

JAMES HAWKINS APLC
JAMES R. HAWKINS (SBN 192925)
SEAN SASAN VAHDAT (SBN 239080)
9880 Research Drive, Suite 200
Irvine, CA 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

Attorneys for Plaintiff Aaron Flott
on behalf of himself and all others similarly situated

[ADDITIONAL COUNSEL LISTED ON FOLLOWING PAGE]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE COMPLEX JUSTICE CENTER

**DONNA CARONE, on behalf of all
aggrieved employees, AARON FLOTT,
individually and
on behalf of the proposed class;**

Plaintiffs,

v.

**JEWISH HOME FOR THE AGING OF
ORANGE COUNTY, INC., A California
Corporation, (Doing Business as
HERITAGE POINTE; and DOES 1
through 50, inclusive,**

Defendants.

LEAD CASE:

**CASE No. 30-2020-01152256-CU-OE-
CXC**

CONSOLIDATED CASE:

**CASE NO. 30-2020-01141665-CU-OE-
CXC**

**PLAINTIFF'S NOTICE OF MOTION
UNOPPOSED MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT; FEES, COSTS,
ADMINISTRATION EXPENSES, AND
ENHANCEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES;
[PROPOSED] ORDER**

[Declarations of Sean S. Vahdat, James R.
Hawkins, Tyler Kring, Donna Carone, Aaron
Flott, Exhibits, In Support of Motion filed
concurrently herewith]

Hearing Date: October 7, 2022
Time: 10:00 a.m.
Dept.: CX105

Complaint Filed: 06/04/2020

KRING & CHUNG, LLP

KYLE D. KRING, SBN 123378

TYLER D. KRING, SBN 325588

38 Corporate Park

Irvine, CA 92606-5105

Telephone: (949) 261-7700

Facsimile: (949) 261-8800

Attorneys for Plaintiff

Donna Carone on behalf of herself and all others similarly situated

1 **PLEASE TAKE NOTICE THAT** on October 7, 2022 or soon thereafter as possible, at
2 10:30 a.m. in Department CX 105 of the above-entitled court located at 751 West Santa Ana,
3 Blvd., Santa Ana, California 92701, Plaintiffs Donna Carone, and Aaron Flott, will and hereby
4 do move the Court for an Order granting final approval of the class action settlement including
5 the maximum settlement amount of Seven Hundred Thirty Five Thousand Dollars
6 (\$735,000.00), Maximum Settlement Amount which encompasses (1) all settlement payments to
7 individual Class Members; (2) Enhancement award to the named plaintiffs Donna Carone and
8 Aaron Flott in the sum of eight thousand dollars (\$8,000.00) each; (3) claims administration
9 expenses in the amount of \$9,000.00; (4) \$22,500.00 to the California Labor & Workforce
10 Development Agency, representing 75% of the \$30,000.00 allocated to the settlement of
11 Plaintiffs' claim for penalties under PAGA, (5) attorneys' fees in the sum of Two Hundred Forty
12 Five Thousand dollars, (\$245,000.00), representing thirty three and One third (33 and 1/3%) of
13 the Gross Settlement; and \$15,229.09 in litigation costs to be allocated as follows: James
14 Hawkins APLC \$8,649.75; Kring & Chung, LLP \$6,579.34.

15 This Motion is made pursuant to California Rules of Court Rule 3.769, which requires
16 court approval of the settlement of a putative class action. Further, this Motion, which is
17 unopposed by Defendant JEWISH HOME FOR THE AGING OF ORANGE COUNTY, INC.,
18 will be based on the following: Memorandum of Points and Authorities set forth herein; the
19 Amended Stipulation Re: Settlement of Class Action and Release ("Settlement Agreement")
20 attached to the Declaration of Sean S. Vahdat as Exhibit A; the Declarations of Sean S. Vahdat,
21 James R. Hawkins, Tyler D. Kring, Donna Carone, Aaron Flott, and Lluvia Islas of ILYM
22 Group, in support of Plaintiff's Motion for Final Approval and Supplements to said Motion and
23 such evidence or oral argument as may be presented at the hearing, and on the complete records
24 and file herein.

25 //

26 //

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

DATED: September 8, 2022

JAMES HAWKINS APLC

By: 

JAMES R. HAWKIS

SEAN S. VAHDAT

Attorneys for Plaintiffs
Aaron Flott

DATED: September 9, 2022

KRING & CHUNG, LLP

By: 

TYLER D. KRING

Attorneys for Plaintiff
Donna Carone

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3
4 Through this unopposed motion, Plaintiffs Donna Carone, and Aaron Flott (hereinafter
5 “Plaintiffs” or “Class Representatives”), on behalf of a putative class (hereinafter “Class” or
6 “Class Members”), seek final approval of the class action settlement (“Settlement”) reached with
7 Defendant JEWISH HOME FOR THE AGING OF ORANGE COUNTY, INC., (“Jewish
8 Home”).

9 Through an Order dated June 2, 2022, this Court preliminarily approved the settlement
10 amount of Seven Hundred Thirty-Five Thousand Dollars and Zero Cents (\$735,000.00) as being
11 fair, adequate, and reasonable. Further, this Court preliminarily appointed Plaintiff’s counsel,
12 Sean S. Vahdat, and James R. Hawkins of James Hawkins APLC, and Tyler D. Kring of Kring
13 & Chung, LLP, as class counsel; the named Plaintiffs Donna Carone and Aaron Flott as Class
14 Representatives, and provisionally certified the Settlement Class defined as: All persons who are
15 or were previously employed by Jewish Home as non-exempt employees in California at any
16 time from June 4, 2016 through June 2, 2022.

17 On August 5, 2022, the parties notified the Class Members about the settlement through
18 the Settlement Administrator, ILYM Group, Inc. (“ILYM”), whom the Court preliminarily
19 approved to conduct the settlement administration. (See Declaration of Lluvia Islas “Islas Decl.”
20 ¶ 7.) The deadline for requests for exclusions from, and objections to the Settlement will expire
21 on September 19, 2022. (*Id.*; at ¶ 12.)

22 The benefits conferred to the Settlement Class, as a result of this Settlement, are
23 extremely favorable. Specifically, as previously set forth in Plaintiff’s Motion for Preliminary
24 Approval (“Preliminary Approval Motion”), this is a cash settlement with no reversionary
25 aspect. Every Class Member who has not opted out of the Settlement will automatically be
26 mailed an individual settlement payment. There is no claims filing process, and Class Members
27 do not have to file a claim to be mailed a payment. Moreover, out of the 471 class members
28

1 there is only one requests for exclusion and zero objections to the settlement. (Islas Decl. ¶¶ 11-
2 12)

3 Additionally, in the event the Court approves the requested fees, costs and enhancements,
4 the estimated highest individual settlement amount to be paid is approximately \$3,637.49 and the
5 *average* Settlement Share to be paid is approximately \$893.13, and the lowest payment is 11.77
6 (Islas Decl. ¶ 14.)

7 In sum, the proposed Settlement, which is the product of years of diligent advocacy and
8 negotiations by Class Counsel, provides benefits to the Class and has been well received as a
9 favorable outcome. The Settlement of this action is fair, reasonable, and adequate, and in the
10 best interest of the Class. Accordingly, final approval of the Settlement should be granted.

11 **II. LITIGATION AND SETTLEMENT**

12 **A. Plaintiffs and the Alleged Wage and Hour Violations**

13 On June 4, 2020 Class Representative Aaron Flott filed (Class Action Case No. 30-2020-
14 01141665-CU-OE-CXC) entitled *Flott v. Jewish Home of Orange County, Inc.*, in the Superior
15 Court of the State of California, County of Orange. On August 8, 2020 Flott filed an Amended
16 complaint adding a PAGA cause of action. On July 21, 2020, Class Representative Donna
17 Carone also filed a PAGA action (CASE No. 30-2020-01152256-CU-OE-CXC, *Carone v.*
18 *Jewish Home for the Aging of Orange County*) in the Superior Court of the State of California,
19 County of Orange. The Class and Representative actions are both on behalf of themselves and
20 all other Jewish Home non-exempt employees in California at any time during the Class Period,
21 June 4, 2016, through the date of resolution.¹ The “Class Members” were later defined as
22 follows for purposes of settlement: All Current and Former non-exempt employees of
23 Defendant who worked in the State of California anytime between June 4, 2016, and the date of
24 entry of the Preliminary Approval Hearing Date in this Action.

