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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:

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

CONSOLIDATED CASE:

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

ASSIGNED FOR ALL PURPOSES TO:
Hon.: Randal Sherman

**MEMORANDUM OF POINTS AND
AUTHORITIES 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

Complaint Filed: 9/18/18

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3 **I. INTRODUCTION**

4 This motion is brought seeking preliminary approval of a proposed wage and hour class
5 action and PAGA settlement by Plaintiffs Aaron Flott and Donna Carone ("Plaintiffs"),
6 individually and on behalf of the alleged class of non-exempt current and former employees of
7 Defendant Jewish Home For the Aging of Orange County, Inc. Doing Business As Heritage
8 Pointe, hereinafter ("Jewish Home" or "Defendant") from June 4, 2016 through (preliminary
9 approval hearing date). For the reasons described below, Plaintiffs and Jewish Home, ("the
10 Parties") request that the Court find their class action and PAGA settlement to be fair, adequate
11 and reasonable, and grant the Parties' proposed order preliminarily approving the settlement.

12 **I. FACTS AND PROCEDURE**

13 **A. The Litigation**

14 On June 4, 2020 Class Representative Aaron Flott filed (Class Action Case No.
15 30-2020-01141665-CU-OE-CXC) entitled Flott v. *Jewish Home of Orange County, Inc.*, in the
16 Superior Court of the State of California, County of Orange. On August 8, 2020 Flott filed an
17 Amended complaint adding a PAGA cause of action. On July 21, 2020, Class Representative
18 Donna Carone also filed a PAGA action (CASE No. 30-2020-01152256-CU-OE-CXC, *Carone v.*
19 *Jewish Home for the Aging of Orange County*) in the Superior Court of the State of California,
20 County of Orange. The Class and Representative actions are both on behalf of themselves and
21 all other Jewish Home non-exempt employees in California at any time during the Class Period,
22 June 4, 2016, through the date of resolution.¹ The "Class Members" were later defined as follows
23 for purposes of settlement: All Current and Former non-exempt employees of Defendant who
24 worked in the State of California anytime between June 4, 2016, and the date of entry of the
25 Preliminary Approval Hearing Date in this Action. (Vahdat Declaration ¶ 3; Kring Declaration
26 ¶ 2).

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

1 The cases were subsequently consolidated by the parties' stipulation, and the
2 Carone 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: 1) Failure
7 to pay minimum wages; (2) Failure to pay overtime; (3) Failure to provide meal periods; (4)
8 Failure to provide rest periods; (5) Failure to timely pay wages; (6) Failure to provide accurate
9 wage statements; (7) Failure to indemnify necessary expenditures; (8) Unfair competition; (9) and
10 violations pursuant to Private Attorneys General Act of 2004 ("PAGA"), Labor Code
11 section 2699, *et seq.* (Vahdat Declaration ¶4-5; Kring Declaration ¶ 3).

12 On or about October 26, 2020, Defendant Jewish Home filed an answer to the Flott action.
13 On or about November 19, 2020, Defendant filed an answer to the Carone action. Throughout the
14 litigation, Defendant denied and continues to deny any liability. (Vahdat Declaration ¶6; Kring
15 Declaration ¶ 3).

16 **B. Discovery Completed**

17 Plaintiff Flott, through his respective counsel, prepared discovery in the form of
18 Production of Documents, Request for Admissions, Special Interrogatories, and Form
19 Interrogatories General and Employment. (Vahdat Declaration ¶ 6). Plaintiff Carone, through
20 her respective counsel, engaged in months of extensive meet and confer efforts with Defendant's
21 counsel to understand and evaluate the extent of Defendant's potential PAGA liability. (Kring
22 Declaration ¶ 4). Prior to serving formal discovery counsel for Plaintiff Flott and Carone met and
23 conferred with Defendant's counsel and agreed to serve a request for informal discovery based on
24 a sampling size that would allow Plaintiff's counsel to do a damage analysis. (Vahdat Declaration
25 ¶ 6; Kring Declaration, ¶ 5). Defendant responded and provided Plaintiffs' counsel with informal
26 discovery in or around January 2021 through February 11, 2021. This included Jewish Homes'
27 Policies, data regarding time sheets and payroll records, memos, and other valuable documents.

