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SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF SAN DIEGO**

MINERVA CASTANEDA, individually,
and on behalf of other members of the
general public similarly situated and on
behalf of other aggrieved employees
pursuant to the California Private
Attorneys General Act

Plaintiff,

v.

CASA DE LAS CAMPANAS, INC., a
California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 37-2021-00022395-CU-OE-CTL

Honorable Gregory W. Pollack
Department C-71

CLASS ACTION**PLAINTIFF'S NOTICE OF MOTION
AND UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Declaration of Proposed Class Counsel
(Danielle L. GruppChang); Declaration of
Proposed Class Representative (Minerva
Castaneda); and [Proposed] Order filed
concurrently herewith]

Date: March 10, 2023
Time: 9:30 am
Department: C-71

Complaint Filed: May 20, 2021
FAC Filed: September 23, 2022
Trial Date: None Set

**TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF
RECORD:**

PLEASE TAKE NOTICE that on March 10, 2023 at 9:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Gregory W. Pollack in Department C-71 of the Superior Court of California for the County of San Diego, located at the Hall of Justice, 330 West Broadway, San Diego, California 92101, Plaintiff Minerva Castaneda (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation Re: Class Action and and Representaitve Action Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT A**” to the Declaration of Danielle L. GruppChang, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Class Representative Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Minerva Castaneda as Class Representative;
- Preliminarily appointing Brock & Gonzales, LLP as Class Counsel;
- Approving the proposed Notice of Class Action and PAGA Settlement (“Class Notice”), attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests

1 for the Attorneys' Fees and Costs to Class Counsel, Class Representative Payment for
2 Plaintiff, and Settlement Administration Costs to Settlement Administrator.

3 This motion is made pursuant to Rule 3.769 of the California Rules of Court, which
4 provides for approval by the Court of the settlement of a putative class action and allows the
5 Court to preliminarily certify a class for settlement purposes.

6 This motion is based upon the following memorandum of points and authorities, the
7 Settlement Agreement, the Declaration of Proposed Class Counsel (Danielle L. GruppChang)
8 and Proposed Class Representative (Minerva Castaneda) in support thereof, the pleadings and
9 other records on file with the Court in this matter, and such evidence and oral argument as may
10 be presented at the hearing on this motion.

11 Dated: February 14, 2023

BROCK & GONZALES, LLP

12 By: 
13 _____
14 Danielle L. GruppChang
15 *Attorneys for Plaintiff*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION AND PROCEDURAL HISTORY

Plaintiff Minerva Castaneda (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation Re: Class Action and Representative Action Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Casa de las Campanas, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of Nine Hundred Fifty Thousand Dollars (\$950,000.00).¹

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendant does not oppose:

any and all hourly-paid and/or non-exempt employees that worked for defendant during the period from May 20, 2017 through May 31, 2022 (“Class Period”) (“Class” or “Class Members”).²

The Class is estimated to consist of approximately 900 individuals.³

The Settlement resolves the Class Released Claims of Plaintiff and Participating Class Members and PAGA Released Claims of Plaintiff and Aggrieved Employees, against the Released Parties.⁴

Defendant is a continuing care retirement community. Plaintiff is a former employee of Defendant.

On May 20, 2021, Plaintiff filed a Class Action Complaint for Damages thereby commencing the above-captioned lawsuit (“Action”). On September 23, 2022, pursuant to the Parties’ joint stipulation, Plaintiff filed a First Amended Class Action Complaint for Damages and Enforcement under the Private Attorneys General Act (“First Amended Complaint”).

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Danielle GruppChang (“GruppChang Decl.”), § 1.N.

² *Id.*, §§ 1.D - 1.E.

³ GruppChang Decl., ¶ 10.

⁴ See Settlement Agreement at § 7.A. for the definition of the “Class Released Claims” and “PAGA Released Claims,” and at § 1.AA for the definition of the “Released Parties.”

Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that she, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

On February 21, 2022, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, a well-regarded mediator experienced in mediating complex labor and employment matters. Ultimately, with the aid of the mediator and the mediator's evaluations, the Parties reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed Three Hundred Sixteen Thousand Six Hundred Sixty Seven Dollars (\$316,667.00) (i.e., 1/3 of the Gross Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are not to exceed Fifteen Thousand Dollars (\$15,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) Two Hundred Thousand Dollars (\$200,000) allocated towards the settlement of PAGA ("PAGA Payment"); and (4) payment in the amount of up to Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff ("Class Representative Payment").⁵

///

⁵ Settlement Agreement, §§ 1.F., 1.N., 1.S., 1.T., 1.DD., & 12.