25
26 ¹ The non-exempt Class Members are identified in Joint Stipulation Class Action and PAGA Settlement
27 Exhibit “A” Section 1.15 (Page 5).
28

1 The cases were subsequently consolidated by the parties' stipulation, and the Carone
2 action was deemed the lead case on May 18, 2021, by the Honorable Kirk Nakamura. On
3 October 1, 2021, the Court considered the parties Joint Case Management Statement and
4 authorized the filing of the Consolidated Complaint. On October 27, 2021, the Court accepted
5 the parties' Consolidated Complaint (hereinafter referred to as the "Consolidated Complaint").

6 The Plaintiffs' Consolidated Complaint alleges the following causes of actions:

7 1) Failure to pay minimum wages; (2) Failure to pay overtime; (3) Failure to provide meal
8 periods; (4) Failure to provide rest periods; (5) Failure to timely pay wages; (6) Failure to
9 provide accurate wage statements; (7) Failure to indemnify necessary expenditures; (8) Unfair
10 competition; (9) and violations pursuant to Private Attorneys General Act of 2004 ("PAGA"),
11 Labor Code section 2699, *et seq.* (See Declaration of Sean S. Vahdat ("Vahdat Decl.") ¶ 2.)

12 The predominant claim in this action arises from Defendant's alleged failure to provide
13 lawful rest and meal periods. Specifically, Plaintiff contends that they and class members were
14 frequently unable to take 30 minute meal periods before the end of the fifth hour of their shift
15 nor able to leave the premises for a 10 minute break. This gave rise to the derivative claims
16 under labor code sections 226 and 203. (Vahdat Decl. ¶ 3.)

17 Jewish Home adamantly disputes the propriety of certification in this case, as it contends
18 that its break policies are compliant with the law. Further, Defendant's position is, under the
19 holding in *Brinker* and other state and federal decisions, that Jewish Home fulfilled its legal
20 obligations to non-exempt employees by paying proper wages and providing them with timely
21 and proper breaks, including providing the requisite amount of time for each break. Jewish
22 Home also claims that any Plaintiff or Class member's claims for minimum wages, overtime,
23 and reimbursement of expenses were individualized. (Vahdat Decl. ¶ 4.)

24 Through counsel, Plaintiff took into consideration the significant risk that class
25 certification could be denied on the central claims, or that a merits decision on the central claims
26 would not favor the Class. Plaintiff considered the expense and length of continued proceedings
27 necessary to continue the Action against Defendant through trial and any possible appeals.
28 (Vahdat Decl. ¶ 5.) Thus, the Settlement achieved a favorable result for the putative class

1 members especially considering the risks inherent in the continued litigation of this matter as
2 already discussed herein

3 **B. Discovery and Mediation**

4 As also discussed in Plaintiffs' motion for preliminary approval, through discovery,
5 Plaintiffs and Jewish Home exchanged extensive documents and information. (Vahdat Decl. ¶
6 6.) Plaintiff Flott, through his respective counsel, prepared discovery in the form of Production
7 of Documents, Request for Admissions, Special Interrogatories, and Form Interrogatories
8 General and Employment. (ID). Plaintiff Carone, through her respective counsel, engaged in
9 months of extensive meet and confer efforts with Defendant's counsel to understand and
10 evaluate the extent of Defendant's potential PAGA liability. (Declaration of Tyler D. Kring
11 ("Kring Decl.") ¶ 4). Prior to serving formal discovery counsel for Plaintiff Flott and Carone
12 met and conferred with Defendant's counsel and agreed to serve a request for informal discovery
13 based on a sampling size that would allow Plaintiff's counsel to do a damage analysis. (Vahdat
14 Declaration ¶ 6; Kring Decl. ¶ 5). Defendant responded and provided Plaintiffs' counsel with
15 informal discovery in or around January 2021 through February 11, 2021. This included Jewish
16 Homes' Policies, data regarding time sheets and payroll records, memos, and other valuable
17 documents. Plaintiffs' counsel reviewed this discovery and requested additional records to
18 facilitate a meaningful mediation, and Jewish Home provided supplemental records. (Vahdat
19 Declaration ¶ 7; Kring Decl. ¶ 5). With the information provided, and with the information
20 previously obtained from named Plaintiffs, the parties agreed to attend mediation.

21 After months of discovery and settlement discussions on or about February 11, 2021, the
22 Parties (Flott, Carone and Jewish Home) attended mediation via Zoom, with Steven G. Pearl,
23 Esq., an experienced class action wage and hour mediator. As a result of the parties' preparation
24 the parties did reach a resolution and signed the Memorandum of Understanding (MOU).
25 (Vahdat Decl. ¶ 7.) After months of ironing out the full details of the settlement agreement (and
26 also navigating the interruptions caused by COVID's impact on counsel and their clients), the
27 parties finalized and executed the settlement agreement on or about July 20, 2021. (Vahdat Decl.
28 ¶ 8; Kring Decl. ¶ 6).

1 //

2 //

3 **C. The Preliminarily Approved Settlements**

4 On June 2, 2022, the Court granted preliminary approval of the Settlement (“Preliminary
5 Approval Order”) (Vahdat Decl. ¶ 9; Kring Decl. ¶ 7.) Per the Court’s minute orders the parties
6 had to make changes and submit multiple supplements to the Notice, and the Settlement
7 Agreement and Release before the court granted Preliminary approval.

8 The Preliminary approval order appointed class counsel (Sean S. Vahdat and James
9 Hawkins, of James Hawkins APLC, Kyle D. Kring and Tyler D. Kring of Kring & Chung
10 Attorneys, LLP), the class representatives (Donna Carone, and Aaron Flott), and the Settlement
11 Administrator (ILYM Group) (Vahdat Decl. ¶ 10.) The Court also approved the proposed
12 Notice of Class Action Settlement, (hereinafter referred to as “Notice Packet”).

13 Now that administration has been completed, subject to the Court’s final approval, the
14 fees and expenses will be paid from the Gross Settlement Amount as follows:

15 1. Subject to Court approval, the law firms of James Hawkins, APLC, and Kring &
16 Chung Attorneys, LLP shall be paid a total of Two Hundred Forty-Five Thousand Dollars and
17 Zero Cents (\$245,000.00) in attorneys’ fees (i.e., 33 1/3% of the Gross Settlement Amount) and
18 costs (not to exceed \$30,000). (Exhibit “A” Section [1.9].) Kring & Chung is seeking
19 \$6,579.34, for their litigation costs, and \$8,649.75 is being sought by James Hawkins APLC.
20 (Kring Decl. ¶8, Decl. of James Hawkins ¶6.)

21 2. Subject to Court approval, the Named Plaintiff Donna Carone and Aaron Flott
22 shall be paid Eight Thousand Dollars and Zero Cents (\$8,000.00) each for their effort and work,
23 and risk in prosecuting the Action on behalf of the Class. (*Id.*)

24 3. Subject to Court approval, Nine Thousand Dollars and Zero Cents (\$9,000.00)
25 will be set aside from the Gross Settlement Amount to cover ILYM Group’s costs of
26 administering this Settlement. (*Id.*)

1 4. Subject to Court approval, \$22,750.00 will be paid to the California Labor &
2 Workforce Development Agency, for the PAGA payment, representing the 75% of the
3 \$30,000.00 Penalty allocation.

