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[ADDITIONAL COUNSEL LISTED AFTER CAPTION]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

LAURA HERRERA, VALERIE
CHAVEZ, individually and on behalf of
others similarly situated and other
aggrieved employees,

Plaintiffs,

v.

CASCADE LIVING GROUP
MANAGEMENT, LLC, an active
Washington Limited Liability Company;
BPM SENIOR LIVING COMPANY, an
active Delaware Corporation; and DOES
1 through 10,

Defendants.

Case No.: 20STCV48606 (related to
21STCV35724)

**CLASS AND REPRESENTATIVE
ACTION**

*[Assigned to Hon. Stuart M. Rice
in Dept. SS-1]*

**NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

[FILED CONCURRENTLY WITH
DECLARATION OF HAIK
HACOPIAN WITH EXHIBITS;
DECLARATION OF ZORIK
MOORADIAN; DECLARATION OF
JAMES R. HAWKINS;
DECLARATION OF LAURA
HERRERA; DECLARATION OF
VALERIE CHAVEZ; AND
[PROPOSED] ORDER]

Date: August 14, 2023

Time: 10:30 a.m.

Dept.: SS-1

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7 Attorneys for Plaintiff, VALERIE CHAVEZ
on behalf of herself and all others similarly situated
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1 **PLEASE TAKE NOTICE** that, pursuant to Cal. Rules of Court, rule 3.769, on
2 August 14, 2023 at 10:30 a.m. or as soon thereafter as the matter may be heard in Department
3 SS-1 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California
4 90012, Plaintiff Laura Herrera and Plaintiff Valerie Chavez ("Plaintiffs"), individually and on
5 behalf of a similarly-situated class of individuals, will and hereby do move this Court for an
6 order:

7 1. Preliminarily approving the proposed class settlement of this lawsuit;

8 2. Provisionally certifying the Settlement Class, defined as follows:

9 All current and former non-exempt employees employed by
10 Cascade Living Group, Inc., Cascade Living Group
11 Management, LLC, Cascade Living Group – Hemet, LLC, or
12 Cascade Living Group – Grass Valley, LLC, in California
 during the period starting December 21, 2016 to December 13,
 2022 ("Class Period");

13 3. Preliminarily appointing Plaintiff Laura Herrera and Plaintiff Valerie Chavez
14 as Class Representatives;

15 4. Preliminarily appointing Zorik Mooradian and Haik Hacopian of Mooradian
16 Law, APC and James R. Hawkins and Isandra Fernandez of James Hawkins APLC as Class
17 Counsel;

18 5. Preliminarily approving the proposed settlement of Plaintiffs' Private
19 Attorneys General Act ("PAGA") claims;

20 6. Appointing CPT Group as the third-party settlement administrator;

21 7. Scheduling a hearing to consider whether the class settlement should be finally
22 approved, and whether to award an amount for the Service Awards to the Class
23 Representatives, attorneys' fees and costs to Class Counsel, and settlement administration
24 costs; and

25 8. Approving the proposed Class Notice, and ordering that it shall be
26 disseminated to the proposed Settlement Class as provided in the Stipulated Settlement
27 Agreement.

28 This Motion is based on this Notice of Motion, the accompanying Memorandum of

1 Points and Authorities, the Declaration of Haik Hacopian with Exhibits, the Declaration of
2 Zorik Mooradian, the Declaration of James R. Hawkins, the Declaration of Laura Herrera, the
3 Declaration of Valerie Chavez, the pleadings and other papers filed in this action, and on any
4 further oral or documentary evidence or argument presented at the time of hearing.

5 The Stipulated Settlement Agreement is attached as **Exhibit “A”** to the Declaration of
6 Haik Hacopian. The proposed Class Notice is attached as **Exhibit “1”** to the Stipulated
7 Settlement Agreement. See HH Decl. ¶11, Exh. 1 to Exh. A.

8
9 Dated: June 15, 2023

MOORADIAN LAW, APC
JAMES HAWKINS APLC

10
11 By: /s/Haik Hacopian
12 Zorik Mooradian, Esq.,
13 Haik Hacopian, Esq.,
14 James R. Hawkins, Esq.,
15 Isandra Fernandez, Esq.,
16 Attorneys for Plaintiffs, individually and on
17 behalf of other persons similarly situated and
18 similarly aggrieved employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs, Laura Herrera and Valerie Chavez (“Class Representatives” or “Plaintiffs”),
4 and Defendant Cascade Living Group Management, LLC (“Defendant”) have reached a
5 proposed class settlement with a non-reversionary Settlement Amount of \$850,000 for a Class
6 consisting of 709 non-exempt employees who worked for Defendant, through their
7 subsidiaries, at their four assisted living facilities in California from December 21, 2016
8 through December 13, 2022 (“Class Period”). The Settlement anticipates coverage for 44,861
9 workweeks and up to 750 Class Members, with a proportional increase of the Settlement
10 Amount if the class member total ultimately exceeds 750. The settlement allows for an average
11 settlement payment in excess of \$640, which represents an excellent recovery.

12 This Settlement resolves this class and representative action lawsuit and settles the
13 wage and hour claims for all Settlement Class Members who do not request exclusion.
14 Payments will be made on an opt-out non-reversionary basis.

15 The proposed settlement is memorialized in the “Stipulated Settlement Agreement”
16 hereinafter referred to as “Settlement Agreement” or “S.A.” A true and correct copy of which
17 is attached to the accompanying Declaration of Haik Hacopian (hereinafter “HH Decl.”) as
18 **Exhibit “A”**.

19 The Parties have conducted an investigation concerning the facts and law during the
20 pendency of this action and which included formal discovery, production of class records and
21 data and expert analysis of same, conferences, and a mediation session before an experienced
22 employment law mediator, Mr. Scott S. Markus.

23 This proposed settlement is well within the range of what constitutes a fair, reasonable,
24 and adequate settlement to all concerned especially in light of the legal and factual obstacles
25 that Plaintiffs faced, the sharply contested issues involved, the risks and costs of further
26 litigation, and the tangible monetary benefits to be received by Plaintiffs and the Class. The
proposed notice procedure comports with Cal. Rules of Court, rule 3.769, and due process
requirements. The notice program should be approved and a final fairness hearing set.

