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Attorneys for Plaintiffs

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

**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

*Assigned for all purposes to the Honorable
Randall J. Sherman
Dept. CX-105*

**DECLARATION OF TYLER D. KRING
IN SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
RELEASE**

Date: January 14, 2022
Time: 10:00 a.m.
Dept.: CX105

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I, Tyler D. Kring, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts in the State of
 2. nia. I am an associate attorney with the law firm of KRING & CHUNG, LLP, counsel of record
 3. Anna Carone in this action. I have personal knowledge of the facts set forth in this Declaration and,
 4. and as a witness, could and would testify competently to such facts under oath.

2. On July 21, 2020, Donna Carone filed a PAGA action (CASE No. 30-2020-01152256-CXC, *Carone v. Jewish Home for the Aging of Orange County*) in the Superior Court of the County of Orange.

3. Plaintiff Donna Carone and Plaintiff Aaron Flotts’ (“Plaintiffs”) cases were consolidated Parties’ stipulation, and the Carone action was deemed the lead case on May 18, 2021, by the Honorable Judge Kirk Nakamura. On October 1, 2021, the Court considered the parties Joint Case Management Statement and authorized the filing of the Consolidated Complaint. On October 27, 2021, the Court accepted the parties’ Consolidated Complaint (hereinafter referred to as the “Consolidated Complaint”). The Plaintiffs’ Consolidated Complaint alleges the following causes of actions: 1) Failure to pay minimum wages; (2) Failure to pay overtime; (3) Failure to provide meal periods; (4) Failure to provide rest periods; (5) Failure to timely pay wages; (6) Failure to provide accurate wage statements; (7) Failure to indemnify necessary expenditures; (8) Unfair competition; (9) and violations pursuant to the California Labor Code section 2699, *et seq.* On or about November 19, 2020, Defendant filed an answer to the Carone action.

4. Plaintiff Carone, myself as her respective counsel, engaged in months of extensive meet and confer efforts with Defendant's counsel to understand and evaluate the extent of Defendant's potential PAGA liability.

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1 5. Prior to serving formal discovery, myself and counsel for Plaintiff Flott met and
2 conferred with Defendant's counsel and agreed to serve a request for informal discovery based on a
3 sampling size that would allow Plaintiffs' counsel to do a damage analysis. Defendant responded and
4 provided us with informal discovery in or around January 2021 through February 11, 2021. This
5 included Defendant's data regarding time sheets and payroll records, memos, and other valuable
6 documents. Plaintiffs' counsel reviewed this discovery and requested additional records to facilitate a
7 meaningful mediation and Defendant provided supplemental records. With the information provided,
8 and with the information previously obtained from named Plaintiffs, the parties agreed to attend
9 mediation.

10 6. After months of discovery and settlement discussions on or about February 11, 2021, the
11 Parties attended mediation via Zoom with Steven G. Pearl, Esq., an experienced class action wage and
12 hour mediator. As a result of the parties' preparation the parties reached a resolution and signed the
13 Memorandum of Understanding (MOU). After months of ironing out the full details of the settlement
14 agreement (and also navigating the interruptions caused by COVID's impact on counsel and their
15 clients), the parties finalized and executed the settlement agreement on or about July 20, 2021.

16 7. Class Counsel is convinced that the proposed settlement is in the best interests of the
17 class based on the negotiations and a detailed knowledge of the issues present in this action. The length
18 and risks of trial and other normal perils of litigation that may have impacted the value of the claims
19 were all weighed in reaching the proposed settlement. In addition, the affirmative defenses asserted by
20 Defendant, the prospect of a potential adverse summary judgment ruling, class certification issues, as
21 well as the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of
22 establishing specific damages and various possible delays and appeals, were also carefully considered by
23 Class Counsel in agreeing to the proposed settlement.

