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situated employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE COUNTY – CIVIL COMPLEX CENTER**

KATHERYN ENRIQUEZ, as individuals  
and on behalf of other similarly situated  
employees,

Plaintiff,

vs.

VINTAGE REAL ESTATE GROUP, INC.,  
a California corporation, and DOES 1-50,  
inclusive,

Defendants

Case No.: 30-2021-01204252-CU-OE-CXC

Assigned for all purposes to:  
Hon. Peter Wilson  
Dept. CX 102

**PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Date: November 17, 2022

Time: 2:00 p.m.

Place: Department CX 102

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

This is an extremely small representative action. Plaintiff Katheryn Enriquez (“Plaintiff”) seeks preliminary approval of the Parties’ Stipulation of Class Action and PAGA Settlement (hereinafter “Stipulation” or “Settlement”), which if approved by the Court, would provide valuable monetary relief for approximately current and former employees of Defendant, Vintage Real Estate Group, Inc. (“Defendants”), (collectively with Plaintiff, the “Parties”). The Parties jointly prepared and executed the formal long-form Stipulation, attached as **Exhibit A** to the Declaration of Armond M. Jackson (“Jackson Decl.”), the basic terms of which provide for:

- (1) Conditional certification of the Settlement on behalf of Class Members defined as: All hourly paid Employees employed by Defendant in the State of California during the Class Period, which is from November 19, 2016 through October 21, 2022.
- (2) A non-reversionary Class Settlement Amount of \$9,000 addition to employer payroll taxes which will be paid separately by Defendant. The Maximum Settlement Amount includes:
  - (a) A Net Settlement Amount of approximately \$3,375 (the Maximum Settlement Amount minus the requested Attorneys’ Fees and Costs, Settlement Administration Costs, the payment to the California Labor and Workforce Development Agency [“LWDA”], and the requested Class Representative Enhancement Payment), which will be allocated to Participating Class Members on a pro-rata basis according to the Qualified Pay Periods worked by each Class Member during the Class Period. The entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class (“Participating Class Members”), and without the need to submit claims for payment.
  - (b) Attorneys’ fees in the amount of one-fourth of the Class Settlement Amount (or \$2,250.00) of attorneys fees to Jackson Law, APC (“Class Counsel”).
  - (c) Settlement Administration Costs, currently estimated at \$1,000, to be paid to the jointly selected settlement administrator, ILYM Group, Inc.
  - (d) A \$2,500.00 payment of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. \$1,875.00 will be a payment to the LWDA pursuant to the Private Attorneys General Act (“PAGA”).
  - (e) Class Representative Enhancement Payments of \$500.00 to Plaintiff Katheryn Enriquez for their service on behalf of the Settlement Class.

An objective evaluation of the Settlement confirms that the relief negotiated on the Class Members’ behalf is fair, reasonable, and valuable. The Stipulation was negotiated by the parties at arm’s length with helpful guidance from mediator T. Warren Jackson, Esq., an experienced mediator, and the

1 Stipulation confers substantial benefits to Class Members. [Jackson Decl. ¶ 6.]

2 As discussed below, the proposed Stipulation satisfies all criteria for preliminary settlement  
3 approval under California law and falls within the range of reasonableness. Moreover, the proposed  
4 group of Class Members is appropriate for provisional certification. Accordingly, the Parties respectfully  
5 request that this Court grant preliminary approval of the Settlement.

## 6 **II. FACTS AND PROCEDURE**

### 7 **A. Summary of the Litigation.**

8 The defendant is a real estate company that offers property management services. Plaintiff was  
9 one of 8 non-exempt property managers. Defendant has an office in Laguna Hills, California, where the  
10 plaintiff worked. [Jackson Decl. ¶ 3.] This Stipulation is limited to Defendants' employees in the State  
11 of California, during the Class Period. [*Id.*]

12 On October 28, 2021, Plaintiff filed her Second Amended complaint in the Orange County  
13 Superior Court alleging retaliation claims and violations of the California Labor Code for the following  
14 claims: (1) failure to reimburse for business expenses; (2) unlawful business practices under Business  
15 and Professions Code section 17200 et. seq.; and (3) claims for PAGA penalties. [ROA No. 71.]

16 The 2802 claims were based on claims that during the stay-home order related to the pandemic,  
17 property managers were required to work from home, and use their personal cell phones to continue to  
18 conduct business without reimbursement.