4 5. Payment to each Class Member, who does not submit a valid and timely request
5 for exclusion from the Settlement (“Participating Claimant”) , shall be based on a percentage of
6 the Net Settlement Fund (“NSF”) which is the amount remaining after deducting amounts set
7 forth in paragraphs 1-4 above from the total Settlement Amount. (Exhibit A Settlement
8 Agreement Section [Section 1.21]

9 6. Defendant will pay employer-side payroll taxes separately. (*Exhibit A* Section
10 2.14,line 8)

11 7. All Settlement Payments to Authorized Claimants shall be allocated as follows:
12 20% shall be deemed payment in settlement of claims for any alleged unpaid wages; and (b)
13 80% shall be deemed payment in settlement of claims for all non-wage payments, penalties,
14 interest and other recoveries. (Exhibit A Section 2.13)

15 8. This is a common fund settlement with no reversion to Defendant. Thus, each of
16 the Settlement Class Members, who does not request exclusion from the Settlement, will be paid
17 his/her percentage share of the NSF, and any unclaimed funds will be deposited by the class
18 administrator with the California State Controller’s Unclaimed Property Fund. (Exhibit A
19 Section 1.20; 2.13.4)

20 **D. Dissemination of Class Notice**

21 On July 5, 2022, ILYM received the mailing list containing the Class Member’s names,
22 taxpayer identification numbers, last known mailing addresses, and the number of work periods
23 during the Class Period (“Class List”). The Class List contained data for 471 potential Class
24 Members. (Islas Decl. ¶ 5.) The mailing addresses contained in the Class List were processed
25 and updated and the Notice Packets were mailed via First Class Mail to the 471 Class Members
26 on August 5, 2021. (Islas Decl. ¶6.)

27 For the Notice Packets returned from the post office without a forwarding address,
28 ILYM performed an advanced address search (i.e., skip trace) on all of these addresses (Islas

Decl. ¶¶ 8-9.) A total of Twenty-four (36) Notice Packets were re mailed. Out of which 11 remain undeliverable as no updated addresses were found. (Islas Decl. ¶10)

E. Estimated Settlement Awards

The following summarizes the estimated settlement awards which are to be paid out by ILYM pending the Court's final approval:

The total potential Net Settlement Fund is approximately \$427,270.91. All Class Members, who did not opt- out, will be paid their portion of the Net Settlement Fund. The *highest* Settlement Share to be paid is approximately \$3,637.49 and the *average* Settlement Share to be paid is approximately \$893.13, and the *lowest* Settlement Share to be paid is approximately \$11.77 (Islas Decl. ¶ 14.)

III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE

The law favors settlement, particularly in class actions and other complex cases in which substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation. *City of Seattle* 955 F.2d at 1276; *Potter v Pacific Coast Lumber Company*, (1951) 37 Cal. 2d. 592, 602-603.; 4 NEWBERG § 11.41. When faced with a motion for final approval of a class action settlement under Code of Civil Procedure section 382, a court inquires whether the settlement is "fair, adequate, and reasonable." *See e.g., Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, (2010) 186 Cal. App. 4th 399, 407-408; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801.

A. This Court Preliminarily Found This Settlement To Be Fair, Reasonable And Adequate And Nothing Has Changed To Disturb That

Before granting preliminary approval of a class action settlement, courts must determine that the proposed settlement is fair, reasonable, and adequate — and not a product of fraud, overreaching, or collusion. Cal. R. Ct. 3.769 (g); Cal. Civ. Pro. Code § 382; *Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at 1801. Courts must presume that a settlement is fair, reasonable, and adequate, and thus appropriate for preliminary approval when the following three factors are satisfied: (1) the parties reached settlement after arms-length negotiations; (2) counsel conducted sufficient investigation and discovery to allow themselves and the court to act

intelligently; and (3) counsel is experienced in similar litigation *Id.* at 1802. *See also 7-Eleven Owners for Fair Franchising v. Southland Corp.*, (2000) 85 Cal. App. 4th 1135, 1146. Further, as discussed below, although not determinative, courts consider the percentage of objectors in determining whether a presumption of fairness exists. *Id.* There is no question that these factors are satisfied here. The parties conducted sufficient amount of discovery, an extensive informal exchange of information and data, and participated in a private mediation and numerous conferences of counsel that ultimately led to an arms-length settlement that provides for substantial recovery. Moreover, out of 471 class members presumed to have received the Notice Packets, there is only one request for exclusion from the Settlement and zero objectors. (Islas Decl. ¶¶ 11-12.)¹

1. The Settlement Resulted From Non-Collusive, Arms-Length Negotiations

There certainly is no collusion between the parties. The involvement of a neutral third-party mediator is a factor that favors approval and evidences the presumptive fairness of the arms-length negotiations. Indeed, courts should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring themselves that a settlement agreement represents an arms-length transaction entered without self-dealing or other potential misconduct. *Kullar v. Foot Locker, supra*, 168 Cal. App. 4th at 129. Here, after extensive discovery, discussions, exchange of information and review of records, the parties engaged in mediation with a well-respected and highly knowledgeable wage and hour mediator Steven G. Pearl, Esq. (Vahdat Decl. ¶¶ 6-8.)

2. The Settlement is Supported by Substantial Investigative and Discovery Efforts

As discussed in the preliminary approval papers, supporting declaration and herein, Class Counsel analyzed a significant amount of information that Defendant produced in response to informal discovery requests in preparation for mediation. (Vahdat Decl. ¶ 6.) The parties have conducted significant investigation of the facts and law during the prosecution of the Action, including formal discovery efforts. Class Counsel's research enabled them to pinpoint the

¹ Out of 471 class members to whom the Notice Packets were mailed, all but 11 were deliverable. (Islas Decl. ¶ 10.)

1 relevant issues and claims and to assess potential liability and damages. These efforts resulted in
2 the parties having a clear view of the strengths and weaknesses of their respective cases and
3 achieving a resolution on favorable terms, as was evidenced during mediation and subsequent
4 negotiations leading to Settlement.

5 3. Class Counsel is Experienced in Similar Litigation

6 The endorsement of qualified and well-informed counsel of the settlement as fair is
7 entitled to significant weight. *See Dunk, supra*, 48 Cal.App.4th at 1802. As discussed in the
8 preliminary approval papers and set forth in the Declaration of Class Counsel, Class Counsel has
9 represented, mediated and settled other employee class actions in wage and hour litigation and
10 have knowledge of the strengths and weaknesses of the claims against Defendant and the
11 benefits of the proposed settlement under the circumstances of the case. (Vahdat Decl. ¶¶ 13-17;
12 Hawkins Dec. ¶¶ 3,4; Kring Decl. ¶ 9.) Class Counsel contends that the Settlement is fair,
13 adequate, reasonable, and in the best interests of the Class as a whole.

14 4. Class Members' Positive Reaction to the Settlement Favors Final Approval

15 Finally, courts look at the reaction of class members to determine if a settlement that
16 directly affects their interests should be approved as fair, adequate, and reasonable. As already
17 discussed herein, out of 471 class members presumed to have received the Notice Packets, there
18 is only one request for exclusion from the Settlement. (Islas Decl. ¶ 10.) Further, a court may
19 appropriately infer that a class action settlement is fair, adequate, and reasonable even when
20 class members object to it. Indeed, a court may approve a class action settlement as fair,
21 adequate, and reasonable even over the objections of a significant percentage of class members.
22 *See Boyd v. Betchel Corp.*, (D.C. Cal 1976) 485 F. Supp. 610, 624. *Reed v. General Motors* (5th
23 Cir. 1983) 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.* (D. Ariz. 1989)
24 720 F. Supp. 1379, 1394. There are no objections to the Settlement which the Court should
25 construe as a further indication of Class Members' support for the Settlement as fair, adequate,
26 and reasonable. (Islas Decl. ¶ 11.)

1 **IV. CLASS REPRESENTATIVE ENHANCEMENT IS REASONABLE**

2 The settlement provides for an enhancement award to be paid to the Class
3 Representative. The purpose is to provide an additional incentive payment, taking into
4 consideration the risks, time and effort in coming forward to fulfill all the duties associated with
5 being a class representative. Awarding incentive awards to compensate named plaintiffs in class
6 actions has been specifically recognized. See, e.g. *Clark v. American Residential Services, LLC*,
7 (2009) 175 Cal App 4th 785, 804 (incentive awards to named plaintiff appropriate for
8 participation in class action); *Bell v Farmers Ins. Exchange*, (2004) 115 Cal App 4th 715, 726
9 (upholding “service payments” to named plaintiffs for their efforts in bringing class case).