1 **II. SUMMARY OF THE LITIGATION**

2 **A. Defendant, Class Members, and Plaintiffs**

3 Defendant Cascade Living Group Management, LLC (Cascade) is based in
4 Washington State and is the owner and operator of 30 assisted living facilities in western
5 States (CA, WA, OR, WY, AZ, NV). This lawsuit covers four facilities operated by Cascade
6 in California as follows: (1) Desert Hills Memory Care Center (acquired April 1, 2007); (2)
7 Cascade of Grass Valley (acquired Dec. 16, 2013); (3) Magnolia Grand (acquired June 13,
8 2019); and (4) Regency Grand (acquired from Defendant BPM on June 13, 2019). Plaintiff
9 Herrera was employed at the Regency Grand upon Cascade's acquisition of that facility on
10 June 13, 2019 until her separation on March 7, 2020. HH Decl.") ¶7, Declaration of Laura
11 Herrera (hereinafter "Herrera Decl.") ¶2. Plaintiff Chavez was employed at that same location
12 from on or about August 2019 through on or about September 29, 2020. Declaration of Valerie
13 Chavez (hereinafter "Chavez Decl.") ¶2.

14 The class count, per the roster produced by Cascade, reflects 709 employees (509 of
15 whom have termination dates) who worked at the four California locations during the Class
16 Period. Class Members worked 44,861 workweeks during the Class Period. The average shift
17 length calculates to 7.4 hours and the average hourly rate to \$14.86. HH Decl., ¶8.

18 **B. Plaintiffs' Lawsuits**

19 **1. Plaintiff Herrera's Lawsuits**

20 On December 21, 2020, Plaintiff Herrera initiated the instant class action against
21 Defendant Cascade Living Group Management, LLC ("Cascade") and Defendant BPM Senior
22 Living Company ("BPM"). ("Herrera Action"). S.A. ¶2.1.

23 On December 19, 2020, Plaintiff Herrera communicated a notice letter pursuant to the
24 Private Attorneys General Act ("PAGA") to Cascade and thereafter to the Labor and
25 Workforce Development Agency ("LWDA"). Plaintiff Herrera's PAGA claim was assigned
26 case no. LWDA-CM-816251-20 upon electronic submission to the LWDA. Thereafter, on
February 25, 2021, Plaintiff filed a representative PAGA action against Cascade that was
assigned Case No. 21STCV07475 ("Herrera PAGA Action"). S.A. ¶¶2.2 and 2.3. On May 26,

2022, the operative Second Amended Complaint was filed in the Herrera Action which added a cause of action for PAGA violations. The Herrera PAGA Action was thereafter dismissed. S.A. ¶2.7.

2. Plaintiff Chavez’s Lawsuit

On September 28, 2021, Plaintiff Valerie Chavez filed a separate class action complaint against Cascade in Los Angeles Superior Court, which was assigned Case No. 21STCV35724 (“Chavez Action”). On that date as well, Plaintiff Chavez communicated a notice letter pursuant to PAGA to Defendant Cascade and the LWDA. Plaintiff Chavez’s PAGA claim was assigned case no. LWDA-CM-846361-21 upon electronic submission to the LWDA. S.A. ¶2.4. On January 25, 2022, a First Amended Complaint was filed in the Chavez Action which added a cause of action for PAGA violations. S.A. ¶2.6.

On January 20, 2022, the Herrera Action and the Chavez Action were related before this Court. S.A. ¶2.7.

3. Operative Second Amended Complaint

On June 15, 2023, pursuant to the Settlement and stipulation of the Parties, the operative Second Amended Complaint was filed in the Herrera Action which added Plaintiff Valerie Chavez as an additional named plaintiff and amended the class definition to be consistent with the Settlement Class definition. The Second Amended Complaint asserts the following causes of action: (1) Failure to Provide Meal Periods; (2) Failure to Provide Paid Rest Periods; (3) Failure to Pay Wages; (4) Failure to Timely Pay Wages at Termination/Separation; (5) Failure to Timely Pay Vacation Wages at Termination/Separation; (6) Failure to Provide Accurate Wage Statements; (7) Violation of Unfair Business Practices Act – Bus. & Prof. Code §§ 17200, et seq.; and (8) Penalties Pursuant to Private Attorneys General Act (“PAGA”). HH Decl., ¶9.

C. Discovery and Mediation

The Parties have conducted investigation of the operative facts and applicable law during the pendency of the case through both formal and informal discovery. Plaintiff Herrera has reviewed and examined class data and has retained the services of an expert who has

1 analyzed the damages and evaluated the potential class wide exposure. Prior to mediation,
2 Plaintiff Herrera conducted formal written discovery that yielded three sets of verified
3 responses. In addition to Plaintiff's file and employee handbook, Defendant produced
4 complete electronic class time and payroll records for 2018-2021 for two locations and for
5 2019-2021 for the two facilities acquired during the Class Period. Plaintiff Herrera had the
6 benefit of time and payroll analysis across 27,958 of the 44,861 total workweeks (62.3%).
7 Plaintiff also received an electronic employee roster that included hire and termination dates
8 for 709 employees. HH Decl. ¶10.

9 On December 13, 2022, Plaintiff Herrera and Cascade participated in a full-day
10 mediation before Mr. Scott S. Markus. The Parties were able to reach a resolution at the
11 mediation and executed a Memorandum of Understanding ("MOU"). The Parties ultimately
12 entered into their Stipulated Settlement Agreement that incorporated the terms of their MOU,
13 a true and correct copy of which is attached as **Exhibit "A"** to the Declaration of Haik
Hacopian. HH Decl. ¶11, Ex. A.

14 **D. Defendant BPM Senior Living Company**

15 BPM was the owner of the Regency Grand facility where Plaintiff Herrera was
16 employed until sale and transfer to Cascade on June 13, 2019. Employees at the facility,
17 including Plaintiff Herrera, were all terminated by BPM and rehired by Cascade upon the
18 transfer. A significant part of the Herrera litigation focused on whether Cascade assumed
19 liability for claims against BPM prior to the sale. It was ultimately established that there was
20 no such assumption. HH Decl. ¶12.

21 Moreover, Plaintiff Herrera executed an enforceable arbitration agreement with BPM
22 which BPM intended to enforce and would have resulted in the dismissal of class allegations
23 against BPM. As such, the matter would have bifurcated into an arbitration for Plaintiff
24 Herrera's individual claims against BPM prior to June 13, 2019 and class/PAGA litigation
25 against Cascade (Plaintiff Herrera's PAGA claim was only asserted against Cascade). As
26 Plaintiff Chavez was hired on or about August 2019, after the transfer on June 13, 2019, she
would not have any claims against BPM. HH Decl. ¶13.