19 Thereafter, plaintiff served written discovery. [Jackson Decl. ¶¶ 6-7.] Defendant informed  
20 Plaintiff the size of the class, and requested to mediate the case and agreed to send informal discovery  
21 containing data of employees for one hundred percent of the class. (*Id.*)

22 Defendant produced such data. Plaintiff's primary theories of liability are as follows:

23 • **2802 Claim:** Plaintiff alleges that Defendant failed to reimburse Plaintiff to business  
24 related expenses, particularly use of personal cellphone to answer business calls, and home internet use.  
25 [Jackson Decl. ¶ 10.]

### 26 **B. The Parties Settled at Mediation.**

27 On January 12, 2022, the Parties participated in a full day of mediation with mediator T. Warren  
28 Jackson, an experienced mediator on Signature Resolution's panel. The Mediator helped to manage the

Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. At the conclusion of the mediation, Mediator Jackson issued a mediator's proposal, in which both parties accepted. [Jackson Decl. ¶ 6.] At all times, the Parties' negotiations were adversarial and non-collusive, and the Stipulation thus constitutes a fair, adequate, and reasonable compromise of the claims at issue. [Jackson Decl. ¶ 4-12.]

**C. The Proposed Settlement Fully Resolves Plaintiff's Claims.**

**1. Composition of the Settlement Class and Settlement Consideration**

The proposed group of Class Members consists of all hourly paid employees employed by Defendant in California during the Class Period, which is from November 19, 2016 through October 21, 2022.

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the non-reversionary Maximum Settlement Amount of \$9,000. The Maximum Settlement Amount includes: (1) settlement payments to Participating Class Members; (2) \$2,250 in requested attorneys' fees (3) Settlement Administration Costs capped at \$1,000; (4) an allocation of \$2,500 to the LWDA; and (5) a Class Representative Enhancement Payment of \$500.00.00 to Plaintiff for her service on behalf of the Class Members. [Jackson Decl., ¶ 2, **Exhibit A.**]

Subject to the Court approving Attorneys' Fees, Settlement Administration Costs, the payment to the LWDA, and the Class Representative Enhancement Payment, the Net Settlement Amount will be distributed to Participating Class Members without the need to submit claims for payment.

**2. Formula for Calculating Settlement Payments**

Each Class Member's share of the Net Settlement will be proportional to the Workweeks that they worked during the Class Period. The Settlement Administrator will calculate Individual Settlement Payments as follows:

- Defendant will calculate the "Qualifying Workweeks" worked by each Class Member during the Class Period and the aggregate Eligible Workweeks worked by all Class Members during the Class Period, which is from November 19, 2016 through October 21, 2022.
- To determine each Class Member's settlement payment, the Settlement Administrator will use the following formula: the Net Settlement Amount will be divided by the total number of Qualifying Workweeks by all Class members during the Class period and then allocated on a pro rata basis.

[Jackson Decl., ¶ 2, **Exhibit A** (Section 3.06, pgh. f.)]

The **average payment will be approximately \$421.87** per full-time Class Member, assuming no Class Members opt out. If there are any opt-outs, that average will increase. This average net recovery is significantly higher than many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Dept. Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of about \$65); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. County Super. Ct.) (average net recovery of about \$20).

### **3. Release by the Participating Class Members**

In exchange for the Maximum Settlement Amount, Plaintiff and Class Members will agree to release the following Released Claims that accrue from November 19, 2016 through October 21, 2022:

“Upon the Date of Finality, Plaintiffs and Participating Class Members who do not opt out of the Settlement, release the Released Parties from, and will be forever barred from pursuing against the Released Parties, any and all claims, demands, rights, liabilities and causes of action alleged in Plaintiffs Operative Complaint, all claims for attorney’s fees and costs relating to the Released Claims by Class Members.”

[Jackson Decl., ¶ 2, **Exhibit A** (Section 5.01, p. 19)]

The parties understand that the scope of the release is limited to the wage and hour class claims under the factual predicate of California Labor Code section 2802 related to Causes of Action Nos. 1-3 only. (Declaration of Andrea Fernandez-Jackson, ¶ 3, Ex. A)

## **III. ARGUMENT**

### **A. The Court Should Preliminarily Approve the Proposed Settlement.**

#### **1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable.**

California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of class action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and (2) a subsequent “final” review after notice of the settlement has been distributed to class members for

1 their comments and objections. [Rules 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App.  
2 4th 1110, 1118 (2009) (the court first “preliminarily approves the settlement” and later “conducts a final  
3 approval hearing to inquire into the fairness of the proposed settlement”).] The motion for preliminary  
4 approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, (3) the  
5 proposed order, and (4) must identify any agreement regarding attorneys’ fees. [Rule 3.769(b) and (c).]