1 Plaintiffs' counsel reviewed this discovery and requested additional records to facilitate a
2 meaningful mediation, and Jewish Home provided supplemental records. (Vahdat Declaration ¶
3 6; Kring Declaration ¶ 5). With the information provided, and with the information previously
4 obtained from named Plaintiffs, the parties agreed to attend mediation.

5 **C. Mediation**

6 After months of discovery and settlement discussions on or about February 11,
7 2021, the Parties (Flott, Carone and Jewish Home) attended mediation via Zoom, with Steven G.
8 Pearl, Esq., an experienced class action wage and hour mediator. As a result of the parties'
9 preparation the parties did reach a resolution and signed the Memorandum of Understanding
10 (MOU). After months of ironing out the full details of the settlement agreement (and also
11 navigating the interruptions caused by COVID's impact on counsel and their clients), the parties
12 finalized and executed the settlement agreement on or about July 20, 2021. (Vahdat Declaration ¶
13 7; Kring Declaration ¶ 6). Class Counsel is convinced that the proposed settlement is in the best
14 interests of the class based on the negotiations and a detailed knowledge of the issues present in
15 this action. The length and risks of trial and other normal perils of litigation that may have
16 impacted the value of the claims were all weighed in reaching the proposed settlement. In
17 addition, the affirmative defenses asserted by Defendant, the prospect of a potential adverse
18 summary judgment ruling, class certification issues, as well as the uncertainty of class
19 certification, the difficulties of complex litigation, the lengthy process of establishing specific
20 damages and various possible delays and appeals, were also carefully considered by Class
21 Counsel in agreeing to the proposed settlement. (Vahdat Declaration ¶ 8; Kring Declaration, ¶ 7).

22 **II. THE PROPOSED SETTLEMENT**

23 **A. Calculation of the Class Members' Individual Settlement Payment**

24 As a result of the arms' length negotiations facilitated by the experienced
25 mediator, Steven G. Pearl, Esq., the Parties reached a fair compromise and settlement of this case
26 described in the Stipulation of Settlement and Release presented for preliminary approval. A true
27

1 and correct copy of the Stipulation of Settlement and Release is attached hereto as “**Exhibit A**”.
2 (Vahdat Declaration ¶ 9; Kring Declaration ¶ 8).

3 Pursuant to the Stipulation of Settlement and Release, the Parties have agreed
4 (subject to and contingent upon the approval of this Court), that this action be settled and
5 compromised for the total Maximum Settlement Amount (“MSA”) of SEVEN HUNDRED
6 THIRTY FIVE THOUSAND DOLLARS (\$735,000), which sum includes, subject to Court
7 approval, (a) attorneys’ fees in the sum of up to thirty three and One third (33 and 1/3%) percent
8 of the MSA to compensate Class Counsel for all of the work already performed in this action and
9 all of the work remaining to be performed in documenting the settlement, administering the
10 settlement and securing Court approval; at Final approval Counsel will provide billing records in
11 support of it’s fees, and documentation for it’s costs. Counsel for Flott and Carone have a fee
12 splitting arrangement, and the fee splitting agreement has been signed by Flott and Carone; (b)
13 litigation costs not to exceed \$30,000; (c) class representative enhancement award to the named
14 plaintiffs Donna Carone and Aaron Flott in the sum of Eight thousand dollars (\$8,000.00) each,
15 in consideration for serving as a class representative, work performed, documents provided, risks
16 undertaken for the payment of attorneys’ fees and costs in the event they had been unsuccessful in
17 this matter. Further at Final Approval, Plaintiffs will submit declarations addressing the factors
18 set forth in *Golba v. Dick’s Sporting Goods, Inc.* (2015) 238 Cal. App. 4th 1251, 1272 and *Clark*
19 *v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 804, including an estimate of the
20 hours spent on this litigation; (d) claims administration expenses estimated to be \$9,000; and
21 \$22,500.00 to the California Labor & Workforce Development Agency, representing 75% of the
22 \$30,000.00 allocated to the settlement of Plaintiffs’ claim for penalties under PAGA, and
23 \$7,500.00 to Class Members, representing 25% of the \$30,000.00 allocated to the settlement of
24 Plaintiffs’ claim for penalties under PAGA. (Exh. A, §§ VI (d) and IV (b); Vahdat Declaration,
25 ¶10-11; Kring Declaration ¶ 8).