1 BPM did not participate in the class mediation. BPM is neither a signatory to the
2 Settlement Agreement nor is BPM being provided with a release for any class or PAGA
3 claims. The Settlement Agreement expressly provides that “Defendant BPM Senior Living is
4 expressly excluded from the definition of Released Parties.” S.A. at §1.19. Further, Plaintiff
5 Herrera and BPM have agreed to a confidential individual settlement for Ms. Herrera’s claims
6 prior to June 13, 2019 and are currently awaiting its full execution. Notably, Cascade is not a
7 party to the individual settlement between Plaintiff Herrera and BPM, nor is Cascade being
8 released through that agreement. Plaintiff Herrera will seek dismissal of her individual claims
9 against BPM with prejudice and dismissal of class allegations against BPM without prejudice.
10 No consideration is being received by Plaintiff Herrera for the dismissal of class allegations
11 against BPM as said dismissal is being sought based on an enforceable arbitration agreement
12 barring class claims against BPM. HH Decl. ¶14.

12 **III. THE PROPOSED SETTLEMENT**

13 **A. The Essential Terms of the Settlement**

14 If the Court approves this settlement, Cascade will pay the gross sum of \$850,000
15 ("Settlement Amount") which will be used to fund this Settlement and make payments to Class
16 Members, who will be paid on an all-in non-reversionary opt-out basis. The Settlement
17 Amount excludes the employer share of taxes on the wage component of the Settlement which
18 will be separately funded by Defendant. HH Decl. ¶15.

19 The principal terms of the class action settlement are summarized below:

- | | |
|--|-------------|
| 20 • Settlement Amount. S.A. ¶¶1.21, 3.5: | \$850,000 |
| 21 • Minus Court-approved Attorneys’ Fees (35%). S.A. ¶3.6: | (\$297,500) |
| 22 • Minus Court-approved Cost Award. S.A. ¶3.6: | (\$25,000) |
| 23 • Minus Court-approved Service Awards. S.A. ¶3.8: | (\$20,000) |
| 24 • Minus estimated settlement administration costs. S.A. ¶3.7: | (\$13,000) |
| 25 • Minus 75% PAGA Payment to LWDA. S.A. ¶3.9: | (\$22,500) |
| 26 • Minus 25% PAGA Share to Aggrieved Employees. S.A. ¶3.9: | (\$7,500) |

1 **D. Settlement Allocation to Class Members**

2 The Individual Settlement Payments to Participating Settlement Class Members are
3 allocated for tax purposes as follows: 20% to claimed unpaid wages and 80% to claimed
4 interest and claimed penalties. Class Members will be responsible for paying their share of
5 all taxes due on their Settlement Payment other than the employer's share of payroll taxes,
6 and all required withholdings and deductions which will be calculated and withheld by the
7 Settlement Administrator. S.A. ¶4.9.

8 **E. Opt-Outs and Objections**

9 Class Members will have sixty (60) days from the mailing of the Class Notice to opt
10 out, object to the Settlement, or dispute the number of workweeks attributable to them. S.A.
11 ¶¶4.4, 4.5, & 4.6.

12 Class Members may elect to exclude themselves ("Opt Out") from the Settlement by
13 timely submitting a written request to be excluded from the Settlement. S.A. ¶4.5. The Opt-
14 Out Request must include the Class Member's name, address, telephone number, last four
15 digits of the Social Security number, and a statement that the Settlement Class Member wishes
16 to be excluded from the Settlement. Class Notice, §13.

17 Class Members who have not filed an Opt-Out Request may object to the Settlement
18 by submitting a written request to the Settlement Administrator. S.A. ¶4.6. The written
19 objection must contain the Class Member's name, address, and telephone number of the
20 objector. It must also include the case name and number, and a description of the objection.
21 Class Notice, §16. S.A. ¶4.6.

22 Any dispute shall be resolved by the Settlement Administrator with the assistance of
23 Settlement Class Counsel and Defense Counsel. Absent clear evidence submitted by the
24 Settlement Class Member establishing that the workweeks are not as presented in their Class
25 Notice, Defendant's records shall presumptively control. To the extent the Settlement
26 Administrator is unable to resolve the dispute to the satisfaction of the Settlement Class
Member, the Parties will submit the dispute with all supporting evidence to the Court for final
adjudication at the Final Approval Hearing. S.A. ¶4.4.

1 **F. Release**

2 Release As To All Participating Class Members. Upon the Effective Date and funding
3 in full of the Settlement Amount by Defendant, all Settlement Class Members who do not
4 timely opt out of the Settlement (“Participating Class Members”), including their heirs,
5 assigns, estates and representatives, shall be deemed to fully forever, irrevocably and
6 unconditionally release and discharge the Released Parties from the Released Claims. The
7 Settlement Agreement shall be in full settlement, compromise, release and discharge of the
8 Released Claims and each of them, and the Released Claims by the Class Representative, and
9 the Released Parties shall have no further or other liability or obligation to any Class Member
10 and/or the Class Representative with respect to the Released Claims and Class
Representative’s Released Claims, except as expressly provided herein. S.A. ¶5.1.

11 Release As To All Aggrieved Employees. Upon the Effective Date and funding in full
12 of the Settlement Amount by Defendant, Plaintiff and the State of California shall be deemed
13 to fully forever, irrevocably and unconditionally release and discharge the Released Parties
14 from the Released PAGA Claims. *Id.*

15 “Released Claims” means all class claims alleged in the operative complaint which are
16 based upon the alleged actions that occurred during the Class Period, and those claims that
17 could have been based on the same factual allegations and legal assertions made in the
18 operative complaint, and expressly excluding all other claims, including claims for vested
19 benefits, wrongful termination, unemployment insurance, disability, social security, workers’
20 compensation, and class claims outside of the Class Period. S.A. ¶1.17.

21 “Released PAGA Claims” means all PAGA claims alleged in the operative complaint
22 and Plaintiffs’ PAGA notices to the LWDA which occurred during the PAGA Period, and
23 expressly excluding all other claims, including claims for vested benefits, wrongful
24 termination, unemployment insurance, disability, social security, workers’ compensation, and
PAGA claims outside of the PAGA Period. S.A. ¶1.18.

25 “Released Parties” means Defendant, and each of Defendant’s respective past, present,
26 and/or future, direct and/or indirect, officers, directors, members, managers, employees,

1 agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators,
2 parent companies, subsidiaries, related entities, affiliates, divisions, predecessors, successors,
3 assigns, and joint venturers. Defendant BPM Senior Living Company is expressly excluded
4 from the definition of Released Parties. S.A. ¶1.19.