10 As stated by the Court of Appeal in the *Cellphone Termination Fee Cases*: incentive
11 awards are "intended to compensate class representatives for work done on behalf of the class, to
12 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
13 recognize their willingness to act as a private attorney general." *Cellphone Termination Fee*
14 *Cases*, (2010) 186 Cal. App. 4th 1380, 1394 (approving an incentive award of \$10,000).

15 The class representative enhancement payment is intended to compensate named
16 Plaintiffs Dona Carone, and Aaron Flott as the class representatives for their willingness to
17 accept the responsibility of representing the interests of all class members. The purpose is to
18 provide an incentive payment, taking into consideration the risks, time and effort expended by
19 them and dedication to this matter in coming forward to provide invaluable information and to
20 litigate this matter on behalf of the Class which resulted in a very favorable outcome to Class
21 Members. (Vahdat Decl. ¶ 11) (Declaration of Aaron Flott (“Flott Decl.”) ¶¶ 9-18) (Declaration
22 of Donna Carone (“Carone Decl.”) ¶¶ 2-5.)

23 Plaintiffs also risked potential judgment against them if this case had been unsuccessful.
24 In class action losses, class representatives are deemed the losing party that is liable for the
25 prevailing party’s costs. *Earley v. Superior Court*, (2000) 79 Cal. App. 4th 1420, 1433-1434.
26 Finally, Plaintiffs also risked this lawsuit having a negative impact on future employment
27 opportunities, as prospective employers may be less inclined to hire an employee who has served
28 as a class representative. (Flott Decl. ¶ 18; Carone Decl. ¶ 4) See, e.g. *Staton v. Boeing*, 327 F.3d

1 938, 977 (9th Cir. 2003) As such, Plaintiff respectfully requests that this Court approve the Class
2 Representative enhancement payment in the amount of \$8,000.00 each to Donna Carone, and
3 Aaron Flott.

4 **V. CLASS COUNSEL’S REQUEST FOR ATTORNEYS FEE AWARD IS**
5 **REASONABLE**

6 Subject to court approval, this settlement amount of \$735,000.00 includes Class
7 Counsel’s attorneys’ fees of \$245,000.00. Plaintiff and class members are entitled to recover
8 their attorneys’ fees and costs. (Labor Code §2802; Code Civ. Proc. §1021.5(a); *Earley v. Super.*
9 *Ct.*, (2000) 79 Cal.App.4th 1420. A fee award is justified when class benefits are obtained via
10 settlement. *Maria P. v. Riles*, (1987) 43 Cal.3d 1281, 1290-91; *Westside Cmty. for Indep.*
11 *Living, Inc. v. Obledo*, (1983) 33 Cal.3d 348, 352-53.

12 Fee awards may be based on (1) the percentage-of-the-benefit method; or (2) the
13 lodestar plus multiplier method. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th
14 224, 254; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27. Both methods are
15 proper in California, although courts often use a lodestar-multiplier method as a check against
16 the reasonableness of a percentage fee award. (*See, e.g., Serrano v. Priest (Serano III)*, (1977)
17 20 Cal.3d 25, 48-49 fn. 23; *People ex rel. Dept. of Transportation v. Yuki*, 31 (1995)Cal. App.
18 4th 1754, 1769-1772; *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, (1985)172 Cal. App.
19 3d 914, 954. As discussed further below, Class Counsel's requested fees are reasonable under the
20 percentage of the benefit method. Second, the fee award is justified by the work performed. As
21 set forth in the accompanying Declarations of counsel, the fee award represents Plaintiff’s
22 Counsel’s current lodestar of \$245,000.00 with a negative multiplier.

23
24 **A. Class Counsel's Requested Fee Is Reasonable Under the**
25 **Percentage of the Benefit Method**

26 **1. Attorneys’ Fees Should Be Based Upon the Total Benefit to the Class**

27 The primary benefit of the percentage method is that it focuses on the benefit conferred
28 on the class as a result of the efforts of Class Counsel. Awarding Class Counsel fees based on a
percentage of the recovery has the advantages of eliminating the incentive for attorneys to

1 increase hours unnecessarily, encouraging early settlement of disputes, and preserving judicial
2 resources otherwise used to monitor attorneys' billable hours. See *In re Activision Sec. Litig.*,
3 (N.D. Cal. 1989) 723 F. Supp. 1373, 1378-79; *MANUAL FOR COMPLEX LITIGATION* 4th ed.
4 § 14.121 (2004) ("in practice, the lodestar method is difficult to apply, time consuming to
5 administer, inconsistent in result. . . capable of manipulation,... [and] creates inherent incentive
6 to prolong the litigation"); See also *In re Quantum Health Resources, Inc.* (C.D.Cal. 1997) 962
7 F. Supp. 1254, 1256 (noting that lodestar "creates an incentive to keep litigation going in order
8 to maximize the number of hours included in the court's lodestar calculation.").

9 The percentage of fund method survives in California class action cases. *Laffitte v*
10 *Robert Half Intern, Inc.* (2016) 1 Ca. 4th 480, 506.[See also. *Chavez v. Netflix, Inc.*, (2008) 162
11 Cal. App. 4th 43 at 65, 66; *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.*,
12 (2005) 127 Cal. App. 4th 387, 397 [the common fund doctrine is "frequently applied in class
13 actions when the efforts of the attorney for the named class representatives produce monetary
14 benefits for the entire class"]; *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal. App. 4th at 254.

16 2. The Contingent Nature Of Class Counsel's Representation Supports The
17 Requested Fees Based On 33.33% (One Third) of The GSA

18 Further, the contingent nature of Class Counsel's representation also warrants the
19 requested attorney fees based on the percentage of the common fund. The risks in taking on any
20 class action are enormous especially in regards to wage-and-hour class actions because the wage
21 laws are still developing and a change in the law could wipe out a plaintiff's recovery. Litigating
22 a class action through trial takes years and requires the investment of hundreds of thousands of
23 dollars. Attorneys willing to undertake this risk deserve appropriate compensation. As
24 elaborated by the California Supreme Court in *Graham v. Daimler Chrysler Corp.*, (2008) 34
25 Cal. 4th 553, 579-580, counsel should be awarded a fee enhancer for taking on contingent cases
26 because a "contingent fee compensates the lawyer not only for the legal services he renders but
27 for the loan of those services. The implicit interest rate on such a loan is higher because the risk
28

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."

As the California Supreme Court specifically explained:

A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest 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. A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.

Id. at 580 (citing *Ketchum v. Moses*, (2001) 24 Cal. 4th 1122, 1132-33).

In the legal marketplace, an attorney whose compensation is entirely dependent on success – who takes a significant risk – should and does expect a significantly higher fee than an attorney who is paid a market rate as the case goes along, win or lose. *See, e.g., Rader v. Thrasher*, (1962) 57 Cal. 2d 244, 253 (“[a] contingent fee contract, since it involves a gamble on the result, may properly provide for a larger compensation than would otherwise be reasonable” (citation omitted); *Salton Bay Marina v. Imperial Irrig. Dist.*, (1985) 172 Cal. App. 3d 914, 955 (contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee award).

Class Counsel represented the class members in this matter and have borne the entire risk and costs of litigation on a pure contingency basis. To date, Class Counsel have not received any compensation and expended litigation costs on behalf of the class. Class action contingency cases are inherently risky. (Vahdat Decl. ¶ 15; Hawkins Decl. ¶ 2; Kring Decl. ¶ 10.) Upon retention, Class Counsel makes a commitment to litigate the case through trial. *Id.* These types of cases can take years, hundreds of hours of work and cost an enormous amount of money; these risks are known upon retention. The risks involved coupled with the contingency basis of this case further support Class Counsel’s request for attorneys’ fees and costs. *Id.*

3. Additional Factors Re: Contingency Market Rate Justify The Requested Fee Award

Further, important public policies underlie a court's determination of a motion for attorneys' fees in class actions. Employees who are wronged by employer's violation of state and federal labor laws should have access to counsel with the ability and resources necessary to litigate complex cases. *See e.g. Say-On Drug Stores, Inc. v. Superior Court*, (2004) 34 Cal. 4th 319, 340 (enforcement of labor laws and class action device both matters of public policy); Our legal system places unique reliance on private litigants to enforce substantive provisions of employment law through class actions. *See e.g. Gentry v. Superior Court*, 42 Cal. 4th 443, 450-6 (2007) (confirming the public importance of private enforcement of overtime laws through class actions); *Lealao*, 82 Cal. App. 4th (legal system relies on private litigants to enforce substantive provisions of law through class and derivative actions; attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace).