26 After all court-approved deductions from the MSA, it is estimated that \$412,500
27 will be available for distribution to participating Class Members (the “Net Settlement Fund” or
28

1 “NSF”). (Vahdat Declaration, ¶12; Kring Declaration ¶ 9). The total number of Class members
2 shall not exceed 471; the average Class Member is expected to receive \$875.79. This was
3 calculated by as follows ($\$412,500.00 \div 471$). However, we should expect the shares to be
4 uneven, since some people worked during a shorter period of time, and others may have worked
5 for the entire class period.

6 This is a Common Fund Non-Reversionary Settlement. The participating Class
7 Members are those Settlement Class Members who do not submit an opt-out request. (Exh. A,
8 § 1.20). Class Members who don’t submit an opt-out request will receive their proportional share
9 of the NSF based upon the number of workweeks he or she worked during the Class Period in
10 relation to the number of work weeks worked by all members of the Class. The formula will be
11 calculated by first, dividing the Net Settlement Amount by the total number of Eligible Class
12 Member Work Weeks to arrive at the Eligible Work Week Rate, and then second, by multiplying
13 the resulting Eligible Work Week Rate by the total number of Eligible Class Member Work
14 Weeks for each respective Eligible Class Member. (Exh. A, pp. 7, § 1.21; a true and correct copy
15 of the Notice of Class Action Settlement is attached hereto as “**Exhibit B**”). (Vahdat Declaration,
16 ¶13; Kring Declaration ¶ 10).

17 At the Final Approval hearing, and upon completion of Class Administrator's
18 review and analysis, Plaintiff's counsel will submit the approximate amount that each Class
19 Member will receive.

20 **IV. ADMINISTRATION OF NOTICE, CLAIMS AND OBJECTIONS**

21 Within thirty days following the Court’s grant of Preliminary Approval, Defendant
22 will transmit to the appointed Claims Administrator the class data list containing the names, last
23 known addresses, social security numbers, and the Class member’s first and last date of
24 employment, of all identified class members. (Exh. A; § 2.5). Within ten (10) days thereafter, the
25 Claims Administrator will mail to each Class Member a Notice of Proposed Class Action
26 Settlement. (Exh. A, § 2.6). In the event of returned or non-deliverable Notice Packets, the
27 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
28

1 Notice Packet. (*Id.*). The proposed Notice of Pendency of Class Action and Settlement, and the
2 instructions therein, which are subject to approval, is written in plain language and is attached to
3 the Stipulation of Settlement and Release (Exh. A and Exh. B).

4 All Class Members will have 45 days of the initial mailing of the Notice to submit
5 a request to be excluded, or to Challenge the Calculations of their proposed settlement payment,
6 and/or to file objections. The claims administrator will resolve any disputes and may adjust the
7 number of qualified weeks and resulting individual settlement payment, subject to final review by
8 the Court. (Exh. A, §§ 2.7.1, 2.7.4; Exh. B).

9 The Notice will be in English only, because the Class members worked in
10 hospitality, dealing with English speaking clients, and they had to be proficient in the English
11 Language.

12 V. ARGUMENT

13 A. Class Action Settlements are Subject to Court Review and Approval Under 14 the California Rules of Court

15 Rule 3.769 requires court approval for class action settlements. “Before final
16 approval, the court must conduct an inquiry into the fairness of the proposed settlement.”
17 (California Rules of Court, rule 3.769 (g).) It further requires a noticed motion for preliminary
18 approval of class settlements:

19 (a) A settlement or compromise of an entire class action, or a
20 cause of action in a class action, or as to a party, requires the
21 approval of the court after hearing.

