 and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and
26 adequate. (*Id.*) Furthermore, in light of all known facts and circumstances, the risk of
27 significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendant
28 both to certification and on the merits, including enforcement of an arbitration agreement, the

1 settlement is in the best interests of the Settlement Class Members. (*Id.*) **Indeed, the**
2 **\$2,500,000.00 Settlement represents 89.6% of Defendant's maximum potential overall**
3 **liability of \$2,790,382.00.** (Moon Decl., ¶ 21.)

4 **D. Key Terms of the Proposed Settlement**

5 Under the Settlement, Defendant will pay \$2,500,000.00 to resolve this litigation. This
6 amount is all-inclusive (with the exception of employer-side taxes, which will be paid separately
7 by Defendant). The Settlement's key terms include:

8 1. Class Members: Class Members are all current and former non-exempt hourly
9 employees of Defendant employed in California at any time during the Class Period. (Settlement,
10 ¶ 5.)

11 2. Class Period: The Class Period means the period beginning February 15, 2019 to
12 the earlier of September 16, 2021, or the date on which the Court grants preliminary approval.
13 (Settlement, ¶ 4.)

14 3. Settlement Class Members: Class Members who do not timely opt out of the
15 Settlement. (Settlement, ¶ 5.)

16 4. No Reversion: This is a non-reversionary settlement requiring Defendant to make
17 payments to Class Members that shall be issued by Claims Administrator. (Settlement, ¶ 28(e).)

18 5. Gross Settlement Amount: This amount is \$2,500,000.00 and excludes
19 Defendant's employer's taxes. (Settlement, ¶ 28(h).)

20 6. Release: The class release is limited to actions or causes of action which are
21 alleged, or reasonably could have been alleged based on the facts and claims asserted in the
22 action. (Settlement, ¶ 39(c).)

23 7. Net Settlement Amount: The Net Settlement Amount is the amount that remains
24 and that shall be paid to Class Members after the following amounts are subtracted: (a) attorneys'
25 fees (not to exceed \$833,333.33), (b) reasonable litigation costs and expenses (not to exceed
26 \$30,000.00), (c) service payment for each Class Representative of \$10,000.00 per Named
27 Plaintiff (for a total of \$20,000.00), (d) administrative costs (not to exceed \$38,000), and (e)
28 PAGA penalties paid to the Labor and Workforce Development Agency ("LDWA") in the

1 amount of \$75,000.00 (total allocation to PAGA is \$100,000.00 with 75% to the LWDA, and the
2 remaining 25% reverting to the Net Settlement Amount). (Settlement, ¶ 28(g).)

3 8. Allocation of Settlement Payments: Any settlement money paid will be allocated
4 as 33 1/3% as wages, 33 1/3% as penalties, and 33 1/3% as interest. (Settlement, ¶ 28(k).)

5 9. Service Payment for Class Representatives: Subject to Court approval, each
6 Named Plaintiff shall be paid service payment up to \$10,000.00 (for a total up to \$20,000.00).
7 This amount is for Plaintiffs' time and effort in bringing and presenting the action, and in
8 exchange for a general release. (Settlement, ¶ 28(n).)

9 10. Attorneys' Fees and Costs: The Settlement provides that Defendant will not
10 oppose a fee application of a third of the Gross Settlement Amount (\$833,333.33) plus out-of-
11 pocket costs not to exceed \$30,000.00. (Settlement, ¶ 28(m).) At this time, Moon & Yang, APC
12 has incurred \$13,571.70 in costs; while the Haines Law Group, APC has incurred \$812.54 in
13 costs, and Class Counsel expect to incur additional costs through the Settlement approval
14 process. (Moon Decl., ¶ 13, Ex. C.; Declaration of Paul K. Haines ("Haines Decl."), ¶ 14.)