5 “Effective Date” means and refers to the date when all of the following events have
6 occurred: (1) this Settlement Agreement has been executed by all Parties; (2) the Court has
7 given preliminary approval to this Settlement Agreement; (3) the Class Notice has been sent
8 to Settlement Class Members, providing them with an opportunity to object to the terms of
9 this Settlement Agreement or to opt out of the Settlement; (4) the Court has held a formal
10 fairness hearing and entered a final Order and Judgment certifying the Settlement Class, and
11 approving this Settlement Agreement; (5) ten (10) calendar days have passed since the Court
12 has entered a Final Approval Order and Judgment certifying the Settlement Class, and
13 approving the Stipulated Settlement Agreement; and (6) in the event there are written
14 objections filed prior to the final fairness hearing which are not later withdrawn or denied, the
15 later of the following events: fifteen (15) days after the period for filing any appeal, writ or
16 other appellate proceeding opposing the Court’s final Order approving the Settlement has
17 elapsed without any appeal, writ or other appellate proceeding having been filed; or, if any
18 appeal, writ or other appellate proceeding opposing the Court’s final Order approving the
19 Settlement has been filed, five (5) business days after any appeal, writ or other appellate
20 proceedings opposing the Settlement has been finally and conclusively dismissed with no right
21 to pursue further remedies or relief. S.A. ¶1.11.

22 Only Named Plaintiffs will be providing general releases and waivers of Civil Code
23 §1542. S.A. ¶5.2.

24 **G. Service Awards to Named Class Representatives**

25 As part of the settlement, at the time of seeking final approval of the proposed class
26 action settlement, Plaintiffs will separately apply for a Service Award in the amount of Ten
Thousand Dollars (\$10,000) each for their services to the Settlement Class. S.A. ¶3.8.
"[I]ncentive awards are fairly typical in class action cases ... and are intended to compensate

1 class representatives for work done on behalf of the class [and] to make up for financial or
2 reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases*
3 (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiffs' requested incentive payments are intended
4 to recognize their contributions on behalf of the Class and are fair in relation to the total
5 settlement, their efforts, and standing alone. HH Decl. ¶18. Plaintiffs have put a significant
6 amount and time and effort participating in these cases and understand their role and
7 obligations as class representatives. Herrera Decl., ¶¶3-8. Chavez Decl., ¶¶3-6.

8 **H. Attorneys' Fees & Costs**

9 Defendant agrees not to oppose Plaintiffs' counsel's application for an attorneys' fees
10 award of \$297,500.00, which is thirty five percent (35%) of the Settlement Amount of
11 \$850,000, and payment of documented litigation costs and expenses up to \$25,000. S.A. ¶3.6.
12 Plaintiffs will submit detailed support for their request for a fee award along with their motion
13 for final approval of the settlement. For now, counsel submits that the requested fee is fair
14 compensation for undertaking a complex, risky, expensive, and potentially time-consuming
15 litigation involving these cases on a purely contingent fee basis. Here, counsel has incurred
16 substantial attorneys' fees independently conducting pre-filing investigations, analyzing the
17 claims, litigating the case, conducting legal research and analysis, reviewing significant
18 documentary and electronic records produced by Defendant, performing data analysis of
19 employee timekeeping data and payroll records, preparing for and attending a full-day
20 mediation, negotiating the settlement, preparing and amending the long-form Stipulated
21 Settlement Agreement, Class Notice, and preparing this Motion for Preliminary Approval,
22 and otherwise aggressively pursuing the interests of the putative class. HH Decl. ¶19.

23 Both California and federal courts have recognized that an appropriate method for
24 awarding attorneys' fees in class actions is to award a percentage of the "common fund"
25 created as a result of the settlement. *See Wershba v. Apple Computer, Inc.* (2001) 91
26 Cal.App.4th 224, 254 (recognizing both the "percentage of recovery" and "lodestar/
multiplier" methods). Plaintiffs' counsel's request for fees of thirty five percent (35%) of the
Settlement Amount is within the range of reasonableness. Historically, courts have awarded

1 percentage fees in the one-third range. *See, e.g., Laffitte v. Robert Half Int'l, Inc.* (2014) 231
2 Cal.App.4th 860, 878 (“[S]tudies show that . . . fee awards in class actions average around
3 one-third of the recovery.”); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 n.11 (2008)
4 (accord); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*,
5 J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies
6 of class action litigation nationwide conclude that a one-third fee is consistent with market
7 rates). In conclusion, counsel submits that its request for attorneys' fees is reasonable when
8 viewed as an overall percentage of the settlement as well as with reference to counsel's
9 loadstar. In light of the risks and significant work undertaken by counsel, the results obtained
10 for the class, and the efficiency with which the Parties collaborated to conduct the litigation,
the fee and cost request is fair and reasonable. HH Decl. ¶20.

11 It has been agreed that the attorneys' fees awarded to Class Counsel shall be paid
12 seventy-five percent (75%) to Mooradian Law, APC and twenty-five percent (25%) to James
13 Hawkins APLC. S.A. ¶3.6.

14 **IV. PRELIMINARY APPROVAL IS WARRANTED**

15 Rules of Court, rule 3.769, conditions the settlement of a class action on court
16 approval, which is generally evaluated under the federal standards applicable under Rule 23
17 of the Fed. R. Civ. P. 23. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th
18 322, 337 (2012) (stating that Rule 3.769 requires the trial court to determine "that the
19 settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th
20 Cir. 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine
21 "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). To be
22 approved, a settlement must be "fair, reasonable and adequate to all concerned." *Reed*, 208
23 Cal.App.4th at 337. Settlement is the preferred means of dispute resolution, particularly in
24 complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095,
1101. The Court's role in evaluating a proposed settlement is limited to ensuring that the
25 agreement taken as a whole is fair, and is not the product of fraud or collusion between the
26 negotiating parties. *See, e.g., Hanlon*, 150 F.3d at 1027. There is an initial presumption of

1 fairness when the settlement agreement was negotiated at arms' length by experienced
2 counsel. *See, e.g., Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. A trial
3 court's decision to approve a class action settlement is within the sound discretion for the trial
4 judge and may be reversed only if the trial court acted outside of its broad discretion. *See*
5 *Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399, 407.

6 **A. Standard for Preliminary Approval**

7 To make a fairness determination, the Court should consider several factors, including:
8 "The strength of Plaintiff's case, the risk, expense, complexity and likely duration of further
9 litigation, the risk of maintaining class action status through trial, the amount offered in
10 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
11 experience and views of counsel." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.
12 "The list of factors is not exclusive and the Court is free to engage in a balancing and weighing
13 of the factors depending on the circumstances of each case." *Wershba v. Apple Computer,*
14 *Inc., supra*, 91 Cal.App.4th at 245. It should be noted that the reasonableness of a settlement
15 is not dependent upon its actual value approaching the potential recovery plaintiff might have
16 received if he had succeeded at trial, *Sutter Health Unins. Pricing Cases* (2009) 171 Cal. App.
17 4th 495, 511 (emphasizing that the court must be mindful that "[t]he ... class case could have
18 gone to an incredibly lengthy and expensive jury trial, and the class could have lost the case"
19 and must account for that likelihood in discounting the value of the claims for settlement
20 purposes [emphasis in original]). As discussed below, the proposed settlement is fair, adequate
21 and reasonable in light of the overall balance of factors in this case.