22 (c) Any party to a settlement agreement may serve and file a
23 written notice of motion for preliminary approval of the settlement.
24 The settlement agreement and proposed notice to class members
25 must be filed with the motion, and the proposed order must be
26 lodged with the motion.

27 California courts favor settlement. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231,
28 236 (1976). In approving class action settlements, courts have broad powers to determine
whether a proposed settlement is fair under the circumstances of the case. *Mallick v. Super. Ct.*,
89 Cal. App. 3d 434, 438 (1979); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-

235 (2001). Courts act within their discretion in approving settlements which are fair, not collusive, and take into account “all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions.” *In re Beef Indus. Antitrust Litig.*, 607 F.2d 167, 179 (5th Cir. 1979). *See also Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n*, 452 U.S. 905 (1981). Where a settlement is reached on terms agreeable to all Parties, a court should disapprove of the settlement “only with considerable circumspection.” *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481(E.D. Pa. 1975).

B. The Settlement Is Fair, Reasonable and Adequate

In deciding whether to approve a proposed class action settlement under California Code of Civil Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801(1996) [quoting *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982)]. The trial court considers all relevant factors, such as the following:

the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. *Id.*

The court’s primary function is to determine that the Settlement is not the product of fraud, overreaching, or collusion, and taken as a whole, is fair, reasonable and adequate to all concerned. *Id.* at 1801.

A proposed class action settlement is presumed fair under the following circumstances: (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery were 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 1802. The Declarations of Class Counsel Sean S. Vahdat, James R. Hawkins, and Tyler D. Kring (“Vahdat, Hawkins, and Kring Declarations”) filed concurrently herewith demonstrate that the proposed settlement was the 1) product of serious, informed, and non-collusive negotiations,

1 overseen by an experienced and well-respected mediator, 2) that the class is represented by
2 experienced counsel, and 3) that the Parties exchanged a significant amount of information such
3 that Plaintiffs and their respective counsel are able to make an informed recommendation about
4 the proposed settlement. The fourth factor pertaining to the percentage of objectors cannot be
5 known until after the close of the claims process. Thus, at this stage, the proposed settlement is
6 presumed to be fair and should be preliminary approved.

7 **C. The Amount of the Settlement is a Fair Compromise of Vigorously Contested,**
8 **Factually Complex Claims Subject to Many Legal Uncertainties**

9 There are significant legal uncertainties associated with the principal claims
10 alleged in this action for example whether the meal and rest breaks were made available and not
11 taken, whether Plaintiffs failed to provide notice to Defendant as to their out-of-pocket expenses
12 and whether such expenses were reasonable and necessary, and whether the class members were
13 not paid for all hours worked and, if so, how much unpaid work could even be identified. Jewish
14 Home will pay a total Maximum Settlement Amount of up to \$735,000.00 making available after
15 Court-approved deductions of the items referenced above, an estimated \$412,500.00 for
16 distribution to the Settlement Class Members.

17 **1) Plaintiffs' Claims and Jewish Home's Defenses**

18 Plaintiffs alleged that Defendant violated various California Labor Code sections
19 relating to the failure to pay minimum wages and overtime, (Lab. Code §§ 1194 and 510), failure
20 to provide rest periods and/or meal periods or compensation in lieu thereof (Lab. Code §§ 226.7
21 and 512), failure to pay wages due at termination (Lab. Code §§ 201, 202, and 203), failure to
22 provide accurate wage statements, (Lab. Code §§ 226), failure to reimburse necessary
23 expenditures, (Lab. Code §§ 2802), civil penalties pursuant to the Private Attorneys General Act
24 of 2004("PAGA"), and violations of Business & Professions Code sections 17200, *et seq.*
25 Plaintiffs assert that these claims are suitable for adjudication in a class action, and suitable for
26 certification on the basis that there were company-wide policies and practices which affected all
27

1 class members which could be established using representative testimony that would not require
2 separate mini-trials on liability.