6 If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to  
7 (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide  
8 notice to the class of the hearing and “an explanation of the proposed settlement.” The court must also  
9 approve a procedure for class members to file objections to the settlement. [Rule 3.769(f).] At the final  
10 approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. [Rule  
11 3.769(g).]

12 Although Rule 3.769 does not provide detail as to the scope of review of the proposed  
13 settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” [See  
14 *North County Contractor’s Ass’n, Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089–90  
15 (1994); Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002) (“Newberg”).  
16 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length  
17 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act  
18 intelligently;” (3) counsel is “experienced in similar litigation;” and (4) the percentage of objectors “is  
19 small.” [*Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).] The presumption of fairness is  
20 consistent with California’s public policy goal of favoring settlements. [*Stambaugh v. Super. Ct.*, 62 Cal.  
21 App. 3d 231, 236 (1976) (“the law wisely favors settlements”); *Cellphone Termination Fee Cases*, 180  
22 Cal. App. 4th at 1118 (“public policy generally favors the compromise of complex class action  
23 litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151  
24 (2000) (“voluntary conciliation and settlement are the preferred means of dispute resolution . . . [t]his is  
25 especially true in complex class action litigation”).]

26 In reviewing the fairness of a class action settlement, due regard should be given to what is  
27 “otherwise a private consensual agreement between the parties.” [*Cellphone Termination Fee Cases*,  
28 186 Cal. App. 4th at 1389.] The inquiry “must be limited to the extent necessary to reach a reasoned

1 judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the  
2 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all  
3 concerned.” [Id.]

4 **2. Plaintiff’s Counsel Conducted an Investigation of the Factual and Legal**  
5 **Issues and Objectively Assessed the Settlement’s Reasonableness.**

6 By engaging in an investigation and evaluation of Plaintiff’s claims, Plaintiff’s Counsel can  
7 opine that the Settlement, for the consideration and on the terms set forth in the Stipulation, is fair,  
8 reasonable, an adequate, and is in the best interests of the Class Members in light of all known facts and  
9 circumstances, including the risk of significant delay and uncertainty associated with litigation, various  
10 defenses asserted by Defendant. [Jackson Decl. ¶¶ 6-12.]

11 Plaintiff’s Counsel interviewed Plaintiff who provided accounts of her own experience, which  
12 enabled Plaintiff’s Counsel to understand the theories explaining the respective frequencies of the alleged  
13 violations borne out in the data and records produced and to learn more about the day-to-day  
14 circumstances giving rise to the alleged violations. [Jackson Decl. ¶ 7-17.] Overall, Plaintiff’s Counsel  
15 performed a searching investigation into the claims at issue, which included: (1) determining Plaintiff’s  
16 suitability as a class representative through interviews, background investigations, and analyses of her  
17 employment files and related records; (2) reviewing discovery produced and (3) evaluating Plaintiff’s  
18 claims and estimating Defendant’s liability for purposes of settlement; (4) drafting the mediation brief;  
19 and (5) participating in the mediation. [Jackson Decl. ¶ 7.]

20 **3. The Settlement Was Reached Through Arm’s-Length Bargaining in**  
21 **Which All Parties Were Represented by Experienced Counsel.**

22 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed  
23 settlement’s fairness.” [State v. Levi Strauss & Co., 41 Cal. 3d 460, 482 (1986).] Courts presume the  
24 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered;  
25 thus, there is a presumption that settlement negotiations are conducted in good faith. [Newberg, §  
26 11.51.]

27 On January 12, 2022, the Parties participated in a mediation. [In re Apple Computer, Inc.  
28 Derivative Litig., No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008)]

(mediator’s participation weighs considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (same).] At all times, the Parties’ negotiations were adversarial and non-collusive. After a full day of mediation, the Parties reached a settlement in principal and the mediator issues a proposal and a Memorandum of Understanding, before entering in the long form Settlement. [Jackson Decl. ¶ 6.]

Experienced class action counsel represented both Parties throughout the case and settlement negotiations. Plaintiff is represented by Armond M. Jackson of Jackson Law, APC, who regularly litigates wage and hour claims through certification and on the merits, and has considerable experience settling wage and hour class actions. [Jackson Decl. ¶¶ 19-20, 25.] Defendants are represented by Chris Hellmich of The Law Office of Karen J. Sloat who operates an employment defense practice.