15 11. Notice of Settlement: The Notice sets forth in plain terms, a statement of case, the
16 terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service
17 payments being sought, an explanation of how the settlement allocations are calculated, and sets
18 forth each class member's total pay periods, as well as the approximate amount of money they
19 would receive in the event all class members participate in the settlement. (Settlement, Ex. A.)
20 Class Members will be notified by First Class U.S. Mail of the settlement. Translations of
21 Exhibits "A" and "B" from English to Spanish shall also be provided. ILYM Group, Inc., the
22 proposed Settlement Administrator, will undertake its best efforts to ensure that the notice is
23 provided to the current addresses of class members, including conducting a national change of
24 address search and re-mailing the notice to updated addresses. If a Notice Packet is
25 "undeliverable" and no forwarding address is provided, the Settlement Administrator shall
26 employ standard skip-tracing to obtain updated address information and shall re-mail the Notice
27 to those Class Members. (Settlement, ¶ 36.) Settlement Administration costs are estimated to be
28 \$31,331.82. (Moon Decl., ¶ 14, Ex. D.) At the time of drafting the Settlement, administration

costs were estimated to not exceed \$38,000.00; accordingly, any difference between the estimate and actual costs will revert to Class Members.

12. Resolution of Disputes: The Notice shall inform Class Members of the pay periods they worked as a non-exempt employee during the Class Period based on Defendant's records. If a Class Member disputes the accuracy of Defendant's records, and the Parties' counsel cannot resolve the dispute informally, the matter will be referred to the Settlement Administrator. The Settlement Administrator will review Defendant's records and any information or documents submitted by the Class Member and issue a decision regarding the dispute within 14 calendar days of the submission of the dispute. (Settlement, ¶ 28(v).)

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached through arm's-length bargaining; (2) investigation is 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. (*Dunk*, 48 Cal.App.4th at p. 1800.)

In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include: 1) the strength of plaintiff's case, 2) the risk, expense, complexity and likely duration of further litigation, 3) the risk of maintaining class action status through trial, 4) the amount offered in settlement, 5) the extent of discovery completed and the stage of the proceedings, 6) the experience and views of counsel, 7) the presence of a governmental participant, and 8) the reaction of the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 128). To approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require "an explicit statement of the maximum amount the

1 plaintiff class could recover if it prevailed on all its claims”, but instead, only an “understanding
2 of the amount that is in controversy and the realistic range of outcomes of the litigation.”].)

3 As discussed below, Class Counsel has provided information exceeding the threshold
4 required to provide this Court with materials and information necessary to determine that the
5 proposed settlement is fair, adequate, and reasonable.

6 **A. The Settlement Is Fair, Reasonable, Adequate, and the Product of**
7 **Investigation, Litigation, and Negotiation**

8 **1. The Settlement Is the Product of Discovery, Investigation, and**
9 **Informed and Non-Collusive Arm’s-Length Negotiations**

10 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
11 evidence to the contrary is offered; thus, there is a presumption here that the negotiations were
12 conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.)
13 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super.*
14 *Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The
15 fact that a plaintiff might have received more if the case had been fully litigated is no reason not
16 to approve the settlement.”].)

17 In this case, the Settlement was reached following extensive negotiations including a
18 mediation session with experienced neutral employment mediator Tripper Ortman, Esq. (Moon
19 Decl. ¶ 9.) The settlement negotiations were at arm’s length and, although conducted in a
20 professional manner, were adversarial. (*Id.*) The parties went into the mediation willing to
21 explore the potential for a settlement of the dispute, but each side was also prepared to litigate
22 their position through trial and appeal if a settlement had not been reached. (*Id.*)

23 Prior to reaching this Settlement, Class Counsel conducted informal discovery and
24 investigation into the claims alleged by Plaintiffs, including, among other things, reviewing and
25 analyzing policy manuals, pay records, and preparing a damage analysis. (Moon Decl., ¶¶ 15-
26 25.) Significantly, Class Counsel’s calculations are based on the analysis of a statistics expert
27 retained by Class Counsel to analyze the records produced by Defendant. (*Id.*) In conjunction
28 with their extensive factual investigation, Class Counsel investigated the applicable law

1 regarding the claims and defenses asserted in the litigation. (*Id.*) Thus, Plaintiffs and their
2 counsel were able to act intelligently and effectively in negotiating the proposed settlement. (*Id.*)

3 Class Counsel also has considerable experience and has demonstrated competence with
4 litigating wage and hour class actions. (Moon Decl., ¶¶ 36-50; Haines Decl., ¶¶ 2-11.) Again,
5 this supports that the terms of the Settlement are premised on objective evidence that has been
6 considered and weighed in light of the risks, expenses, and time consumption to both sides of
7 continued litigation of this action.