3 Jewish Home vigorously disputes liability on Plaintiffs' claims and the alleged
4 class certification, given the individualize inquiries that would be required among the differing
5 job titles and employees, and argues that class members were properly paid for all hours worked,
6 were provided with the requisite rest and meal periods, were adequately reimbursed for business
7 expenditures, were given adequate pay stubs, were paid all their wages upon their separation, and
8 there was no unfair advantage.

9 VALUATION:

10 Meal and Rest breaks: To the extent that the policies were valid on their face and
11 implemented, the evaluation was done at 22% violation rate. The valuation for Meal and Rest
12 Breaks were combined \$652,683.00 dollars. The valuation was calculated by multiplying the
13 average hourly rate of \$15.14 by the 22% of total number of shifts greater than five hours
14 (94,977) during the liability period .

15 (Average Hourly Rate \$15.14 x 94977 shifts = \$1,437,000 Million dollars)

16 However, the sampling did not indicate a 100 % violation rate, further the
17 sampling indicated that the employees would clock out for their meal breaks, and the policy was
18 valid.

19 Accordingly, the damages were reduced, as the individual questions would make
20 certifying a class extremely difficult under the circumstances.

21 The Labor Code Section 226 Claims and Labor Code 203 Penalties which are
22 derivative of the other claims were valued at \$1,598,747.00. The Labor Code 226 claims were
23 evaluated by multiplying the total number of employees (217) by \$4,000.00, which is the
24 maximum recovery, equating to \$868,000.00. The valuation for the Labor Code 203 penalty was
25 calculated by taking the average daily rate of \$112.25, and multiplying by 30 days, and
26 multiplying that number by the total number of employees (217)
27

(Average Hourly Rate \$15.14 x 30 Days = \$112.25 x 30 days = \$3,367.50 x 217 employees = 730,747.50)

With respect to PAGA, there were 18,000 shifts. To the extent that there were policies in place, the penalties were derivative of the actual violations, and violations were not flagrant, Plaintiff placed \$30,000 as damages for penalties under PAGA.

Other claims for Minimum wages, Overtime, and failure to reimburse expenditures were not given any value either because after discovery there was not enough evidence to support the claim, or because the claims were individualized and would have no chance for certification.

2) The Uncertainty of the Legal Issues Relating to Plaintiffs' Claims

The Settlement affords the Class prompt and substantial relief, while avoiding significant legal and factual hurdles that otherwise may have prevented the Class from obtaining any recovery at all. The outcome of class certification, trial and any attendant appeals, were inherently uncertain. (Vahdat Declaration, ¶14; Kring Declaration ¶ 11).

If Plaintiff could succeed in getting the Plaintiffs' claims certified, the obstacles still remained significant, both procedurally and substantively. Among other things, Defendant will contend that there are no meal and rest break violations as they were made available, and further that any alleged off-the-clock work or other unpaid work was sporadic and not mandated by Defendant.

Regarding Plaintiffs' Labor Code sections 203 and 226 claims, Defendant contended that these were derivative of other claims and that Defendant did not willfully withhold funds, and that Plaintiffs were not injured by any inaccurate wage statements. Regarding the minimum wage claims, they are too derivative of the meal and rest break violations, and with respect to overtime claims, they are derivative of both the meal and rest breaks. Finally, regarding the claim for failure to reimburse necessary expenditures, Defendant maintained that Plaintiffs never made Defendant aware of any expenses.

In addition to Defendant's defenses to the merits of the claims there are potential problems with class certification.

1 This is particularly true given the quantity of conflicting data, which calls into
2 question the sustainability of class certification, and the uncertain outcome given the standards
3 handed down by the California Supreme Court in *Brinker Restaurant Corp. v. Super. Ct.* (Vahdat
4 Declaration, ¶15; Kring Declaration ¶ 11).