**4. The Proposed Settlement Is Reasonable Given the Size of the Class, the limitation of time the violation occurred and the Risks and Expense of Continued Litigation.**

In seeking approval, a settling party must provide sufficient information to “enable the court to make an independent assessment of the adequacy of the settlement terms.” [*Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131–32 (2008).] However, “[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair.” [*See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982).] “The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” [*Id.* at 625.] “Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years).” [*In re Toys R Us-Delaware, Inc.—Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).] In other words, in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.<sup>1</sup>

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<sup>1</sup> Federal district courts also recognize that there is an inherent “range of reasonableness” in determining

1 Based on the information and evidence provided by Defendant in discovery, Plaintiff's Counsel  
2 determined an appropriate range of recovery for settlement purposes by offsetting Defendant's  
3 maximum theoretical exposure by: (i) the strength of Defendant's affirmative defenses; (ii) the risk of  
4 losing a motion for class certification on some or all of the claims particularly because of the number of  
5 employees that fall within the class; (iii) the risk of losing on various dispositive or quasi-dispositive  
6 motions that Defendant will bring before trial (e.g., motion to strike class and representative allegations,  
7 motion to decertify a class action, and/or motions for summary judgment) which may eliminate all or  
8 some of Plaintiff's claims, or bar evidence necessary to prove such claims; (iv) the risk of losing some or  
9 all of the claims at trial; (v) the chances a Court may find Defendant did not willfully refuse to pay  
10 business expenses (i.e. a good faith failure); (vi) the chances of the Court exercising its discretion to  
11 reduce PAGA penalties (see Cal. Lab. Code section 2699(e); (vii) the delay in payment to class members  
12 due to years of protracted litigation in certifying a class, obtaining a favorable verdict at trial, upholding  
13 that verdict on appeal, and administering class notice and payments to the class at that later stage instead  
14 of now; (viii) the chances of a favorable verdict being reversed on appeal; and (ix) the difficulties  
15 attendant to collecting on a judgment (collectively, the "Discount Factors"). [Jackson Decl. ¶¶ 8-12.]

16 Based on the preceding and considering the aggregate value of the claims, Plaintiff's Counsel  
17 valued the claims for settlement purposes at **\$48,000**, with PAGA penalties. [Jackson Decl. ¶¶ 10-12.] It  
18 must be underscored, however, that the reasonableness of a settlement is not dependent upon its actual  
19 value approaching the potential recovery Plaintiff might have received had he succeeded at trial. Indeed,  
20 "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical  
21 equation yielding a particularized sum.'" [Frank v. Eastman Kodak Co., 228 F.R.D. 174, 186  
22 (W.D.N.Y. 2005) (quoting *In re Michael Milken and Assoc. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y.  
23 1993)).]

24 Here, Plaintiff alleged itself, aggrieved employees and class members were subjected to

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27 whether to approve a settlement "which recognizes the uncertainties of law and fact in any particular  
28 case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." [Id.  
at 188 (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.)). See *Nat'l Rural Telecomm. Coop. v.  
Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("well settled law that a proposed settlement may be  
acceptable even though it amounts to only a fraction of the potential recovery").]

California Labor Code section 2802 violations for failure to reimburse class members and aggrieved employees when ordered to work from home, requiring the use of personal cellphones and internet usage. (See Cal. Lab. Code section 2802.) It was estimated about there were only 8 employees subjected to this violation, many returning back to the office within 6 months, the remainder after about 12 months, however Plaintiff calculated using 24 months. (24 months \* 16 pay periods per month\* \$25 for phone and internet usage). [Jackson Decl. ¶ 15.] For PAGA penalties (24 months\*16 pay periods per month \*\$100 civil penalty).

**5. The Settlement Amount Is Fair and Reasonable Compensation for the Class**

As the above analysis shows, Plaintiff's Counsel objectively and knowledgeably balanced the strengths and weaknesses of the claims against the risk of continued litigation and was able to determine the realistic range of settlement recovery. In this case, a settlement value of \$9,000.00 falls well within the range of reasonableness and is thus fair, adequate, and reasonable.