As the California Court of Appeal recognized in *Thayer v. Wells Fargo Bank, supra*, 92 Cal. App. 4th at 839: "Adequate fee awards are perhaps the most effective means of achieving [the] salutary goal [of encouraging `private attorney general actions and] [c]ourts should not be indifferent to the realities of the legal marketplace or unduly parsimonious in the calculation of such fees." *See also Lealao*, 82 Cal.App.4th at 53 (cautioning against fee awards that are too small and therefore "chill the private enforcement essential to vindication of many rights..."). At a minimum, attorneys providing these substantial benefits should be paid an award equal to the amount negotiated in private bargaining that take place in the legal market place. *Deposit Guaranty Nat. Bank, Jackson, Miss. v. Roper*, (1980) 445 U.S. 326, 338; *Lealao*, 82 Cal. App. 4th at 49-50.

4. Class Counsel's Requested Fee Award Is Well Within California's Benchmark Awards And Thus Reasonable Under the Percentage of The Benefit Method

Class Counsel's request for 33 1/3% of the monetary fund recovered is California's standard benchmark and well within the range customarily approved by the California courts in comparable class actions and other class actions as well as with contingency contracts negotiated by plaintiffs and their counsel. "Empirical studies also show that regardless whether the

percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” See e.g. *Chavez v. Netflix, Inc.*, supra 162 Cal. App. 4th at 66 fn.11; *In re California Indirect Purchases* (October 22, 1998) WL1031494 at * 9(citing to *In re Milk Antitrust Litigation* (L.A. Sup. Ct. 1998) Civ. Case No. BC070061 (33 1/3% award); *In re Facsimile Paper Antitrust Litigation* (San Francisco Sup. Ct. 1997) Civ. Case No. BC0070061 (33 1/3% award) *In re Liquid Carbon Dioxide Cases* (San Diego Sup.Ct.1996) J.C.C.P. 3012 (33 1/3% award); *Romero v Producers Dairy Food, Inc.* (E.D. Cal. Nov. 14, 2007) WL 3492841 at * 4 (“fee awards in class actions average around one-third of the recovery.” (quoting *Newberg on Class Actions* § 14.6 (4th ed.2007)

Moreover, the percentage should be measured against the full fund established by the settlement and not upon the total value of the net settlement fund. *Williams v. MGM-Pathe Communications Co.*, (9th Cir. 1997)129 F.3d 1026, 1027. This method recognizes that the efforts of class counsel established the entire settlement, including non- monetary benefits, for the benefit of the class. *Id.* In the Ninth Circuit’s decision in *Williams*, the parties settled class action claims in favor of the class for a total settlement fund of \$4.5 million, and the district court awarded class counsel attorneys’ fees based upon “the class members’ claims against that fund. *Williams*, 129 F.3d at 1027. The class counsel in *Williams* contended that the district court erred and should have calculated their fee as one-third of the entire \$4.5 million settlement fund. *Id.* The Ninth Circuit agreed with class counsel, and determined that the district court’s award of a fee based solely upon the claims against the settlement fund was an abuse of its discretion.

Ninth Circuit courts have applied *Williams* in a variety of contexts, including claims-made settlements without a minimum or maximum recovery. See, e.g., *Browning v. Yahoo! Inc.*, (N.D. Cal. Nov. 16, 2007) WL 4105971 at *13–14(claims-made settlement with no minimum or maximum recovery); *Young v. Polo Retail*, (N.D. Cal. Mar. 28, 2007) WL 951821 at*14-24 (same); *Lopez v. Youngblood*, (E.D. Cal. Sept. 1, 2011) WL 10483569 at *32–43 (reversionary common fund with maximum recovery only). *Hopson v. Hanesbrands*

1 *Inc.*, (N.D. Cal. Apr. 3, 2009) 09 WL 928133 at *11; *Glass v. UBS Financial Services*, (N.D.
2 Cal. Jan. 26, 2007) WL 221862 at *16) (same).

3 In sum, Class Counsels' request for an award of attorney's fees in the amount of 33 1/3 %
4 of the maximum settlement amount is reasonable.

5
6 **B. Class Counsel's Requested Fees can be crossed checked with Lodestar for**
7 **Reasonableness:**

8 Class Counsel, who are experienced wage and hour class action attorneys, have put a
9 significant number of hours in this case which has been in litigation for over three years now.
10 Class Counsel had to conduct substantial investigation, research numerous issues and review and
11 analyze policies, independently analyze time records and wage statements, as well as dedicate
12 substantial time to analyze data, time records and payroll records. (Vahdat Decl. ¶ 15) Those
13 efforts, along with others involved in litigating this matter, negotiating the settlement, attempting
14 to obtain preliminary approval, preparing and filing the final approval papers, required a
15 significant amount of time and labor. (*Id.*) Since the inception of this matter, on or about May
16 2020, the total amount of attorney and paralegal time expended, and also estimated to be
17 expended in finalizing this matter, is 553.30 hours which equates to attorney fees of
18 \$377,310.00.

19 Ninth Circuit and California Courts award multipliers between 2 to 4 times the lodestar
20 to reward counsel for accepting the contingent risks of the litigation or obtaining good results.
21 See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with multiplier between 2.03
22 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting
23 reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v.*
24 *Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2
25 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014)
26 (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*,
27 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58
28 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL

1 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of
2 2.76 as falling within the "majority" range for risk multipliers). Courts multiply the lodestar by a
3 factor to account for the risk of non-payment, delay in payment, the quality of work, and the
4 novelty and difficulty of the issues involved. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1132
5 (2001).

6 Here, Plaintiff's counsel will have spent 553.30 hours and over \$377,310 in fees. (Decl.
7 of Counsel) The requested fee reflects a multiplier that is well within the range for risk
8 multipliers, especially when viewed in light of the results achieved by Plaintiff's Counsel on
9 behalf of the State and Aggrieved Employees. Indeed, failure to apply a risk multiplier in cases
10 that meet these criteria is an abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
11 Cir. 2016).

12 Plaintiff's Counsel submits that although a multiplier requested is reasonable in light of:
13 (1) the risk that Plaintiff's Counsel took in commencing the action; (2) the time, effort, and
14 expense that Plaintiff's Counsel has shown; (3) the skill and determination that Plaintiff's
15 Counsel has shown; (4) the value of the settlement that Plaintiff's Counsel has achieved for the
16 State of California and the Class members; and (5) the other cases that Plaintiff's Counsel has
17 turned down in order to devote its time and efforts to this matter. No multiplier is necessary in
18 the present case as the amount of attorney's sought is substantially below the Lodestar hours.
19 (Vahdat Decl. ¶ 16.)

20 In sum, Class Counsel litigated this matter diligently and took an enormous risk that they
21 would never be compensated for their time or reimbursed for the substantial costs they incurred
22 and in the end obtained a favorable settlement for Class Members. Thus, as per the Settlement
23 Agreement, Plaintiffs respectfully requests that this Court award Class Counsel's requested
24 attorneys' fees.

25 VI. CLASS COUNSEL'S REQUESTED COSTS ARE REASONABLE

26 Class Counsel has not only expended substantial time in diligently prosecuting this
27 Action but they have also expended considerable resources during litigation with no guarantee
28

1 that their costs would be reimbursed. The Settlement provides for reasonable actual costs of up
2 to \$30,000.00. (Exhibit A Page 4 Section 1.9) The total amount of costs incurred by all Class
3 Counsel and estimated to finalize this litigation is \$15,229.09. Thus, Class Counsel James
4 Hawkins respectfully requests that \$8,649.75 in costs be awarded as per the Settlement
5 Agreement. Class Counsel Tyler Kring respectfully requests that \$6,579.34, in costs be awarded
6 as per the Settlement Agreement. (Kring Decl. ¶ 8.; Hawkins Decl. ¶ 6.)