5 As many courts have recognized, if the duty to provide a meal period means to
6 make a meal period available, and not to ensure a meal period is taken, certifying a class can be
7 difficult, if not impossible, due to the individualized issues presented. *See, e.g., Brown v. Fed.*
8 *Express Corp.*, 249 F.R.D. 580 (C.D. Cal. 2008); *Perez v. Safety-Kleen Sys., Inc.*, 253 F.R.D. 508,
9 515 (N.D. Cal. 2008); *Salazar v. Avis Budget Grp., Inc.*, 251 F.R.D. 529 (S.D. Cal. 2008);
10 *Blackwell v. Skywest Airlines*, 245 F.R.D. 453, 468 (S.D. Cal. 2007); *Kohler v. Hyatt Corp.*, No.
11 EDCV 07-782-VAP (CWx), 2008 U.S. Dist. LEXIS 63392, at *19 (C.D. Cal. July 23, 2008);
12 *Watson-Smith v. Spherion Pac. Workforce LLC*, No. C 07-05774 JSW, 2008 U.S. Dist. LEXIS
13 106147, at *8 (N.D. Cal. Dec. 12, 2008).

14 While Plaintiffs do not necessarily agree, the substantial risk that class certification
15 would be denied cannot be disputed. The Settlement achieved confers a substantial benefit on
16 Plaintiff and the Class Members, whereas proceeding with litigation would impose significant
17 risk of no recovery as well as ongoing, substantial expense. If Settlement were not achieved,
18 continued litigation of Plaintiffs and the Class' claims in this action would require substantial
19 additional preparation and discovery. It ultimately would involve the deposition and presentation
20 of numerous witnesses; the consideration, preparation and presentation of documentary evidence;
21 and the preparation and analysis of expert reports. In addition, Jewish Home would oppose class
22 certification. If this case were to go to trial on a class basis it is estimated that fees and costs
23 would be over three hundred thousand dollars (\$300,000) per side. Further, there is no guarantee
24 that even if Plaintiffs prevail at trial that Jewish Home would actually pay any awarded damages.

25 By contrast, the Settlement will yield a prompt, certain, and very substantial
26 recovery for the Class. Such a result will benefit the parties and the Court. For these reasons,
27

1 Class Counsel believes this is an excellent Settlement for Plaintiffs and the Class. (Vahdat
2 Declaration, ¶16 and ¶17)

3 **3) The Proposed Settlement is a Reasonable Compromise of Claims**

4 *Kullar v. Foot Locker Retail, Inc.* 168 Cal. App. 4th 116 (2008), requires
5 additional information be presented to the Court, acting as a fiduciary for the absent class
6 members “... to ensure that the recovery represents a reasonable compromise, given the
7 magnitude and apparent merit of the claims being released, discounted by the risks and expenses
8 of attempting to establish and collect on those claims by pursuing the litigation...” *Id.* at 129. In
9 evaluating the additional information, the court in *Kullar*, supra, at page 133, stated:

10 We do not suggest that the court should attempt to decide the merits
11 of the case or to substitute its evaluation of the most appropriate
12 settlement for that of the attorneys. However, as the court does
13 when it approves a settlement as in good faith under Code of Civil
14 Procedure section 877.6, the court must at least satisfy itself that the
15 class settlement is within the “ballpark” of reasonableness.
16 [citations omitted.]

17 Class Counsel relied upon information obtained from Plaintiff, as well as formal
18 and informal discovery and information at the mediation, to extrapolate damages for the claims
19 asserted, and penalties.

20 As an initial matter, Jewish Home believes no class can be certified, and that it
21 sufficiently compensated non-exempt employees, and that they complied with the laws regarding
22 all issues; hence the liability is zero. Given the uncertainty of the legal issues and the difficulty
23 in certifying a class, the proposed settlement is well within the “ballpark” of reasonableness and
24 should be preliminary approved. (Vahdat Declaration, ¶18).

25 **4) The Extent of Discovery Completed and the Stage of the Proceedings**
26 **Supports the Settlement**

27 Since the complaint was filed, the Parties have engaged in discovery and extensive
28 mediation preparation, formal informal exchange of information. The Parties thoroughly
investigated and evaluated the factual strengths and weaknesses of this case before reaching the
settlement, and engaged in sufficient investigation and informal discovery to support the

1 Settlement. Represented by counsel experienced in these types of cases, the Parties began
2 discussions concerning the possibility of mediating a global settlement of these actions, and
3 agreed to go to private mediation. After agreeing to mediate, the Defendant provided further
4 documentation and evidence including sampling. (Vahdat Declaration, ¶19; Kring Declaration
5 ¶ 12).