8 **2. The Settlement Is Fair and Reasonable in Light of the Parties’**
9 **Respective Legal Positions**

10 A settlement is not judged against what might plaintiff recover had he prevailed at trial,
11 nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.
12 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is
13 inherent and necessary in the settlement process...even if the relief afforded by the proposed
14 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
15 this is no bar to a class settlement because the public interest may indeed be served by a
16 voluntary settlement in which each side gives ground in the interest of avoiding litigation.”].)

17 Here, the Settlement obviates the significant risk that this Court may deny certification of
18 all or some of Plaintiffs’ claims. (Moon Decl., ¶¶ 15-25.) While Plaintiffs are confident in the
19 merits of their claims, a legitimate controversy exists as to each cause of action. However,
20 Plaintiffs also recognize that proving the amount of wages due to each class member would be an
21 expensive, time-consuming, and uncertain proposition. (*Id.*) Furthermore, continued litigation
22 would be expensive, involving a trial and possible appeals, and would substantially delay and
23 reduce any recovery by the class. (*Id.*)

24 The proposed settlement of \$2,500,000.00 therefore represents a substantial recovery
25 when compared to Plaintiffs’ reasonably forecasted recovery. (*Id.*) Because of the proposed
26 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
27 unfavorable judgment. When considering the risks of litigation, including the uncertainties
28 involved in achieving class certification, the burdens of proof necessary to establish liability, and

1 the probability of appeal of a favorable judgment, it is clear that the settlement amount of
2 \$2,500,000.00 is within the “ballpark” of reasonableness, and preliminary settlement approval is
3 appropriate.

4 The net settlement amount available to all class members is approximately \$1,503,666.67
5 (after subtracting \$833,333.33 in attorneys’ fees; up to \$30,000.00 in attorneys’ costs;
6 \$10,000.00 to each Named Plaintiff for Service Payments; \$75,000.00 to the LWDA for PAGA
7 penalties; and up to \$38,000.00 in settlement administration costs, from the \$2,500,000 Gross
8 Settlement Amount). There are approximately 4,023 Class Members. As such, each Class
9 Member will receive an average of \$373.77. This amount is a timely, guaranteed relief and
10 allows Class Members to avoid the risk of an unfavorable judgment. (Moon Decl., ¶ 24.)

11 **3. Class Counsel Has Extensive Experience in Class Action Litigation**

12 The settlement negotiations were conducted by highly capable and experienced counsel.
13 Class Counsel has a strong record of vigorous and effective advocacy for their clients and are
14 experienced in handling complex wage and hour class action litigation. (Moon Decl., ¶¶ 36-50;
15 Haines Decl., ¶¶ 2-11.) Although Plaintiffs and their counsel were prepared to litigate the claims
16 alleged in the litigation, they support the proposed Settlement as being in the best interest of the
17 class.

18 **B. The Proposed Class Notice of Settlement Should Be Approved**

19 The proposed Notice, in the form attached to the Settlement Agreement as Exhibit A,
20 should be approved for dissemination to the class. The Notice informs the class of the terms of
21 the settlement and of their rights to be excluded from the settlement. If there are class members
22 who wish to object to this proposed class action settlement, they will have the opportunity to
23 object and be heard at the Final Approval Hearing. Accordingly, the proposed Notice meets all
24 the requirements of Rule 3.769(f) of the California Rules of Court.