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member's share of the available Net Settlement Amount ("Individual Settlement Payment"), in accordance with the following formula: Individual Settlement Share = (Class Member's Workweeks ÷ Class Workweeks) × Net Settlement Amount.⁶ Aggrieved Employee's Individual PAGA Payment, will be calculated by the Settlement Administrator in accordance with the following formula: Aggrieved Employee's Individual PAGA Payment = (Aggrieved Employee's Workweeks ÷ PAGA Workweeks) x the PAGA Payment.⁷

Each Participating Class Member's Individual Settlement Payment will be allocated as follows: 25% as wages to be reported on an IRS Form W2 and 75% as penalties and interest to be reported on an IRS Form 1099.⁸ Participating Class Members will be issued payment of their Individual Settlement Payment subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Payment.⁹ Defendant will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Payments separately and in addition to the Gross Settlement Amount.¹⁰ Each Aggrieved Employee's Individual PAGA Payment will be allocated entirely as penalties and will be reported on an IRS Form 1099.¹¹

The checks issued to Participating Class Members and Aggrieved Employees will be negotiable for one hundred eighty (180) calendar days from the date of issuance.¹² Checks that are not negotiated within the 180-day period will be cancelled and the funds from associated with such cancelled checks will be transmitted by the Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the corresponding Class Member.¹³

Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing by sending a letter indicating that they want to exclude

⁶ Settlement Agreement, § 10.B.

⁷ *Id.*, § 10.E.

⁸ *Id.*, § 14.A.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Id.*, § 11.A.

¹³ *Ibid.*

themselves (“Request for Exclusion”).¹⁴ To be timely, the Class Member must mail the Request for Exclusion to the Settlement Administrator, postmarked on or before the date that is forty-five (45) calendar days from the initial mailing of the Class Notice (“Response Deadline”).¹⁵ A valid Request for Exclusion must include: (1) the Class Member’s name; (2) the last four digits of the Class Member’s Social Security Number; (3) the Class Member’s signature; (4) the name and case number of the Action; and (5) the following statement: “Please exclude me as a Class Member in the *Minerva Castaneda v. Casa de las Campanas, Inc.* matter, I understand that by excluding myself I will not receive any payment under the Settlement.” or a statement of similar meaning.¹⁶ Class Members who submit a valid and timely Request for Exclusion will not be bound by release of Class Released Claims.¹⁷ Aggrieved Employees may not request exclusion from the release of PAGA Released Claims.¹⁸

Only Class Members who do not exclude themselves from the Settlement (i.e., Participating Class Members) have standing to object to the Settlement.¹⁹ A valid Objection must be mailed on or before the Response Deadline, be in writing, and contain the following: (1) the Objector’s full name; (2) the Objector’s address; (3) the last four digits of the Objector’s Social Security Number; (4) the Objector’s signature; (5) a statement of whether the Objector plans to appear at the Final Approval Hearing; (6) the name and case number of the Action; and (7) the reason(s) for the Objection, along with whatever legal authority, if any, the Objector asserts in support of the Objection.²⁰

Class Members who wish to dispute the number of Workweeks credited to may do so by mailing a written letter to the Settlement Administrator on or before the Response Deadline (“Workweek Dispute”).²¹ A valid Workweek Dispute must be in writing and contain the following: (1) the Class Member’s full name; (2) the Class Member’s address; (3) the last four

¹⁴ *Id.*, § 9.C.

¹⁵ Settlement Agreement, § 1.BB.

¹⁶ *Id.*, § 9.C.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Id.*, § 9.B.

²⁰ *Ibid.*

²¹ *Id.*, § 9.D.

1 digits of the Class Member's Social Security Number; (4) the name and case number of the
2 Action; and (5) the number of Workweeks the Class Member contends is correct and attach any
3 evidence in support of their contention.²²

4 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
5 **SETTLEMENTS**

6 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
7 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). Courts review class action
8 settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later
9 detailed review after the period during which notice is distributed to class members for their
10 comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002).

11 Preliminary approval of a settlement does not require a court to make a final
12 determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made
13 only at the final approval stage, after notice of the settlement has been given to the class members
14 and they have had an opportunity to voice their views of the settlement or to exclude themselves
15 from the settlement. Cal. R. Ct. 3.769(g).

16 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

17 The trial court has broad powers to determine whether a proposed settlement is fair under
18 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make
19 this fairness determination, courts must consider several relevant factors, including “the strength
20 of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the
21 risk of maintaining class action status through trial, the amount offered in settlement, the extent
22 of discovery completed and the stage of the proceedings, the experience and view of counsel,
23 the presence of a governmental participant, and the reaction of the class members to the
24 proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801.