7
8 **VII. THE SETTLEMENT ADMINISTRATOR'S REQUESTED EXPENSES ARE REASONABLE**

9 ILYM was retained to administer the notice and claims process. ILYM's duties included,
10 among other things: a) preparing, printing and mailing of the class notice packets and b)
11 processing, remailing, skip tracing, and responding to counsel. (Islas Decl. ¶ 3.) In the
12 preliminary moving papers, Plaintiff requested that, as per the Settlement Agreement, the
13 Settlement Administrator be awarded costs of administering the settlement in an amount not to
14 exceed \$9,000.00. As per ILYM, the costs of administering the settlement are \$9,000.00 and
15 should be awarded. (Isalas Decl. ¶ 14.)

16 **VIII. CONCLUSION**

17 For all of the foregoing reasons, Plaintiffs request that the Court (1) grant final approval
18 of this Settlement and approve distribution to the settlement Class Members, (2) approve
19 payment of \$22,500.00 in payment to the LWDA for PAGA penalties, (3) approve Settlement
20 Administrator costs in the amount of \$9,000.00 (4) approve Class Counsel's request for an
21 award of \$245,000.00 in attorneys' fees and \$15,229.09 in costs, and (5) approve the request for
22 \$8,000.00 each to Donna Carone and Aaron Flott in enhancement payment for serving as named
23 plaintiffs and class representatives.

24 Finally, Plaintiff requests that the Court enter the [Proposed] Judgment and Final Order
25 Approving Settlement of Class Action submitted concurrently herewith.

26
27 Respectfully submitted,
28

1 DATED: September 8, 2022

JAMES HAWKINS APLC



2
3 By: _____

JAMES R. HAWKINS

SEAN S. VAHDAT

Attorneys for Plaintiffs
Aaron Flott

4
5
6
7
8
9
10 DATE: September 9, 2022

KRING & CHUNG, LLP



KYLE D. KRING

TYLER D. KRING

Attorneys for Plaintiff
DONNA CARONE

EXHIBIT A

JAMES HAWKINS APLC
JAMES R. HAWKINS (SB# 192925)
Sean Sasan Vahdat, Esq. (SBN# 239080) Of Counsel
9880 Research Drive, Suite 200
Irvine, CA 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

Attorneys for Plaintiff
Aaron Flott on behalf of herself and all others similarly situated

KYLE D. KRING, SBN 123378
TYLER D. KRING, SBN 325588
KRING & CHUNG, LLP
38 Corporate Park
Irvine, CA 92606-5105
Telephone: (949) 261-7700
Facsimile: (949) 261-8800

Attorneys for Plaintiff
Donna Carone on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, COMPLEX JUSTICE CENTER

**DONNA CARONE, on behalf of
all aggrieved employees, AARON
FLOTT, individually and
on behalf of the proposed class;**

Plaintiffs,

v.

**JEWISH HOME FOR THE
AGING OF ORANGE COUNTY,
INC., A California Corporation,
(Doing Business as HERITAGE
POINTE; and DOES 1 through 50,
inclusive,**

Defendants.

LEAD CASE No. 30-2020-01152256-CU-OE-CXC

CONSOLIDATED CASE NO. 30-2020-01141665-CU-OE-CXC

ASSIGNED FOR ALL PURPOSES TO:
Hon.: Randall Sherman

**AMENDEDMENT TO JOINT
STIPULATION OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: April 8, 2022
Time: 10:00 a.m.
Dept.: CX105

Complaint Filed: July 21, 2020

1 This Stipulation of Class Action Settlement and Release is entered into by Plaintiffs
2 Donna Carone and Aaron Flott (hereinafter collectively, "**Named Plaintiffs**"), on the one hand,
3 and Defendant Jewish Home for the Aging of Orange County dba Heritage Pointe (hereinafter,
4 "**Defendant**") on the other.

5 WHEREAS, Named Plaintiffs are former employees of Defendant;

6 WHEREAS, on or about May 12, 2020, Named Plaintiff Donna Carone gave written
7 notice to the California Labor and Workforce Development Agency pursuant to Cal. Lab. Code
8 § 2699.3(a), a true and correct copy of which is attached hereto as **Exhibit "1"** (hereinafter, the
9 "**Carone PAGA Notice**");

10 WHEREAS, on or about July 21, 2020, Plaintiff Donna Carone filed a complaint
11 (hereinafter, the "**Carone Complaint**") alleging a claim for violations of the Private Attorney
12 General Act of 2004, Cal. Lab. Code § 2698, *et seq.* ("**PAGA**") in the Superior Court of
13 California, County of Orange thereby initiating the civil action numbered 30-2020-01152256-
14 CU-OE-CXC in such Court, (hereinafter, the "**Carone PAGA Action**" or the "**Carone PAGA**
15 **Lawsuit**");

16 WHEREAS, on or about November 19, 2020, Defendant filed an answer to the Carone
17 Complaint (hereinafter, the "**Carone Matter Answer**").

18 WHEREAS, on or about June 4, 2020, Plaintiff Aaron Flott filed a complaint (hereinafter,
19 the "**Flott Complaint**") in the Superior Court of California, County of Orange thereby initiating
20 the civil action numbered 30-2020-01141665-CU-OE-CXC in such Court (hereinafter, the
21 "**Class Action**" or the "**Class Lawsuit**");

22 WHEREAS, on or about June 4, 2020, Plaintiff Aaron Flott gave written notice to the
23 California Labor and Workforce Development Agency pursuant to Cal. Lab. Code § 2699.3(a),
24 a true and correct copy of which is attached hereto as **Exhibit "2"** (hereinafter, the "**Flott PAGA**
25 **Notice**");

26 WHEREAS, on or about August 11, 2020, Plaintiff Aaron Flott filed a First Amended
27 Complaint (hereinafter, the "**Flott FAC**"), amending the Flott Complaint by adding a claim for
28 violations of the PAGA;

1 WHEREAS, on or about October 16, 2020, Defendant filed an answer to the Flott FAC
2 (hereinafter, the “**Flott Matter Answer**”);

3 WHEREAS, the Carone PAGA Notice, the Carone Complaint, the Flott PAGA Notice,
4 the Flott Complaint, and the Flott FAC shall be hereinafter collectively referred to as the
5 “**Complaint**”;

6 WHEREAS, the Carone Matter Answer and the Flott Matter Answer shall be hereinafter
7 referenced as the “**Answer**”;

8 WHEREAS, the Complaint and the Answer are incorporated herein by reference as
9 though fully set forth;

10 WHEREAS, the Named Plaintiffs and Defendant shall be hereinafter collectively referred
11 to as the “**Parties**”;

12 WHEREAS, to avoid the inherent risks and costs of litigation, the Parties want to
13 completely settle all claims that were or could have been asserted in the Complaint;

14 NOW THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE to settle all
15 such claims as follows:

16 **1. DEFINITIONS**

17 The terms defined above shall have the meanings therein given, for all purposes in this
18 Joint Stipulation of Class and PAGA Settlement, including in any exhibits hereto. And, the
19 following defined terms used in this Joint Stipulation of Class and PAGA Settlement and any
20 exhibits hereto will have the meanings given them below.

21 1.1. Agreement. “Agreement”, “Settlement”, and “Joint Stipulation” means this Joint
22 Stipulation of Class and PAGA Settlement.

23 1.2. Class. “Class,” “Class Members,” “Settlement Class,” or “Settlement Class
24 Members” shall mean all persons employed by Defendant in a Class Position, at any time during
25 the Class Period. The Parties have agreed to cap the number of Class Members to no more than
26 471 to the extent Defendant ends up employing new employees in a Class Position during the
27 Class Period (includes through the 471st hire of employees who worked during the Class Period).
28 As of the date of mediation, the number of Class Members that Defendant’s Counsel reported to

1 Class Counsel was 459. The Parties have agreed that this number may increase by no more than
2 five percent (5%) prior to the Date of Preliminary Approval. If the number of Class Members
3 reaches 471 prior to the Date of Preliminary Approval, then no additional employees employed
4 by Defendant in a Class Position after the number of Class Members reaches 471 shall be
5 included in the Class. Under no circumstance will the number of Class Members be greater than
6 471.