25 **C. The Proposed Attorneys’ Fees and Costs Are Reasonable**

26 Under the Settlement, subject to the Court’s approval, Defendant agrees to pay Class
27 Counsel reasonable attorneys’ fees in amount of \$833,333.33, which is one third of the Gross
28 Settlement Amount, and up to \$30,000.00 in costs. (Settlement, ¶ 28(g).) At this time, costs are

1 estimated to be \$14,320.17, and any difference between the maximum estimated costs and actual
2 costs will revert to the Net Settlement Amount. (Moon Decl., ¶ 13.) These amounts are disclosed
3 to all Class Members in the proposed Notice and are reasonable.

4 **1. Class Counsel's Request an Award Of Fees Based On The "Common**
5 **Fund" Method**

6 California courts have long awarded attorneys' fees as a percentage of the benefit created
7 by counsel in pursuing claims on behalf of a class. The California Supreme Court held that
8 "when a number of persons is entitled in common to a specific fund, and an action brought by a
9 plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such
10 plaintiff or plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977)
11 20 Cal.3d 25, 34, quoting *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

12 Class Counsel seek an award of attorneys' fees on the "percentage of recovery/common
13 fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all
14 the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v.*
15 *Hughes Air West, Inc.* (1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995) 15
16 Cal.3d 162, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning
17 a suit which creates a fund from which others derive benefits may require those passive
18 beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and*
19 *County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court
20 recognized that the common fund doctrine has been applied "consistently in California when an
21 action brought by one party creates a fund in which other persons are entitled to share." (*Id.* at p.
22 110.)

23 The California Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc.* (2016) 1
24 Cal.5th 480 that, "when class action litigation establishes a monetary fund for the benefit of the
25 class members, and the trial court in its equitable powers awards class counsel a fee out of that
26 fund, the court may determine the amount of a reasonable fee by choosing an appropriate
27 percentage of the fund created." (*Id.* at p. 503.) The court explained: "The recognized
28 advantages of the percentage method—including relative ease of calculation, alignment of

1 incentives between counsel and the class, a better approximation of market conditions in a
2 contingency case, and the encouragement it provides counsel to seek an early settlement and
3 avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable
4 tool that should not be denied our trial courts.” (*Id.* [internal citations omitted].)

5 **2. The Requested Fee Award Is in Line with Typical Cases**

6 According to a leading treatise on class actions, “No general rule can be articulated on
7 what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit
8 on a reasonable fee award from a common fund in order to assure that the fees do not consume a
9 disproportionate part of the recovery obtained for the class, although somewhat larger
10 percentages are not unprecedented.” (*See* Conte & Newberg, *Newberg on Class Actions* (3rd
11 Ed.) § 14.03.) Attorneys’ fees that are fifty percent of the fund are typically considered the upper
12 limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively
13 small. (*Id.*; *see also Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F.Supp.
14 294 [stating that most cases where 30-50 percent was awarded involved “smaller” settlement
15 funds of under \$10 million].)

16 Here, Plaintiffs request attorneys’ fees equal to 33 1/3% of the Gross Settlement Amount,
17 which is in line with the prevailing guidelines established in California case law and academic
18 literature and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162
19 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage
20 method or the lodestar method is used, fee awards in class actions average around one-third of
21 the recovery.”].) It is also the same percentage approved by the California Supreme Court in
22 *Laffitte*. Accordingly, Plaintiffs respectfully request that the Court preliminarily approve the
23 attorneys’ fees as negotiated by the Parties and requested herein.

24 **3. This Matter Involves A “Fee-Shifting” Provision of the Labor Code**

25 Labor Code §§ 218.5, 226, 1194 and 2699, *et seq.* provide for the recovery of reasonable
26 attorney’s fees, and costs of suit, for the claims made in this action. Under these sections,
27 Plaintiffs would be permitted to recover their actual attorneys’ fees, even if those fees were larger
28 than the total class recovery at the conclusion of this case. This settlement is beneficial in that it

limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Class Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Class Counsel. (Moon Decl., ¶¶ 32-34.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class ahead of all other concerns.