25 “A presumption of fairness exists where: (1) the settlement is reached through arm's-
26 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court
27 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
28

²² Settlement Agreement, § 9.D.

objectors is small.” *Wershba, supra*, 91 Cal.App.4th at 245; *Dunk, supra*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

A. The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.

The Parties actively litigated the Action since it was commenced on May 20, 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.²³

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendant.²⁴ Class Counsel interviewed Plaintiff and investigated other Class Members to gather facts and to identify potential witnesses.²⁵ Class Counsel propounded multiple sets of formal written discovery requests on Defendant.²⁶

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Jeffrey Krivis, *esq.*, a well-respected mediator experienced in mediating complex labor and employment matters.²⁷ Prior to and during the mediation and settlement discussions, the Parties exchanged class-wide information and engaged in an extensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, the possibility of appeals, and what Defendant alleged was enforceable and valid arbitration agreements, among other things.²⁸

²³ GruppChang Decl., ¶¶ 12-14.

²⁴ *Id.*, ¶ 13.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Id.*, ¶ 12.

²⁸ *Ibid.*

During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.²⁹

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.³⁰ In addition, Class Counsel have extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.³¹

B. The Settlement Is Fair, Reasonable, and Adequate.

The Settlement, which provides for a Gross Settlement Amount of Nine Hundred Fifty Thousand Dollars (\$950,000.00), represents a fair, adequate, and reasonable resolution of the matter.³² The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue (for example, evidence of arbitration agreements).³³ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.³⁴

Assuming that the Attorneys' Fees and Costs, Class Representative Payment, PAGA Payment, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Three Hundred Ninety Five Thousand Eight Hundred Thirty Three Dollars (\$395,833.00).³⁵ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Settlement Payment will be calculated based on his or her Class Workweeks.³⁶ There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable,

²⁹ *Ibid.*

³⁰ GruppChang Decl., ¶ 12.

³¹ *Id.*, ¶¶ 3-8.

³² *Id.*, ¶¶ 12, 14, 19 & 22.

³³ *Id.*, ¶¶ 18-20.

³⁴ *Id.*, ¶¶ 12, 14, & 22.

³⁵ Settlement Agreement, §§ 1.F., 1.N., 1.S., 1.T., 1.DD., & 12.

³⁶ *Id.*, § 10.B.

1 rational basis [to warrant approval], particularly if recommended by experienced and competent
2 class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y.
3 2001) 127 F.Supp.2d 418, 429-30.

4 In light of the foregoing considerations, Class Counsel believe that the Settlement as a
5 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.³⁷
6 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
7 the recommendations into account, particularly if Class Counsel appear to be competent, and
8 have experience with this type of litigation, and investigation have been completed, as is the
9 case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the
10 Settlement.

11 **C. The Settlement Is of Significant Value.**

12 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
13 conducted significant formal and informal discovery and exchanged thousands of pages of
14 documents, data, and information prior to mediation.³⁸ The documents and information that
15 Class Counsel obtained from Defendant and through other sources allowed Class Counsel to
16 develop valuation models in order to evaluate the potential value and merit of the claims, and
17 perform a complete evaluation of Defendant's defenses thereto.³⁹ As outlined in the Declaration
18 of Danielle L. GruppChang, Class Counsel performed an extensive analysis of each and every
19 claim pursuant to *Kullar* prior to entering into the Settlement.⁴⁰

20 **VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.**

21 For settlement purposes, the requisites for establishing class certification are met, and
22 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁴¹
23 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
24 one of a common or general interest, of many persons, or when the Parties are numerous, and it
25 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*

26 ³⁷ GruppChang Decl., ¶¶ 12, 14, & 22.

27 ³⁸ *Id.*, ¶¶ 12-14 & 19.

28 ³⁹ *Id.*, ¶ 19.

⁴⁰ *Id.*, ¶¶ 12-14 & 17-19.

⁴¹ Settlement Agreement, § 4.

(2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

A. The Class Is Ascertainable and Sufficiently Numerous.

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed Plaintiff by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

This action involves a class of approximately 900 individuals.⁴² This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

B. The Class Members Share a Well-Defined Community of Interest.

The community of interest requirement “embodies three factors: (1) predominant common questions of law or fact; (2) class representative with claims or defenses typical of the class; and (3) class representative who can adequately represent the class.” *Sav-On, supra*, 34 Cal.4th at 326. “[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims.*” *Capitol People First v. Dep’t of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts focus on the defendant’s internal policies and “pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiff renders class certification appropriate.”

⁴² GruppChang Decl., ¶ 10.