7 1.3. Class Administrator. "Class Administrator" means ILYM, Inc., a third party
8 professional class action claims administrator, jointly selected by the Parties and/or appointed by
9 the Court to perform the Class Administration Duties.

10 1.4. Class Administrator Declaration. "Class Administrator Declaration" shall mean a
11 declaration attesting, in detail, to the steps taken through the date of such declaration in
12 performing the Class Administration Duties, that the procedures contemplated in Sections 2.5
13 through 2.7 below are complete, and that the Class Administrator has all information needed to
14 perform any remaining Class Administration Duties, including calculation of the amounts of the
15 respective Eligible Class Member Shares.

16 1.5. Class Administration Costs. "Class Administration Costs" shall mean the fees and
17 expenses reasonably and necessarily incurred by the Class Administrator as a result of
18 performing the Class Administration Duties. Class Administration Costs shall be paid from the
19 Gross Settlement Amount. Based on an estimate provided by the Class Administrator based on
20 presently and reasonably available information, the Parties stipulate that Class Administration
21 Costs shall be up to \$9,000. Should any actual Class Administration Costs turn out to be less than
22 the projected amount, the Parties agree that the savings will be allocated to the Net Settlement
23 Amount, to be distributed to Eligible Class Members in proportion to their respective numbers
24 of Eligible Class Member Workweeks. Should any actual reasonable and necessary Class
25 Administration Costs be more than the above estimated amount, and the Parties stipulate that the
26 Class Administrator should be paid such amounts, Named Plaintiffs will apply to the Court for
27 an adjustment, with any additional Class Administration Costs to be paid from the Gross
28 Settlement Amount, accompanied by a corresponding reduction in other another element or other

elements of the Gross Settlement Amount, to be approved by the Court as part of Final Approval.

1.6. Class Administration Duties: “Class Administration Duties” shall mean the duties of the Class Administrator as set forth in this agreement and as may be ordered by the Court.

1.7. Class Certification. “Class Certification” shall mean certification of the Class pursuant to Cal. Code Civ. Proc. § 382 and other applicable law, for purposes of this Settlement only, without prejudice to Defendant’s ability to oppose or otherwise challenge such certification, except that Defendant shall not so oppose or otherwise challenge such certification for purposes of performing Defendant’s duties under this Settlement, which include to make all reasonable efforts to give such Settlement full force and effect.

1.8. Class Counsel. “Class Counsel” refers to Kring & Chung, LLP, including the attorneys in such firm, Kyle D. Kring (SBN 123378) and Tyler D. Kring (SBN 325588), and also to James Hawkins APLC, including attorneys in such firm, James R. Hawkins (SBN 192925) and Sean S. Vahdat (SBN 239080) and/or any such further attorneys for the Class and/or Named Plaintiffs as may appear in the action and/or be appointed by the Court.

1.9. Class Counsel Fees and Costs. “Class Counsel Fees and Costs” shall mean an amount of up to Two Hundred Forty Five Thousand United States Dollars and Zero Cents (\$245,000.00), or 33.333% (one-third) of the Gross Settlement Amount, in Class Counsel’s Fees subject to Court approval, plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than [\$30,000.00]. Class Counsel Fees and Costs shall be paid to Class Counsel from the Qualified Settlement Fund by the Class Administrator. Such payment of Class Counsel Fees and Costs shall be deemed to be full satisfaction of any obligation by Defendant to pay any attorney fees, attorney costs and/or other fees or costs to Named Plaintiffs, Class Members, and/or any of their attorneys in relation to the Action. Any future adjustments to the amount of the Class Counsel Fees and Costs, including by the Court, shall not constitute a basis for this Settlement being void or Void *Ab Initio*, unless such adjustment shall have the effect of increasing the Gross Settlement Amount, whereupon this Settlement will be voidable by Defendant as provided for in this Agreement.

1 1.10. Class Notice. "Class Notice" shall mean a notice to Class Members pursuant to
2 Rule 3.769(f) of the California Rules of Court, substantially in the form indicated in **Exhibit "5"**
3 hereto and distributed by the Class Administrator in accordance with Section 2.6 below.

4 1.11. Class Member Objection. "Class Member Objection" shall mean a Class
5 Member's objection made pursuant to the provisions of Section 2.7 below.

6 1.12. Class Member Objector. "Class Member Objector" shall mean a Class Member
7 who submits a Class Member Objection. A Class Member Objector shall not be considered an
8 Opt-Out unless he or she submits a valid Opt-Out Request.

9 1.13. Class Member Work Week. "Class Member Work Week" shall mean a Work
10 Week in which a Class Member was employed by Defendant in California in a Class Position,
11 for all or part of such Work Week. For purposes of this Settlement, every Class Member shall be
12 deemed to have performed at least some work for Defendant during each of their respective Class
13 Member Work Weeks that wholly or partially occurred during the Class Period. The Class
14 Administrator shall calculate the total number of Class Member Work Weeks with reference to
15 Class Members' dates of employment in Class Positions during the Class Period, and without
16 regard or reference to time records, records of leave of absence, sick time, or other temporary
17 absences from work.

18 1.14. Class Period. "Class Period" shall mean the time period from June 4, 2016 to the
19 Date of Preliminary Approval.

20 1.15. Class Position. "Class Position" shall mean a non-exempt, hourly-paid
21 employment position with Defendant in California.

22 1.16. Court. "Court" refers to the Superior Court of California, in and for the County of
23 Orange, or any such further courts, arbitrators, or other judicial bodies that may in the future
24 obtain valid jurisdiction over the Action.

25 1.17. Date of Preliminary Approval. The "Date of Preliminary Approval" means the
26 day on which the Court enters an order of Preliminary Approval of the Settlement.

27 1.18. Defendants' Counsel. "Defense Counsel" or "Counsel for Defendants" shall mean
28 Fisher & Phillips LLP, 2050 Main Street, Suite 1000, Irvine, California 92614, and the attorneys

1 in such firm including Usama Kahf (State Bar No. 266443) and Lauren Roseman (State Bar No.
2 316800).

3 1.19. Effective Date. "Effective Date" shall mean the date on which all of the following
4 have occurred:

5 1.19.1. All provisions of Rule 3.769 of the California Rules of Court have been
6 complied with;

7 1.19.2. Entry by the Court of Preliminary Approval;

8 1.19.3. Receipt by Defendant of written notice of such entry of Preliminary
9 Approval pursuant to the California Code of Civil Procedure and the California Rules of Court,
10 or Defendant's express waiver of such notice;

11 1.19.4. Completion of all those Class Administration Procedures which this
12 Settlement dictates will take place in advance of the Final Approval Hearing;

13 1.19.5. The Court setting and conducting a Final Approval Hearing pursuant to
14 Rule 3.769(g) of the California Rules of Court;

15 1.19.6. Entry by the Court of an order of Final Approval of the Settlement and a
16 Judgment pursuant to Rule 3.769(h) of the California Rules of Court;

17 1.19.7. Receipt by Defendant of written notice of such entry of Final Approval
18 and Judgment, or Defendant's express waiver of such notice; and

19 1.19.8. Final Approval has become Final. For purposes of this provision, "Final"
20 means:

21 1.19.8.1. if no Class Member Objections are made and/or are made
22 and withdrawn, the date the Court enters its order granting Final Approval of the settlement and
23 its Judgment pursuant to Rule 3.769(h) of the California Rules of Court;

24 1.19.8.2. if any Class Member Objections are made and not
25 withdrawn, and if no appeal, review or writ is sought from the Judgment, the sixty-first (61st)
26 day after entry of Judgment;

27 1.19.8.3. if rehearing, reconsideration and/or appellate review of the
28 Judgment is sought, the day after any and all avenues of rehearing, reconsideration and appellate

1 review have been exhausted and no further rehearing, reconsideration or appellate review is
2 permitted, and the time for seeking such review has expired, and the Judgment has not been
3 modified, amended or reversed in any way; or

4 1.19.8.4. if a Class Member Objector appeals from any ruling by the
5 Court overruling such objection in whole or in part, the date when the Court's order of Final
6 Approval and final Judgment have been affirmed on appeal;

7 and

8 1.19.9. The existence of a sufficient number of Eligible Class Members such that
9 the number of Class Members who, as of the date of the completion of all Class Administration
10 Procedures are not Eligible Class Members, does not exceed five percent (5%) of the total Class
11 Members. If the number of Class Members who are not Eligible Class Members exceeds such
12 percentage, then Defendant shall have the absolute right (but not the obligation) to deem this
13 Settlement Void Ab Initio upon written notice to Class Counsel, the Court, and the Class
14 Administrator. Should Defendant exercise its right(s) under this clause, Defendant shall be
15 responsible for the costs of administration, if any. If Defendant, within five days of the Class
16 Administrator's written notice to all Parties that the number of Class Members who are not
17 Eligible Class Members exceeds 5% of all Class Members, fail to advise Named Plaintiffs in
18 writing that they will withdraw from the Settlement, this circumstance will not determine the
19 Effective Date.