4. The Experience, Reputation and Ability of Class Counsel Support the Requested Fee Award

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possess considerable expertise in litigating class actions. (Moon Decl., ¶¶ 36-50; Haines Decl., ¶¶ 2-11.) Class Counsel has been involved as lead counsel or co-counsel in several class actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, Class Counsel's requested fee award is supported here.

Class Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. Based on these and other factors, Class Counsel has frequently received fee awards of this percentage from the gross recovery for the class. Therefore, the requested Class fee award is reasonable and fair.

D. The Service Payment To Named Plaintiffs Is Reasonable

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class and are appropriate given the benefit the

1 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
2 2009) 563 F.3d 948, 958-59.)

3 Service awards are particularly important to plaintiffs in wage and hour cases because they
4 promote the important public policies underlying the wage and hour laws. This strong policy is
5 codified in California Labor Code section 90.5, which provides, “it is the policy of this state to
6 vigorously enforce minimum labor standards in order to ensure employees are not required or
7 permitted to work under substandard unlawful conditions....”). Nonetheless, the California
8 Supreme Court has noted that “retaliation against employees for asserting statutory rights under
9 the Labor Code is widespread,” despite anti-retaliation statutes designed to protect employees.
10 (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should
11 be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v.*
12 *Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

13 Under the settlement agreement, subject to the Court’s approval, Defendant has agreed to
14 pay a Service Payment in the total amount of \$10,000.00 to each of the Named Plaintiffs, for a
15 total Service Payment of up to \$20,000.00. (Settlement, ¶ 28(n).) Class Counsel represent that
16 Plaintiffs devoted a great deal of time and work assisting counsel in the case and communicated
17 with counsel and helped Class Counsel to prepare for mediation, among other things. (Moon
18 Decl., ¶¶ 26-29.) This amount is reasonable particularly considering the benefits Plaintiffs
19 generated for all class members. (*Id.*)

20 When compared with the amounts awarded in typical class action cases, the amount
21 requested here is particularly reasonable. Indeed, a 2006 study examining the average incentive
22 award given to class action plaintiffs from 1993 to 2002 found that the “average award per class
23 representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore
24 Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”,
25 53 UCLA L. Rev. 1303, 1308 (2006).) That same study found that named plaintiffs in employment
26 discrimination class actions received an average award of \$69,850 and a median award of \$31,081,
27 while named plaintiffs in other employment class actions received an average award of \$12,121
28 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards

1 in employment cases reflected the “courts’ wish to make representative plaintiffs whole by
2 compensating them for the high costs of their service to the class, including risks of stigmatization
3 or retaliation on the job.” (*Id.* at p. 1308.)

4 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

5 **A. Legal Standard**

6 The proposed Class is well suited for class certification. All of the claims derive from a
7 core set of alleged violations of California’s wage and hour laws and regulations. For the reasons
8 set forth more fully below, for purpose of settlement the Class satisfies the prerequisites for
9 certification under Code of Civil Procedure § 382. Section 382 provides: “when the question is
10 one of a common or general interest, of many persons, or when the parties are numerous, and it is
11 impracticable to bring them all before the court, one or more may sue or defend for the benefit of
12 all.” (Code Civ. Proc., § 382.) There are two requirements to section 382: “(1) There must be an
13 ascertainable class; and (2) there must be a well-defined community of interest in the questions
14 of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow Cab Co.* (1967)
15 67 Cal. 2d 695, 704 [citations omitted].) To clarify these requirements, the California Supreme
16 Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-interest
17 requirement itself embodies three factors: “(1) predominant questions of law or fact; (2) class
18 representatives with claims or defenses typical of the class; and (3) class representatives who can
19 adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 470.)

20 California law and policy favor the fullest and most flexible use of the class action device.
21 (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a
22 means to prevent a failure of justice in our judicial system” particularly where the rights of
23 consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to
24 the appropriateness of class treatment should be resolved in favor of certification. (*Richmond*,
25 *supra*, 29 Cal.3d at pp. 473-75.)