1 *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

2 Here, common issues of fact and law predominate as to each of the claims alleged and
 3 asserted in the Complaint. Based on the documents and information obtained through formal
 4 and informal discovery and exchange of information in this case, Plaintiff contend that all Class
 5 Members were subject to the same or similar job duties and uniform operations and employment
 6 practices, policies, and procedures during the time period at issue.⁴³ Plaintiff's claims arise from
 7 Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiff and the
 8 Class Members, of, *inter alia*, failing to: properly pay overtime and minimum wages for all
 9 hours worked, provide compliant meal and rest periods and associated premium pay, timely pay
 10 wages during employment and upon termination, provide complaint wage statements, keep
 11 requisite payroll records, and reimburse necessary business-related expenses.⁴⁴ Plaintiff also
 12 contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff and the
 13 Class Members were substantially the same during the time period at issue.⁴⁵ As a result,
 14 Plaintiff claim that all of the Class Members were uniformly not paid all compensation due to
 15 them from Defendant during the time period at issue.⁴⁶

16 Plaintiff maintains that the outcome of this litigation would be determined by
 17 Defendant's alleged uniform operations and employment policies and procedures that applied
 18 across the putative class members. Accordingly, the Court should certify the Class for
 19 settlement purposes only.

20 **VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR** 21 **ATTORNEYS' FEES AND COSTS**

22 Class Counsel has been investigating and litigating this action for over one and one half
 23 years, and was actively preparing the matter for class certification and trial.⁴⁷ The ongoing work
 24 has been extensive, demanding, and ultimately successful in achieving a substantial settlement
 25 resolution. Class Counsel conducted extensive investigations into the facts of the case and

26 ⁴³ GruppChang Decl., ¶ 12.

27 ⁴⁴ *Id.*, ¶ 19.

28 ⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Id.*, ¶¶ 12-14.

1 formal and informal discovery, including, and not limited to, propounding multiple formal
 2 written discovery requests onto Defendant. Class Counsel reviewed thousands of pages of
 3 documents and data⁴⁸ and also interviewed and obtained information from Plaintiff and other
 4 Class Members, researched applicable law, undertook damages/valuation calculations, and met
 5 and conferred with Defendant's counsel regarding the pleadings, discovery, and the production
 6 of documents and data prior to mediation.⁴⁹ Counsel for the Parties also undertook extensive
 7 settlement discussions, which included participating in a formal, full-day mediation.⁵⁰

8 Class Counsel is well-experienced in employment law and wage-and-hour class action
 9 litigation and used that experience to obtain a great result for the Class.⁵¹

10 The Settlement provides for Class Counsel to apply to the Court for Attorneys' Fees and
 11 Costs, consisting of attorneys' fees in an amount not to exceed one third (1/3) of the Gross
 12 Settlement Amount (i.e., \$316,667.00) and an amount not to exceed Fifteen Thousand Dollars
 13 (\$15,000.00) for costs and expenses.⁵² The attorneys' fees provided for by the Settlement is
 14 commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2)
 15 the extensive time, effort and expense that Class Counsel has dedicated to the case, (3) the skill
 16 and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved
 17 throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the
 18 Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote
 19 their time and efforts to this matter. The proposed Class Notice provides Class Members with
 20 information about the amount allocated toward the Attorneys' Fees and Costs, and that an award
 21 of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁵³

22 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
 23 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
 24 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. California law provides that attorney fee
 25

26 ⁴⁸ GruppChang Decl., ¶ 13.

27 ⁴⁹ *Ibid.*

28 ⁵⁰ *Id.*, ¶ 12.

⁵¹ *Id.*, ¶¶ 3-8.

⁵² Settlement Agreement, § 12.

⁵³ *Id.*, Exh. A.

awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at 48-49).

The propriety of calculating and awarding attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506.

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve class action attorneys' fee awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁵⁴

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's motion for final approval of the Settlement and application for the Attorneys' Fees and Costs and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. *See* Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50

⁵⁴ GruppChang Decl., ¶ 20.

Cal.App.3d 960, 973-74. A class notice is adequate if it “present[s] a fair recital of the subject matter and proposed terms” of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

The proposed Class Notice⁵⁵ describes the Settlement, the deadlines and procedures to submit an Objection, Request for Exclusion, and/or Workweek Dispute, and the date and time of the Final Approval Hearing.⁵⁶ The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement.⁵⁷ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement and also apprises the Class Members of, *inter alia*, how their gross Individual Settlement Payment and Individual PAGA Payment are calculated and the number of Workweeks credited to them.⁵⁸

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF SIMPLURIS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member in both English and Spanish by U.S. mail.⁵⁹ For any undeliverable Class Notice that is returned to the Settlement Administrator returned on or before the Response Deadline, the Settlement Administrator will obtain an updated address, and re-mail the Class Notice to the Class Member.⁶⁰ The Settlement Administrator will receive and process Requests for Exclusion, Objections, and any Workweek Disputes.⁶¹

The Settlement Administrator will calculate the amounts of the gross Individual Settlement Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of gross Individual Settlement Payments; mail the Individual Settlement Payment checks to Participating Class Members and

⁵⁵ Settlement Agreement, Exh. A.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Id.*, § 9.A.1.