6 Besides the substantial information that Plaintiffs themselves provided to their
7 counsel, Jewish Home produced significant amounts of information, payroll and time records,
8 total number of workweeks and policies. (Vahdat Declaration, ¶20; Kring Declaration ¶ 12).

9 These documents and data provided Plaintiffs' counsel with the facts needed to
10 settle the class action: data relating to payment of wages, meal and rest periods taken by the Class
11 Members, their hourly wages, and the total number of workweeks. Based on this information,
12 counsel formed educated assessments about the strength of Plaintiff's claims, the validity of the
13 defenses, and the value of the case. This litigation, therefore, has reached the stage where the
14 Parties certainly have a clear view of the strengths and weaknesses of their cases sufficient to
15 support the Settlement.

16 **D. Plaintiff's Counsel are Experienced In Similar Litigation.**

17 Both Plaintiff and Defense counsel are particularly experienced in wage and hour
18 class actions. (Vahdat Declaration, ¶21).

19 Class Counsel have prosecuted numerous cases on behalf of employees for
20 California Labor Code violations. Counsel are experienced and qualified to evaluate the Class
21 claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the
22 viability of the defenses. Experienced counsel, operating at arms-length, have weighed the
23 strengths of the case and examined all of the issues and risks of litigation and endorse the
24 proposed settlement. (Vahdat Declaration, ¶22; Kring Declaration ¶ 13).

25 The view of the attorneys actively conducting the litigation "is entitled to
26 significant weight" in deciding whether to approve the settlement. (*Fisher Bros. v. Cambridge*
27 *Lee Indus., Inc.*, 630 F. Supp. 482, 488 (E.D. Pa. 1985); *Ellis v. Naval Air Rework Facility*, 87
28

1 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, 485 F.
2 Supp. 610, 616-617 (N.D. Cal. 1979)).

3 Counsel on both sides share the view that this is a fair and reasonable settlement in
4 light of the complexities of the case, the state of the law and uncertainties of class certification
5 and litigation, and the excellent benefit for the Class. Given the risks inherent in litigation and the
6 defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of the
7 class, and should be preliminarily approved. (Vahdat Declaration, ¶23; Kring Declaration ¶ 14).

8 Accordingly, Plaintiff submits this proposed class action settlement, having
9 satisfied the three requirements of *Dunk* at this stage, sufficient for the Court to grant preliminary
10 approval. The final factor mentioned in *Dunk*, the percentage of objectors, is not determinable
11 until the Class has had an opportunity to respond to the Class Notice, and which information will
12 be provided to the Court in conjunction with the Final Approval motion filed with the Court.

13 Counsel will ask the court to hear its motion for Final Approval on March 30,
14 2022 at 2:00 p.m. The motion will be filed with the court and notice given within the time
15 allocated per California Code of Civil Procedures.

16 **VI. CONCLUSION**

17 The Parties respectfully submit that the proposed settlement is fair, adequate, and
18 reasonable, and one which is in the best interests of the Class and Class Members. Under the
19 applicable class action criteria and guidelines, the proposed settlement should be preliminarily
20 approved by the Court at this time, the Class should be conditionally certified for purposes of
21 settlement only, the Notice of Pendency of Class Action and Settlement, and the claim form,
22 should be approved, and the Final Approval Hearing should be set as requested.

1 DATED: December 17 2021

JAMES HAWKINS APLC

2
3 By: 

SEAN S. VAHDAT
Attorneys for Plaintiff

Aaron Flott

4
5
6 DATED: December 17, 2021

KRING & CHUNG, LLP

7
8 By: */s/ Tyler D. Krings*

TYLER D. KRING
Attorneys for Plaintiff
Donna Carone

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On December 17, 2021, I served on the interested parties in this action the following document(s) entitled:

- [XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Nicole@jameshawkinsapl.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

See attached Service List

Executed on December 17, 2021, at Irvine, California

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26 (via LWDA Website Only)
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