**B. The Proposed Notice Properly Informs Class Members About the Settlement.**

Class members are entitled to the best practical notice under the circumstances. [*Kass v. Young*, 67 Cal. App. 3d 100, 106 (1977) (“*Kass*”).] The purpose of the notice is to give class members sufficient information to decide whether to accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. [*Trotsky v. Los Angeles Fed. Savings & Loan Ass’n*, 48 Cal. App. 3d 143, 151–52 (1975).] The notice must advise class members “that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion.” [*Kass*, 67 Cal. App. 3d at 106.] In a case such as this involving a significant number of class members, California authorities generally require service of the class notice by mail or similar reliable means. [*Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).]<sup>2</sup>

The proposed Class Notice will be mailed to the Class by First Class mail and will include

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<sup>2</sup> Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to reach class members. [Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986).]

1 information regarding the nature of the lawsuit, a summary of the Settlement’s terms, the class definition,  
2 the procedure and time period within which to opt out, exclude, or object to the Settlement, the date for  
3 the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of  
4 the Released Claims. In the event Class Notices are returned as undeliverable, the Administrator will  
5 attempt to locate a current address through the use of skip tracing or another automated search. **[Jackson**  
6 **Decl., ¶ 2, Ex. A, Section 3.03, p. 8, ¶ 9, Exhibit B.)]** This method is designed to maximize the Class  
7 Member response rate while ensuring cost effective administration of the settlement. In past cases,  
8 similar notice methods to class members have resulted in strong response rates. Accordingly, both the  
9 method of disseminating the Class Notice and content of the Class Notice satisfy due process and the  
10 requirements of California law. [See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss*, 41 Cal. 3d 460,  
11 485 (1986) (The class notice must “fairly apprise the class members of the terms of the proposed  
12 compromise and of the options open to dissenting class members.”).]

13 **C. The Court Should Preliminarily Approve the Enhancement Payment.**

14 Enhancement payments “are fairly typical in class action cases.” [*Cellphone Termination Fee*  
15 *Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$5,000.00); *Rodriguez v.*  
16 *West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed.  
17 2002) § 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiff: An Empirical Study*,  
18 53 UCLA L. Rev. 1303 (2006).] Enhancement payments “are intended to compensate class  
19 representative for work done on behalf of the class, to make up for financial or reputational risk  
20 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private  
21 attorney general.” [*Rodriguez*, 563 F.3d at 958–59; see also *Clark v. American Residential Svcs., LLC*,  
22 175 Cal. App. 4th 785 (2009).]

23 Subject to Court approval, the Settlement provides for a Class Representative Enhancement  
24 Payment of \$500.00 for Plaintiff. The enhancement payment is fair and reasonable compensation for  
25 Plaintiff’s efforts in representing the putative Class and the interests of the State of California, for  
26 assisting counsel with the litigation, at mediation, and settlement, regularly conferring with counsel on  
27 the status of the case and the strategies for prosecuting the claims, reviewing the proposed settlement to  
28 ensure that its terms are fair and provide adequate relief for the Settlement Class. [Declaration of

1 Katheryn Enriquez, ¶¶ 1-7.]

2 Plaintiff will file a motion seeking an award of the negotiated Class Representative  
3 Enhancement Payment if preliminary approval of the Settlement is granted. Plaintiff respectfully  
4 submits that the above showing is sufficient for preliminary approval of the Class Representative  
5 Enhancement Payment.

6 **D. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and**  
7 **Costs.**

8 The purpose of an attorney's fee award in class action litigation is to reward counsel who  
9 took the risk of non-payment and invested in a case that achieved a substantially positive result for the  
10 class. Plaintiffs will seek Court approval of attorneys' fees of \$2,250 which is 25% of the Maximum  
11 Settlement Amount, and reasonable and necessary litigation costs and expenses according to proof at the  
12 time of the Final Approval Hearing.

13 California courts routinely award attorneys' fees equaling one-third or more of the potential  
14 value of the common fund. *See Chavez v. Netflix, Inc.* 162 Cal. App. 4th 43, 66 n. 11 (2008) ("Empirical  
15 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards  
16 in class actions average around one-third of the recovery."); Theodore Eisenberg & Geoffrey P. Miller,  
17 Attorney Fees in Class Action Settlements: An Empirical Study, J. of Empirical Legal Studies, Vol. 1,  
18 Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come to  
19 a similar conclusion that a one-third fee is consistent with market rates). At final approval, Class Counsel  
20 will fully brief the merits of its request for attorneys' fees and costs.

21 **E. California Law Authorizes Provisional Certification for Settlement Purposes.**

22 **1. The California Standard for Class Certification**

23 Class actions are statutorily authorized "when the question is one of common or general interest,  
24 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the  
25 court." [Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008)  
26 ("*Lee*").] Class certification is appropriate when there is an "ascertainable class and a well-defined  
27 community of interest among class members." [*Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319,  
28 326 (2004) ("*Sav-On*").] Class treatment is appropriate even if class members at some point may be

1 required to make an individual showing as to eligibility for recovery. [*Bufile v. Dollar Financial Group,*  
2 *Inc.*, 162 Cal. App. 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.]