21 **B. The Strength of Plaintiff's Case**

22 1. Unpaid Wages

23 Cascade's handbook mandated accurate employee timekeeping including recordation
24 of meal breaks. Cascade, however, implemented quarter hour rounding at the start and end of
25 shifts. Based on the time and payroll data, 2,784 underpaid hours are calculated across 76,726
26 shifts. The total amount owed calculates to \$52,951. HH Decl. ¶21.

Cascade pays various non-discretionary payments identified as bonus supplemental

1 pay, referral pay, commission pay, rewards pay, and bonus regular pay which Plaintiffs tally
2 to \$309,520 paid during the class period. The overtime paid to employees, however, was based
3 on an employee's base hourly rate without recalculation to determine the regular rate to the
4 extent any of the above payments were paid. The total overtime differential owed calculates
5 to less than \$20,053. HH Decl. ¶22.

6 The total exposure tallies to \$73,004 and as these are straightforward calculation
7 issues, this is the value ascribed to the unpaid wage claim. HH Decl. ¶23.

8 2. Meal Breaks

9 Cascade's California specific meal break policies went into effect as of December
10 2019 and are compliant. Analysis of the data reflects 77,624 unique meal period violations
11 consisting of at least one of the following: (1) recorded 1st meal break after the end of the 5th
12 hour for shifts greater than 5 hours; (2) 1st meal break less than 30 minutes for shifts greater
13 than 5 hours; (3) no 1st meal break for shifts greater than 5 hours, or (4) no 2nd meal break for
shifts greater than 10 hours. HH Decl. ¶24.

14 Cascade started paying meal premiums in 2021 and the data reflects 751 instances of
15 premium pay, reducing unique violations to 76,873. Further, the policy designates premium
16 pay at "one hour of pay" with no reference to "regular rate of pay." That said, any differential
17 owed across the 751 premium payments would be negligible. Exposure for the unique meal
18 period violations calculates to \$1,129,614. In light of a compliant policy, substantial
19 individual inquiry would be necessary to determine whether a non-compliant meal period was
20 due to employee choice and craft some theory that will lend itself to certification across the
21 multiple locations, managers, and job circumstances. Based on the foregoing, a meal break
22 claim is not valued in excess of 30% of the assessed exposure, or \$338,884.20. HH Decl. ¶25.

23 3. Rest Breaks

24 Cascade maintained a compliant written rest period policy that authorized paid and
25 uninterrupted 10-minute rest periods. Plaintiff Herrera contends, however, that rest breaks
26 were never provided and to the extent any break was provided, it would be a meal break. The
time record reflects tracking of rest breaks for 2% of total shifts. To the extent a rest break

1 violation is assumed across 98% of the 179,462 rest break qualifying shifts, exposure for rest
2 period violations calculates to \$2,688,775. As there is no legal requirement that rest breaks be
3 tracked nor did Cascade require tracking, this sum overstates potential exposure. A more
4 reasonable exposure assessment may be assessed across 50% of rest break eligible shifts, or
5 \$1,334,387.50. HH Decl. ¶26.

6 Substantial individual inquiry would be necessary to determine if and why any rest
7 breaks were not taken on specific occasions and craft some theory that will lend itself to
8 certification across the multiple locations, managers, and job circumstances with the backdrop
9 of a compliant written policy. Based on the foregoing, a rest break claim is not valued in
10 excess of 25% of the assessed exposure, or \$398,558.88. HH Decl. ¶27.

11 4. Unpaid PTO

12 Cascade maintains a PTO benefit that allows for accrual upon hire at rates and caps
13 consistent with an employee's length of service. Per the handbook, however, payment of
14 accrued but unused PTO upon separation is conditioned on employees providing "a minimum
15 of three to four weeks' notice prior to resignation" and that "[f]ailure to provide adequate
16 notice will result in the loss of vacation payout at termination (unless prohibited by state law)
17 and may make you ineligible for rehire." No California requirements are otherwise articulated.
18 HH Decl. ¶28.

19 Plaintiff Herrera accrued PTO at a rate of 0.04 hours per hour worked. At her
20 separation, she had accrued 26.42 hours of PTO that were never paid. At her final hourly rate
21 of \$13.00, she would be entitled to a \$343.46 payment. HH Decl. ¶29.

22 Plaintiff identifies 220 employees who never received PTO (either at termination or at
23 any point during their employment). This may be explained by the handbook's notice and
24 forfeiture provision outlined above. Plaintiff calculates 11,744 hours of PTO that would be
25 owed to former employees, which calculates to \$176,425 in unpaid PTO. There are factual
26 issues that will need to be resolved including whether and how the PTO policy with its
forfeiture provision was interpreted and applied and how PTO was handled prior to the

December 2019 Handbook. Based on these issues, a 25% discount to stated exposure May be applied to arrive at a valuation of \$132,318.75 for the PTO claim. HH Decl. ¶30.

5. Waiting Time Penalties

The handbook makes no reference to the payment and timing of final wages at separation. In Plaintiff Herrera's instance, her last day worked was March 7, 2020 but she received her final wages the next pay day on March 23, 2020. At 509 terminated employees from Dec. 21, 2017 through the mediation date, the maximum waiting time penalties at 30 days calculates to \$1,683,066. There are expected to be significant factual variations relating to individual employee's separation and receipt of final pay that would undermine any unifying certification theory. But putting aside a substantive waiting time claim, the rounding claim would capture \$1,054,809 of the maximum exposure on a derivative basis on account of substantial spread across former employees of the \$52,951 owed. Similarly, the regular rate claim captures \$396,794 of the maximum exposure. *See Naranjo v. Spectrum Sec. Svcs.* (2022) 13 Cal.5th 93. Significantly, this claim is also subject to the good faith dispute defense under Cal. Code Regs. § 13520, and as such a 30% discount is applied to assess a value range from \$277,755.80 to \$738,366.30 for the waiting time penalties claim. HH Decl. ¶31.

6. Wage Statement Penalties

The regular wage statements issued to employees were facially compliant with the requirements of Labor Code Section 226. As with waiting time penalties, this claim is derivative of unpaid wage, meal, and rest break violations. *See Naranjo, supra*. Although maximum exposure calculates to \$1,083,550 for the 560 employees during the wage statement penalty period for 12,269 wage statements from December 21, 2019 through December 13, 2022, a more realistic valuation scenario would be on a derivative basis for the strong rounding and regular rate claims, as with the waiting time claim. The former captures \$569,250 of the maximum exposure and the latter captures \$112,500, and such represents the value range attributable to the wage statement claim. HH Decl. ¶32.