24 8. As a result of the arms' length negotiations facilitated by the experienced mediator,
25 Steven G. Pearl, Esq., the Parties reached a fair compromise and settlement of this case described in the
26 Stipulation of Settlement and Release presented for preliminary approval. Pursuant to the Stipulation of
27 Settlement and Release, the Parties have agreed (subject to and contingent upon the approval of this
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1 Court), that this action be settled and compromised for the total Maximum Settlement Amount (“MSA”)
2 of SEVEN HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$735,000). This sum includes,
3 subject to Court approval, (a) attorneys’ fees in the sum of up to thirty-three and One third (33 and
4 1/3%) percent of the MSA to compensate Class Counsel for all of the work already performed in this
5 action and all of the work remaining to be performed in documenting the settlement, administering the
6 settlement and securing Court approval; at Final approval Counsel will provide billing records in support
7 of its fees, and documentation for its costs. Counsel for Flott and Carone have a fee splitting
8 arrangement, and the fee splitting agreement has been signed by Flott and Carone; (b) litigation costs not
9 to exceed \$30,000; (c) class representative enhancement award to the named plaintiffs Donna Carone
10 and Aaron Flott in the sum of eight thousand dollars (\$8,000.00) each, in consideration for serving as a
11 class representative, work performed, documents provided, risks undertaken for the payment of
12 attorneys’ fees and costs in the event they had been unsuccessful in this matter. Further at Final
13 Approval, Plaintiffs will submit declarations addressing the factors set forth in *Golba v. Dick’s Sporting*
14 *Goods, Inc.* (2015) 238 Cal. App. 4th 1251, 1272 and *Clark v. Am. Residential Servs. LLC* (2209) 175
15 Cal.App.4th 785, 804, including an estimate of the hours spent on this litigation; (d) claims
16 administration expenses estimated to be \$9,000; and \$22,500.00 to the California Labor & Workforce
17 Development Agency, representing 75% of the \$30,000.00 allocated to the settlement of Plaintiffs’
18 claim for penalties under PAGA, and \$7,500.00 to Class Members, representing 25% of the \$30,000.00
19 allocated to the settlement of Plaintiffs’ claim for penalties under PAGA.

20 9. After all court-approved deductions from the MSA, it is estimated that \$412,500 will be
21 available for distribution to participating Class Members (the “Net Settlement Fund” or “NSF”). The
22 total number of Class members shall not exceed 471; the average Class Member is expected to receive
23 \$875.79. This was calculated by as follows ($\$412,500.00 \div 471$). However, we should expect the shares
24 to be uneven, since some people worked during a shorter period of time, and others may have worked
25 for the entire class period.

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1 10. This is a Common Fund Non-Reversionary Settlement. The participating Class Members
2 are those Settlement Class Members who do not submit an opt-out request. Class Members who don't
3 submit an opt-out request will receive their proportional share of the NSF based upon the number of
4 workweeks he or she worked during the Class Period in relation to the number of work weeks worked
5 by all members of the Class. The formula will be calculated by first, dividing the Net Settlement
6 Amount by the total number of Eligible Class Member Work Weeks to arrive at the Eligible Work Week
7 Rate, and then second, by multiplying the resulting Eligible Work Week Rate by the total number of
8 Eligible Class Member Work Weeks for each respective Eligible Class Member.

9 11. The Settlement affords the Class prompt and substantial relief, while avoiding significant
10 legal and factual hurdles that otherwise may have prevented the Class from obtaining any recovery at
11 all. The outcome of class certification, trial and any attendant appeals, were inherently uncertain. This
12 is particularly true given the quantity of conflicting data, which calls into question the sustainability of
13 class certification, and the uncertain outcome given the standards handed down by the California
14 Supreme Court in *Brinker Restaurant Corp. v. Super. Ct.*

15 12. Since the complaint was filed, the Parties have engaged in discovery and extensive
16 mediation preparation, formal informal exchange of information. The Parties thoroughly investigated
17 and evaluated the factual strengths and weaknesses of this case before reaching the settlement, and
18 engaged in sufficient investigation and informal discovery to support the Settlement. The Parties began
19 discussions concerning the possibility of mediating a global settlement of these actions, and agreed to go
20 to private mediation. After agreeing to mediate, the Defendant provided further documentation and
21 evidence including sampling. Jewish Home produced significant amounts of information, payroll and
22 time records, total number of workweeks and policies.

23 13. We associated with co-counsel who is experienced in wage and hour employment class
24 action cases and has prosecuted numerous cases on behalf of employees.

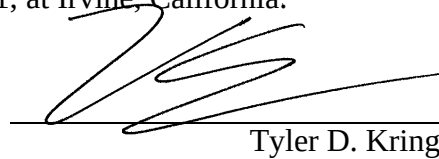
25 14. Counsel on both sides share the view that this is a fair and reasonable settlement in light
26 of the complexities of the case, the state of the law and uncertainties of class certification and litigation,
27 and the excellent benefit for the Class. Given the risks inherent in litigation and the defenses asserted,
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1 this settlement is fair, adequate, and reasonable and in the best interests of the class, and should be
2 preliminarily approved.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct.

5 Executed on this 14th day of December, 2021, at Irvine, California.

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Tyler D. Kring