26 **B. Plaintiffs Maintain That The Criteria For Class Certification Are Satisfied**

27 **1. The Class Is Ascertainable and Numerous**

28 The proposed class that Plaintiffs seek to represent is easily ascertainable and includes

1 approximately 4,023 employees of Defendant. Plaintiffs maintain that there is an easily
2 ascertainable class, defined by objective and precise criteria. Because class members are
3 identified using specific criteria in the regular business records of Defendant, i.e., job position,
4 the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959-60
5 [class membership defined by ownership of product that is the subject of the lawsuit is sufficient
6 to make the class ascertainable].)

7 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
8 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
9 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an
10 action may be maintained as a class action even where the parties are numerous and it is in fact
11 practicable to join them all.” (*Id.*) “No set number is required as a matter of law for the
12 maintenance of a class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing
13 the 10 beneficiaries of a trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v.*
14 *Super. Ct.* (1955) 44 Cal.2d 574; see also, *Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35
15 member class.]) Here, there are 4,023 class members. Therefore, Plaintiffs contend that
16 numerosity is plainly satisfied.

17 **2. There are Many Common Issues of Law and Fact Which Predominate**

18 The Court should grant conditional class certification for settlement here on the grounds
19 that questions of law and fact common to all class predominate over any individual questions.
20 This inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by
21 representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605.)

22 Here, the employment practices at issue are: whether Defendant had legally compliant
23 policies and practices to pay employees all wages owed; whether Defendant had legally
24 compliant policies and practices to pay employees all overtime compensation; whether
25 Defendant had legally compliant policies and practices to provide employees with meal periods;
26 whether Defendant had legally compliant policies and practices authorizing and permitting its
27 employees to take rest breaks; whether Defendant had legally compliant policies and practices to
28 timely pay final wages at termination and excluded unpaid wages, including off-the-clock work,

1 meal period premium wages and rest period premium wages; whether all business expenses were
2 reimbursed; whether all wages were paid to employees at the time of termination of the
3 employment relationship; and whether the wage statements were consequently non-compliant.
4 Plaintiffs contend that the factual and legal issues are the same for all identified class members,
5 including Plaintiffs. For example, a receptionist (like Plaintiff Alvarez) and a Caregiver (like
6 Plaintiff Picos) working at Defendant's senior care facilities throughout California require
7 completion of similar job duties, if not identical, to the Plaintiffs' own duties. Further,
8 Defendant's policy and practice of prohibiting employees from leaving facilities' premises
9 during their rest breaks was common among other employees in the class. Finally, all class
10 members suffered from and seek redress for the same alleged injuries.

11 **3. Plaintiffs' Claims Are Typical of the Claims of the Class**

12 The typicality requirement does not focus on the individual characteristics or circumstances
13 of the representative plaintiffs compared to those of the remainder of the class, but rather upon the
14 typicality of the proposed representatives' claims as they relate to the defendants' conduct and
15 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that
16 common questions of law and fact predominate and that the class representative be similarly
17 situated" vis-à-vis the class.].) A representative plaintiff's claims are typical of the class, as here,
18 if they arise from the same event, practice, or course of conduct, and if the claims rest on the same
19 legal theories. (*Id.*)

20 That is precisely the case here. Like other employees of the defined class, Plaintiffs' claims
21 arise from their employment as a non-exempt employee for Defendant. Furthermore, Plaintiffs'
22 claims rest on the same Labor Code violations as other non-exempt employees from the class.
23 Thus, Plaintiffs' claims are typical of the class they represent.

24 **4. Plaintiffs and Their Counsel Meet the Adequacy Requirement**

25 The adequacy of representation requirements is met by fulfilling two conditions: first, a
26 named plaintiff must be represented by counsel qualified to conduct the pending litigation;
27 second, a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v.*
28 *Bank of America* (1976) 60 Cal.App.3d 442, 451.)