1 7. PAGA Claims

2 The data analysis reflects 12,269 PAGA Pay Periods. Assuming Plaintiffs are to
3 identify a predicate violation for every pay period across the unpaid wage, meal break, and
4 rest break claims and assessing a \$100 penalty for each and every pay period, results in
5 \$1,226,900 in maximum penalties. Applying an 80% reduction to maximum penalties results
6 in a potential exposure of \$245,380. Hacopian Decl. ¶33. See e.g., *Fleming v. Covidien* (C.D.
7 Cal. Aug. 12, 2011) 2011 WL 7563047 at *4 (reduction of PAGA civil penalties for wage
8 statement violations from \$2,800,000 to \$500,000, because employees suffered no injury,
9 defendants were not aware that their wage statements violated the law, and that they took
10 prompt steps to correct violations.) Moreover, a court may readily conclude that a lower
11 penalty assessment will suffice for this particular Defendant, including due to Defendant
12 starting to pay meal premiums in 2021, ostensibly as a consequence of this lawsuit and
13 Plaintiff’s PAGA claim. Plaintiff does not believe that any mid-to-high six figure PAGA
14 penalty recovery is very realistic in this case. There is also the risk that all or part of the PAGA
15 claim may be rejected on trial manageability grounds. Based on the foregoing, and also
16 because of potential defenses to the substantive claims that would bear on PAGA liability, the
17 Parties’ \$30,000 allocation for release of the PAGA claims reflects a very fair compromise
18 and is extremely reasonable. HH Decl. ¶33.

18 **C. Risks and Uncertainty**

19 Although Plaintiffs steadfastly maintain that their claims are meritorious, they
20 acknowledge that their position includes real risks and uncertainty. In deciding whether to
21 approve the settlement, the Court must balance the risk factors against an “understanding of
22 the amount in controversy and the realistic range of outcomes of the litigation.” *Kullar*, 168
23 Cal.App.4th at 130, 133; *Munoz*, 186 Cal.App.4th at 408-09. In this case, the settlement is fair
24 and adequate when compared to the total potential exposure and the risks inherent in
25 Plaintiffs’ claims. HH Decl. ¶34.

26 As courts have observed, “simply because a settlement may amount to only a fraction
of the potential recovery does not in itself render it unfair or inadequate. Compromise is the

1 very nature of settlement.” *Boyd v. Bechtel Corp.* (C.D. Cal. 1979) 485 F. Supp. 610, 618. In
2 this case, Plaintiffs consider the settlement to be significantly more than a “fraction,”
3 particularly considering the various potential complications, dangers and pitfalls that
4 proceeding would entail. HH Decl. ¶34.

5 In addition to considering the value of immediate payment for Settlement Class
6 Members, Plaintiffs’ counsel discounted the value of the class claims based on a variety of
7 factors, including the California Supreme Court’s decision in *Brinker Restaurant Corp. v.*
8 *Superior Court* (2012) 53 Cal.4th 1004. Defendant could have argued that it sufficiently
9 provided breaks without “policing” them. Moreover, Plaintiffs’ theory of liability for rest
10 break violations was weaker since employers have no obligation to record rest breaks (as rest
11 breaks are paid breaks). The relative lack of written proof, except for potential testimony from
12 Settlement Class Members, diminished the prospect of certifying the claim. Thus, a significant
discount on those claims was warranted. HH Decl. ¶¶24-27.

13 The potential penalties were deemed to be substantial claims. In response, Defendant
14 raised the good-faith dispute defense to the waiting time penalty claims¹. Success on the
15 penalty claims would require proving that the Defendant’s conduct was “willful.” As to PAGA
16 claims, there existed a high likelihood of a significantly reduced award. HH Decl. ¶¶31-33.

17 In short, Plaintiffs’ ability to prevail on certification and merits was far from certain.
18 There is the risk that prolonged litigation would likely have produced a worse result for
19 Settlement Class Members. Thus, this factor supports preliminary approval.

20 **D. Risk, Expense, Complexity, and Duration of Further Litigation**

21 This factor also weighs in favor of settlement approval. The parties had engaged in
22 formal discovery with significant review and assessment of the asserted claims which included
23 expert assistance. Defendant could have moved for summary adjudication on all or some of

24 ¹ See, e.g., Cal. Code Regs. § 13520 (a good-faith dispute exists to a claim for waiting time penalties "when an
25 employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part
26 of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith
dispute did exist.").

1 the claims. Moreover, preparation for class certification and trial remained for the Parties as
2 well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff
3 and/or summary judgment ruling. As a result, the parties would incur considerably more
4 attorneys' fees and costs through trial. This settlement avoids those risks and the
5 accompanying expense. HH Decl. ¶35. Hence, an additional support for a preliminary
6 approval.

7 **E. Risk of Maintaining Class Action Status**

8 To the extent any claims were certified, Defendant would certainly seek to decertify
9 them. Absent settlement, there was a risk that there would never be a certified class. HH Decl.
10 ¶36. Thus, this factor, too, supports preliminary approval of the settlement.

11 **F. Amount Offered in Settlement Given Realistic Value of Claims**

12 This proposed settlement provides a fair and reasonable monetary recovery for the
13 Class in the face of disputed claims and significant hurdles. HH Decl. ¶34. Courts recognize
14 that the reasonableness of a settlement is not dependent upon it approaching the potential
15 recovery plaintiffs might receive if successful at trial. *See In re Omnivision Tech., Inc.* (N.D.
16 Cal. Jan. 9, 2008) 2008 WL 123936; *see also Nat'l Rural Telecomm. Coop. v. Directv, Inc.*
17 (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be
18 acceptable even though it amounts to only a fraction of the potential recovery”); *Officers for*
19 *Justice v. Civil Serv. Comm* (9th Cir. 1982) 688 F. 2d 615, 628 (it is “the complete package,
20 taken as a whole rather than the individual component parts, that must be examined for overall
21 fairness”). The \$850,000 Settlement Amount captures 37.8 to 63.8% of the \$1,333,021.63 to
22 \$2,250,382.13 assessed case value on viable class claims, which is extremely favorable given
23 the significant risk factors described above. HH Decl. ¶34.

24 **G. Discovery Completed and the Status of Proceedings**

25 The lawsuit involved formal discovery which included the production of substantial
26 payroll and timekeeping records, and information regarding the size and makeup of the
putative class. It was only after the completion of this process and expert analysis that the
parties participated in mediation and reached the proposed settlement. HH Decl. ¶¶10 & 11.