3                   **2.       The Proposed Settlement Class is Ascertainable, and There is a Well-**  
4                   **Defined Community of Interest Among Class Members.**

5           Whether a class is “ascertainable” within the meaning of Section 382 is “determined by  
6 examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying  
7 class members.” [*Lee*, 166 Cal. App. 4th at 1334.] Class members are ascertainable where they may be  
8 readily identified without unreasonable expense or time by reference to official records. [*Id.*] The  
9 community of interest requirement embodies three factors: (1) predominant common questions of law or  
10 fact; (2) a class representative with claims or defenses typical of the class; and (3) a class representative  
11 and counsel who can adequately represent the class. [Cal. Civ. Proc. Code § 382.] Expounding on the  
12 element of predominance, the California Supreme Court noted that the “ultimate question” is whether  
13 “the issues which may be jointly tried, when compared with those requiring separate adjudication, are so  
14 numerous or substantial that the maintenance of a class action would be advantageous to the judicial  
15 process and to the litigants.” [*Brinker*, 53 Cal. 4th at 1021–22.]

16           The proposed Settlement Class consists of the 8 property management employees employed by  
17 Defendant in California during the Class Period, which is November 19, 2016 through October 21, 2022.

18           Defendants’ payroll records will ascertain the Class Members because all Class Members are  
19 either current or former employees of Defendant, the class is readily ascertainable from Defendant’  
20 regular business records.

21           Conditional certification of the proposed group of Class Members is warranted here given the  
22 relatively relaxed standard for certification at the preliminary approval stage. [*See Dunk v. Ford Motor*  
23 *Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification  
24 in settlement cases).]<sup>3</sup> In *Dunk*, the California Court of Appeal specifically rejected the argument that the

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<sup>3</sup> See also Newberg on Class Actions § 13:18 (5th ed.) (Courts “declin[e] to treat formal class  
certification as a prerequisite for preliminary approval and undertak[e] a more cursory class certification  
analysis at the preliminary approval stage.”) (*citing, e.g., Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-  
KJM-AC, 2016 WL 3549473, at \*6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions  
in *Amchem* . . . , a cursory approach appears the norm.”).)

1 standard for certifying a class for purposes of settlement is identical to the standard for certifying the  
2 same class for purposes of litigation; the *Dunk* Court provided that the Federal Rules of Civil Procedure,  
3 Rule 23 allows for “a lesser standard of scrutiny for settlement cases.” [*Id.* at n.19.]

4 Here, the California statutes relating to Plaintiff’s claims apply to all Class Members. Plaintiff  
5 contends that Defendant’s policies and practices apply class wide and liability can be determined by facts  
6 common to all class members, i.e., common policies or de facto common practices. While the class size  
7 may be minimal, the Court could find numerosity is sufficient for purposes of this approval.

8 Likewise, Plaintiff’s interests are coextensive with the interests of the Class and he alleges that  
9 she was injured by the same company-wide practices to which the proposed Settlement Class was  
10 subject and seeks the same relief. Plaintiff has already demonstrated her ability to advocate for the  
11 interests of the Class by initiating this litigation and evaluating the fairness of the proposed settlement.

12 Additionally, Plaintiff is represented by competent counsel who has extensive experience in  
13 litigating wage and hour class action cases. [Jackson Decl. ¶¶ 13-19.] Plaintiff’s Counsel has  
14 successfully briefed, argued, certified, and gained state court settlement approval of the same or similar  
15 class-wide causes of action that are at issue in this case. Plaintiff’s Counsels’ wage and hour class action  
16 expertise establishes that they are well qualified to represent the interests of this Class. [*Id.*] A class  
17 action is superior to a multitude of individual lawsuits. Many class members claims my have statute of  
18 limitation issues or may have very little desire to litigate individually, because the amount of damages at  
19 issue. In sum, class treatment is superior to individual, case-by-case adjudication.

#### 20 **IV. CONCLUSION**

21 The Parties have negotiated a fair, reasonable settlement and presented the required for  
22 preliminarily approval, and as such, request that the Court preliminarily approve the settlement.

24 Dated: October 19, 2022

**JACKSON LAW, APC**

25 By: /s/ Armond M. Jackson

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