⁶⁰ *Ibid.*

⁶¹ *Id.*, § 9.A.4.

Individual PAGA Payments to Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Class Representative Payment, and LWDA's portion of the PAGA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁶² The Settlement Administration Costs will not exceed Fifteen Thousand Dollars (\$15,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁶³

Accordingly, Plaintiff respectfully request that the Court appoint Simpluris as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At the preliminary approval stage, Plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26.

Within fourteen (14) calendar days after the preliminary approval date, Defendant will provide the Settlement Administrator with the Class List.⁶⁴ Within fourteen (14) calendar days of receipt of the Class List, the Settlement Administrator will mail the Class Notice to the Class Members via U.S. Mail.⁶⁵ Class Members and/or Aggrieved Employees will have until the applicable Response Deadline (i.e., 45 days after mailing) to submit a Request for Exclusion, Objection, and/or Workweek Dispute.⁶⁶

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE PAYMENT

Plaintiff respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Class Representative Payment in an amount up to Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff.⁶⁷ It is within the Court's discretion to award

⁶² Settlement Agreement, § 8.A.; GruppChang Decl., ¶ 16.

⁶³ *Ibid.*

⁶⁴ *Id.*, § 9.A.1.

⁶⁵ *Ibid.*

⁶⁶ *Id.*, § 1.BB.

⁶⁷ *Id.*, § 1.F.

1 payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.*
 2 (N.D. Cal. 1995) 901 F.Supp. 294, 299.

3 Plaintiff spent a substantial amount of time and effort in producing relevant documents
 4 and past employment records and providing the facts and evidence necessary to attempt to prove
 5 the allegations and was available whenever Class Counsel needed her and actively tried to obtain
 6 and provide information that would benefit the Class.⁶⁸ Accordingly, it is appropriate and just
 7 for Plaintiff to receive a Class Representative Payment for her services on behalf of the Class.

8 **XII. CONCLUSION**

9 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
 10 approval of the Settlement; conditionally certify the Class for settlement purposes; preliminarily
 11 appoint and designate Brock & Gonzales, LLP as Class Counsel; preliminarily appoint and
 12 designate Plaintiff Minerva Castaneda as Class Representative; appoint Simpluris as Settlement
 13 Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Class
 14 Representative Payment, PAGA Payment, and Settlement Administration Costs; approve the
 15 proposed Class Notice; direct the Settlement Administrator to undertake the notice and
 16 settlement administration process in conformity with the deadlines and procedures provided by
 17 the Settlement Agreement; and schedule a Final Approval Hearing to take place in
 18 approximately three months after the Preliminary Approval Order is entered.

19 Dated: February 14, 2023

BROCK & GONZALES, LLP

20 By: 
 21 Danielle L. GruppChang
 22 Attorneys for Plaintiff

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⁶⁸ GruppChang Decl., ¶ 21; Castaneda Decl., ¶¶ 4-6.

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 6701 Center Drive West, Ste. 610, Los Angeles, CA 90045.

On February 17, 2023, I served the foregoing documents described as: **PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action, addressed as follows:

Thomas S. Ingrassia, Esq.

Christine Y. Dixon, Esq.

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

11622 El Camino Real, Suite 300

San Diego, CA 92130

Emails: tigrassia@pettitkohn.com; cdixon@pettitkohn.com

Attorneys for Defendant, CASA DE LAS CAMPANAS, INC.

☒ **ONLY BY ELECTRONIC TRANSMISSION.** Only by e-mailing the document(s) to the persons at the e-mail address(es) listed based on notice provided on **March 17, 2020** that, during the Coronavirus (Covid-19) pandemic, this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

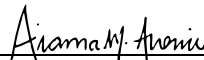
☐ **By U.S. Mail,** I deposited such envelope(s) in the mail at Los Angeles, California, with postage thereon fully prepaid.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

☐ **By Personal Service,** I caused such envelope(s) to be delivered by hand to the office(s) of the addressee(s).

☒ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 17, 2023, at Los Angeles, California.


Arianna Aveni