1 Here is an additional factor germane to the preliminary approval.

2 **H. The Experience and Views of Counsel**

3 "Parties represented by competent counsel are better positioned than courts to produce
4 a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*
5 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are
6 represented by competent and experienced counsel who pressed Plaintiffs' claims forward
7 against a reputable defense firm. Class Counsel possesses extensive experience litigating wage
8 and hour class actions from the plaintiff side and has been appointed as class counsel in
9 numerous cases alleging similar claims. HH Decl. ¶¶2-3, Declaration of Zorik Mooradian
10 (hereinafter "ZM Decl.") ¶¶2-5. Declaration of James R. Hawkins (hereinafter "JRH Decl.")
11 ¶¶3-6. Class Counsel conducted review and analysis of Defendant's practices and timekeeping
12 and payroll records and drew on its extensive experience in similar cases to effectively assess
13 the strengths and weaknesses of Plaintiffs' claims. The settlement was also reached with the
14 input and assistance of an experienced and respected neutral mediator. HH Decl. ¶¶9 & 10.
15 This factor strongly supports preliminary approval. *See, Kullar, supra*, 168 Cal.App.4th at
16 130 ("The court undoubtedly should give considerable weight to the competency and integrity
17 of counsel and the involvement of a neutral mediator in assuring itself that a settlement
18 agreement represents an arm's length transaction entered without self-dealing or other
19 potential misconduct.").

20 **V. THE PRELIMINARY APPROVAL STANDARD HAS BEEN MET**

21 The Court should grant preliminary approval of the settlement and direct that notice
22 be given if the proposed settlement when it: (1) falls within the range of possible approval;
23 (2) appears to be the product of serious, informed and non-collusive negotiations; and (3) has
24 no obvious deficiencies. *See Manual for Complex Litigation* § 30.41 (3rd Ed. 1995); *4*
Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

25 The proposed settlement reflects a substantial portion of the estimated recovery that
26 the Settlement Class could reasonably expect in light of the potential litigation risks. As well,

1 the proposed settlement is for a sizable sum in light of the strong defenses and provides for
2 significant individual recovery. In accordance, the proposed settlement is within the range of
3 possible approval for communication of a notice in conformity and consideration thereof by
4 the Settlement Class. The Court will have the opportunity to again assess the reasonableness
5 of the settlement after the Class has had the opportunity to opt-out or object. HH Decl. ¶37.

6 **A. The Settlement Resulted From Serious, Informed, and Non-Collusive**
7 **Negotiations**

8 This proposed class-wide settlement is the result of arm's-length negotiations by
9 counsel, punctuated by a full-day mediation session before an experienced mediator and is,
10 therefore, entitled to an initial presumption of fairness. *See Kullar*, 168 Cal.App.4th at 130.
11 Plaintiff reviewed data for the class and conducted analysis of the data and records, with the
12 participation of an expert, to arrive at the estimated damage figures. HH Decl. ¶¶10-11, 21-
34.

13 The parties reached an agreement to mediate before Mr. Scott S. Markus, a respected
14 neutral mediator and agreed to a settlement. They then finalized the Stipulated Settlement
15 Agreement. HH Decl. ¶11. Therefore, this factor also supports preliminary approval.

16 **B. Provisional Class Certification is Appropriate Here**

17 “Litigation by class action has long been recognized as a superior method of resolving
18 wage and hour claims in California.” *Martinez v. Joe’s Crab Shack Holdings* (2013) 221
19 Cal.App.4th 1148, 1152. Class certification is appropriate when there exists “an ascertainable
20 and sufficiently numerous class, a well-defined community of interest, and substantial benefits
21 from certification that render proceeding as a class superior to alternatives.” *Brinker*, 53
22 Cal.4th 1004 at 1021. As the Supreme Court has noted, “[c]laims alleging a uniform policy
23 consistently applied to a group of employees in violation of the wage and hour laws are of the
24 sort routinely, and properly, found suitable for class treatment.” *Id.* at 1033. This is exactly
such a case.

25 **1. The Proposed Class Is Ascertainable and Numerous**

26 A class is "ascertainable" where the members "may be readily identified without

1 unreasonable expense or time by reference to official [or business] records." *See Sevidal v.*
2 *Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed
3 Class is defined by reference to two objective characteristics: (1) individuals who worked as
4 non-exempt employees for Defendant in California, and (2) were employed by Defendant at
5 some time during the putative class period at their California assisted living facilities.
6 Therefore, Class Members can be identified from Defendant's personnel and other
7 employment records. As to numerosity, the Class consists of at least 709 individuals, making
8 it highly impracticable to bring all class members before the Court. HH Decl. ¶8.

9
10 **2. The Community of Interest Requirements for Class Treatment are Met**

11 "[T]he community of interest requirement embodies three factors: (1) predominant
12 common questions of law or fact; (2) class representatives with claims or defenses typical of
13 the class; and (3) class representatives who can adequately represent the class." *Brinker*, 53
14 Cal.4th at 1021.

15 **a. Common Issues of Law and Fact Predominate**

16 The focus in a certification dispute is not on the merits of the case, but rather on what
17 types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug*
18 *Store, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. "Common questions of law and fact
19 are required in order to assure the interests of the litigants and the Court are furthered by
20 permitting the suit to proceed as a class action rather than in a multiplicity of separate suits."
21 *Cohen v. DIRECTV, Inc.* (2009) 178 Cal.App.4th 966, 975. Where the defendant
22 systematically engages in policies and practices that allegedly violate the Labor Code and
23 subject all of its employees to the same unlawful conduct, common questions of law and fact
24 will predominate over individualized issues. *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*
25 (2008) 169 Cal.App.4th 1524, 1538 (holding that a class of limousine drivers challenging their
26 compensation plan was proper for class treatment). Here, the predominance factor is met
because each claim challenges an alleged common policy or practice that Plaintiffs contend is
illegal. Plaintiffs' claims under the Labor Code are predicated on: a failure to pay for all hours

1 worked; meal, rest period policies and practices. These sorts of claims are commonly held to
2 be proper for class certification. *See, e.g., Williams v. Superior Court* (2013) 221 Cal.App.4th
3 1353, 1371 (certifying class based on uncompensated work time).

4 **b. The Claims of Named Plaintiffs Are Typical**

5 The typicality requirement is satisfied where class representatives have claims that are
6 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987)
7 191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the
8 same goods as the putative class in a consumer class action). Here, the claims of Plaintiffs are
9 typical of those held by the members of the proposed Class. First, Plaintiffs were employed
10 by Defendant during the proposed Class Period and were subject to its wage and hour
11 practices. Second, Plaintiffs claim they were injured by the same challenged practices they
12 claim injured the Settlement Class as a whole. Therefore, Plaintiffs have suffered the same
13 alleged injuries as the other members of the Settlement Class and satisfy the typicality
14 requirement.