1 All requirements are met here. Plaintiffs retained counsel with extensive experience in
2 prosecuting complex class actions, including similar class actions that previously settled. (Moon
3 Decl., ¶¶ 36-50; Haines Decl., ¶¶ 2-11.) With their combined experience, Class Counsel
4 unquestionably are “qualified, experienced and generally able to conduct the proposed
5 litigation.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) In addition, Plaintiffs have no
6 conflict of interests, and Plaintiffs have, with counsel, litigated this case and diligently reviewed
7 the settlement terms, showing their dedication. Plaintiffs’ willingness to serve as representatives
8 demonstrate their serious commitment to bringing about the best results possible for the class.
9 (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

10 **5. A Class Action is Superior to a Multiplicity of Litigation**

11 Finally, in making its class certification decision, the Court must determine that a class
12 action would be superior to alternative means for the fair and efficient adjudication of the
13 litigation. By consolidating many potential individual actions into a single proceeding, this
14 Court’s use of the class action device enables it to manage this litigation in a manner that serves
15 the economics of time, effort and expense for the litigants and the judicial system. Absent class
16 treatment, similarly-situated employees with small but nevertheless meritorious claims for
17 damages would, as a practical matter, have no means of redress because of the time, effort and
18 expense required to prosecute individual actions. (*Gentry v. Super. Ct.* (2007) 42 Cal. 4th 443,
19 457-62; *Leyva v. Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of
20 settlement, the superiority concerns are essentially non-existent.

21 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

22 **A. The Proposed Notice Plan Satisfies Due Process**

23 Notice requirements are set forth in the California Rules of Court. Cal. Rules of Court,
24 Rule 3.766 (e) and (f). California law vests the Court with broad discretion in fashioning an
25 appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no
26 statutory or due process requirement that all class members receive actual notice, but in this
27 matter, the class members will receive direct mailed notice. As the Court of Appeals has
28 explained, “[t]he notice given should have a reasonable chance of reaching a substantial

percentage of the Class Members” (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided by direct mailing, the best possible form of notice. (Settlement, ¶ 34.)

B. The Notice is Accurate and Informative

The proposed Notice should be approved. It will be disseminated through direct U.S. First Class Mail to the last known address for each Class Member. (*Id.*) The proposed Notice informs the Class Members of the terms of the settlement and their right to be excluded from the Settlement. And if there are Class Members who wish to object to this proposed class action settlement, they will have the opportunity to object and be heard at the Final Approval Hearing.

The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the terms and conditions of the settlement agreement, in an informative and coherent manner. It makes clear that the settlement agreement does not constitute an admission of liability by Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits of the action. It also states that the final settlement approval decision has yet to be made. Accordingly, the Notice complies with the required standards of fairness, completeness, and neutrality of a combined settlement-certification class notice.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the proposed settlement.

Dated: December 8, 2021

Respectfully submitted,

MOON & YANG, APC

By: 

Kane Moon
Allen Feghali
Enzo Nabiev

Attorneys for Plaintiffs

1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA)
4) ss
5 COUNTY OF LOS ANGELES)

6 I am employed in the county of Los Angeles, State of California. I am over the age of 18
7 and not a party to the within action; my business address is 1055 West Seventh Street, Suite 1880,
8 Los Angeles, California 90017. On December 9, 2021, I served the foregoing document described
9 as:

10 **PLAINTIFFS NUBIA ALVAREZ AND ANDREA PICOS' NOTICE OF MOTION AND**
11 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**
12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
14 addressed as follows:

15 Jon Yonemitsu
16 Noah Woods
17 **LITTLER MENDELSON, P.C.**
18 501 W. Broadway, Suite 900
19 San Diego, CA 92101-3577
20 jyonemitsu@littler.com
21 nwoods@littler.com

22 *Attorneys for Defendant SRG Operating, Inc. dba Coventry Place*

23 [✓] **BY Via Court Approved Efiling & Eservice Vendor: FILE & SERVE EXPRESS:**
24 by transmitting via electric service the document(s) listed above to the parties and or
25 email address(es) set forth below.

26 X (State) I declare under penalty of perjury under the laws of the State of
27 California that the above is true and correct.

28 Executed on December 9, 2021, at Los Angeles, California.

Ximena Reyes
Name

/s/ Ximena Reyes
Signature