20 1.20. Eligible Class Member. "Eligible Class Member" means a Class Member who is
21 not an Opt-Out.

22 1.21. Eligible Class Member Share. "Eligible Class Member Share" shall mean the
23 portion of the Net Settlement Amount that will be allocated to each Eligible Class Member,
24 according to the following method: first, dividing the Net Settlement Amount by the total number
25 of Eligible Class Member Work Weeks to arrive at the Eligible Work Week Rate, and then
26 second, by multiplying the resulting Eligible Work Week Rate by the total number of Eligible
27 Class Member Work Weeks for each respective Eligible Class Member. Payment of Eligible
28 Class Member Shares shall be subject to legally required withholdings, deductions, and

1 contributions. As to the Named Plaintiffs, the amount of their Eligible Class Member Shares is
2 in addition to the Named Plaintiffs' Enhancement.

3 1.22. Eligible Class Member Work Week. "Eligible Class Member Work Week" shall
4 mean a Class Member Work Week during which an Eligible Class Member worked in a Class
5 Position.

6 1.23. Eligible Class Member Work Week Rate. "Eligible Class Member Work Week
7 Rate" shall mean the amount calculated by the Class Administrator as due to each Eligible Class
8 Member for each Eligible Class Member Work Week.

9 1.24. Final Approval. "Final Approval" shall mean an order of the Court finally
10 approving this Settlement pursuant to Rule 3.769 of the California Rules of Court and granting
11 Class Certification.

12 1.25. Final Approval Hearing. "Final Approval Hearing" shall mean the hearing on a
13 motion for Final Approval, scheduled and conducted pursuant to Rule 3.769 of the California
14 Rules of Court.

15 1.26. Gross Settlement Amount. "Gross Settlement Amount" means the maximum
16 possible amount Defendant shall pay as a consequence of this Settlement excluding any separate
17 payments to Flott and/or Carone for settlement of their individual claims as both have separately
18 executed individual agreements with Defendant. The Gross Settlement Amount is Seven
19 Hundred Thirty-Five Thousand United States Dollars (\$735,000.00).

20 1.27. Judgment. "Judgment" means a Judgement of the Court in accordance with Rule
21 3.769(h) of the California Rules of Court.

22 1.28. LWDA. The "LWDA" shall mean the California Labor and Workforce
23 Development Agency.

24 1.29. LWDA Fund. "LWDA Fund" shall mean the amount payable to the LWDA
25 pursuant to the Joint Stipulation of Settlement, which shall be Twenty-Two Thousand Five-
26 Hundred United States Dollars (\$22,500). This amount shall be deemed to be seventy-five
27 percent (75%) of an overall amount of Thirty Thousand United States Dollars (\$30,000) of the
28 Gross Settlement Amount which shall be allocated to PAGA penalties. The remaining amount of

1 such allocation, Seven Thousand Five-Hundred United States Dollars (\$7,500) shall be deemed
2 part of the Net Settlement Amount and shall be accordingly distributed to the PAGA Class
3 Members as a proportionate part of their PAGA Class Member Shares, proportionate to their
4 number of PAGA Class Member Pay periods.

5 1.30. LWDA Fund Remainder. "LWDA Fund Remainder" shall mean the amount of
6 Seven Thousand Five-Hundred United States Dollars (\$7,500) referenced in Section 1.29 above.

7 1.31. Named Plaintiffs Enhancement. "Named Plaintiffs Enhancement" shall mean the
8 respective amounts approved by the Court to be paid to Named Plaintiffs in addition to their
9 respective individual Eligible Class Member Shares, in consideration for their effort in coming
10 forth as a class and PAGA representative. The Parties agree that the Named Plaintiffs
11 Enhancement shall be Eight Thousand United States Dollars (\$8,000) for each Named Plaintiff,
12 for a total of Sixteen Thousand United States Dollars (\$16,000), subject to the Court's approval,
13 to be paid via 1099. No additional payment will be made to Carone and Flott besides the Named
14 Plaintiffs Enhancement, as Carone and Flott previously signed an individual settlement and
15 general release with Defendant.

16 1.32. Net Settlement Amount. "Net Settlement Amount" shall mean the Gross
17 Settlement Amount minus (a) Class Administration Costs, (b) Class Counsel Fees and Costs; (c)
18 the LWDA Fund, and (d) the Named Plaintiffs Enhancement.

19 1.33. Notice Packet: "Notice Packet" shall mean a packet mailed by the Class
20 Administrator pursuant to Section 2.6 below, containing the Class Notice, and any other
21 accompanying documents required by this Settlement and/or the Court's Order of Preliminary
22 Approval.

23 1.34. Opt-Out(s). "Opt-Out(s)" refers to Class Members who have submitted an Opt-
24 Out Request.

25 1.35. Opt-Out Request. "Opt-Out Request" means a timely and valid written request for
26 exclusion from the Settlement by a Class Member, pursuant to the provisions of Section 2.7
27 below.

28 1.36. PAGA. "PAGA" means the California Labor Code Private Attorneys General Act

1 of 2004, Cal. Lab. Code §§ 2698, *et seq.*

2 1.37. PAGA Class. “PAGA Class” or “PAGA Class Members” shall mean all persons
3 employed by Defendant in a Class Position at any time during the PAGA Period.

4 1.38. PAGA Class Member Share. “PAGA Class Member Share” shall mean the
5 portion of the LWDA Fund Remainder that will be allocated to each PAGA Class Member,
6 according to the following method: first, dividing the LWDA Fund Remainder by the total
7 number of PAGA Class Member Pay Periods to arrive at the PAGA Pay Period Rate, and then
8 second, by multiplying the resulting PAGA Pay Period Rate by the total number of PAGA Class
9 Member Pay Periods for each respective PAGA Class Member. Payment of PAGA Class
10 Member Shares shall be not subject to legally required withholdings, deductions, and
11 contributions.

12 1.39. PAGA Class Member Pay Period. “PAGA Class Member Pay Period” shall mean
13 a Class Member Pay Period during which a PAGA Class Member worked in a Class Position.

14 1.40. PAGA Class Member Pay Period Rate. “PAGA Class Member Pay Period Rate”
15 shall mean the amount calculated by the Class Administrator as due to each PAGA Class Member
16 for each PAGA Class Member Pay Period.

17 1.41. PAGA Period. “PAGA Period” shall mean the time period from May 6, 2019 to
18 the Date of Preliminary Approval.

19 1.42. Party. “Party” shall mean, individually, one of the Parties, and each of them.

20 1.43. Preliminary Approval. “Preliminary Approval” shall mean an order of the Court
21 preliminarily approving this Settlement pursuant to Rule 3.769 of the California Rules of Court,
22 granting conditional Class Certification for purposes of the Class Administration Procedures,
23 certifying Class Counsel, approving the form of Class Notice, establishing Class Administration
24 Procedures, and (if the Court shall do so) scheduling a Final Approval Hearing.

25 1.44. QSF / Qualified Settlement Fund. “QSF” or “Qualified Settlement Fund” shall
26 mean the Qualified Settlement Fund established by the Class Administrator for the payment of
27 the Settlement Payment Amount.

28 1.45. Released Claims. The term “Released Claims” shall have the meaning set forth in