15 **c. Plaintiffs & Class Counsel Will Fairly & Adequately
16 Represent the Class**

17 The adequacy of representation requirement examines conflicts of interest between
18 named parties and the class they seek to represent. *See Capital People First v. State Dept. of*
19 *Developmental Services* (2007) 155 Cal.App.4th 676, 697. A party's claim of representative
20 status will only be defeated by a conflict that "goes to the very subject matter of the litigation."
21 *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Here, Plaintiffs and their counsel
22 will adequately represent the class as there are no conflicts between the named Plaintiffs and
23 the Class they seek to represent, and Plaintiffs have claims that are in line with those of the
24 class. Herrera Decl., ¶¶3&4, Chavez Decl., ¶¶3&4, HH Decl. ¶5, ZM Decl. ¶7. Plaintiffs'
25 counsel also has extensive experience in wage and hour class action litigation. HH Decl. ¶¶2-
26 6, ZM Decl. ¶¶2-5, JRH Decl. ¶¶3-6. For these reasons, the Court should provisionally certify
the proposed Class.

1 **3. Class-Wide Settlement is Superior to Other Available Methods of**
2 **Resolution**

3 Here, the alternative method of resolution would be multiple individual lawsuits,
4 challenging the same alleged wage and hour policies and practices of Defendant, and each
5 seeking a small amount of damages. Such duplicative litigation would be extremely inefficient
6 and costly for the courts and wasteful for judicial forums that would otherwise devote
7 resources to other matters. HH Decl. ¶38. In light of these concerns, a class action is the
8 superior method of resolving these wage and hour claims. *Martinez*, 221 Cal.App.4th at 152
9 (“Litigation by class action has long been recognized as a superior method of resolving wage
10 and hour claims in California.”)

11 **VI. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED**
12 **NOTICE**

13 This Court should order distribution to the Class Members of the proposed Class
14 Notice in both English and Spanish by first-class mail. S.A. ¶¶1.6 & 4.4. This manner of
15 giving notice is the "best notice practicable" under the circumstances because it provides
16 "individual notice to all members who can be identified through reasonable effort." *See Eisen*
17 *v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. As a general rule, class notice must strike
18 a balance between thoroughness and the need to avoid unduly complicating the content of the
19 notice and confusing class members. *Wershba*, 911 Cal.4th at 252. The proposed Notice of
20 Settlement is attached as Exhibit 1 to the Stipulated Settlement Agreement. S.A. ¶1.6, Ex. 1.

21 Here, the Parties propose that the settlement be administered by CPT Group (“CPT”
22 or “Settlement Administrator”), an experienced class action settlement administrator. S.A.
23 ¶4.2. The Settlement Administrator’s duties are detailed in the Stipulated Settlement
24 Agreement. S.A. ¶4.2. Settlement Class Members' addresses are ascertainable through
25 Defendant’s personnel and payroll records. To the extent that the addresses of former
26 employees have changed, CPT will run all the addresses provided through the United States
Postal Service Notice of Change of Address database (which provides updated addresses for

1 any individual who has moved in the previous four years and has notified the U.S. Postal
2 Service of a forwarding address) and perform skip traces to obtain current address
3 information. S.A. ¶4.4. The Settlement Agreement allocates a maximum of \$13,000 for
4 administration expenses, which is appropriate in light of the number of class members and the
5 size of the settlement and the extent of work to be performed in administering the settlement
6 of the class. S.A. ¶3.7. Plaintiff has obtained a quote from CPT to administer the settlement
7 for \$11,000. HH Decl., ¶39, Exh. C.

8 The content of the proposed Class Notice satisfies Cal. Rules of Court, rule 3.769(d)
9 because it advises class members of the nature of the claims, basic contentions and denials of
10 the parties and the key terms of the settlement, the deadline to opt-out, or object to the
11 settlement and the procedure by which to do so, explains the recovery formula and expected
12 recovery amount for each class member, and advises them that they will be bound by the terms
13 of the settlement if they do not request exclusion. S.A. ¶1.6, Ex. 1. The proposed Class Notice
14 will also notify Settlement Class Members of the final approval hearing date and provides the
15 contact information for Class Counsel, and advises Settlement Class Members that they may
16 enter an appearance through counsel if they wish to. This manner of giving notice satisfies
17 Cal. Rules of Court, rule 3.769(e) as the most reliable and cost-effective method of reaching
18 Settlement Class Members.

19 **VII. THE PAGA ALLOCATION AND PAYMENTS SHOULD BE APPROVED**

20 The Settlement allocates \$30,000 for resolution of Plaintiffs' PAGA claims with
21 \$22,500 (75%) payable to the LWDA and \$7,500 (25%) payable to Aggrieved Employees.
22 S.A. ¶3.9. "Aggrieved Employees" means non-exempt employees who are or previously were
23 employed by Defendant in California during the period starting December 9, 2019 until
24 December 13, 2022 ("PAGA Period"). S.A. ¶¶1.3 and 1.13. To the extent an Aggrieved
25 Employee is also a Settlement Class Member, they will receive their Individual PAGA
26 Settlement Payment (S.A. ¶1.24) even if they submit an exclusion request. S.A. ¶3.9. The sum
payable to each Aggrieved Employee shall be allocated based on the proportionate number of

1 weekly pay periods worked by the individual Aggrieved Employee during the PAGA Period
2 relative to the total number of pay periods worked by all Aggrieved Employees. *Id.* As
3 required, this Motion and all supporting papers will be concurrently submitted to the LWDA.
4

5 **VIII. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

6 The Parties request that this Court set a hearing for final approval of the settlement on
7 a date appropriately scheduled to follow the deadline by which Settlement Class Members
8 must file objections to the settlement or opt-out. *See* Cal. Rule of Court, rule 3.769. The parties
9 propose that the final papers in support of the settlement be filed and served no later than 14
10 days prior to the hearing on final approval, and that the hearing on final approval of the
11 settlement be set 120 days after the date of the preliminary approval hearing, to allow a
12 reasonable period for notice and administration, and an opportunity to object to the settlement,
13 without excessive delay to the Class as to the receipt of their settlement shares.

14 **IX. CONCLUSION**

15 For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily
16 approve the proposed settlement, provisionally certify the Settlement Class, and enter the
17 Proposed Order submitted concurrently herewith.

18 Dated: June 15, 2023

MOORADIAN LAW, APC
JAMES HAWKINS APLC

20
21 By: /s/Haik Hacopian

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behalf of other persons similarly situated and
similarly aggrieved employees