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Attorneys for Plaintiff EVA ROCKWELL
on behalf of herself and all others similarly situated

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

EVA ROCKWELL on behalf of herself
and all others similarly situated

Plaintiff,

vs.

CALIFORNIA MENTOR FAMILY
HOME AGENCY, LLC., a California
corporation, and DOES 1 through 50,
inclusive,

Defendant.

Case No. SCRDCVCV21-0197240-001

Assigned For All Purposes To:

Judge: Hon. Tamara L. Wood

Dept.: 8

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT; DECLARATION OF
JAMES R. HAWKINS IN SUPPORT
THEREOF; [PROPOSED] ORDER**

[Declaration of James R. Hawkins concurrently
filed herewith]

Date: July 24, 2023

Time: 9:00 a.m.

Dept.: 8

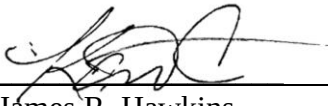
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2 **PLEASE TAKE NOTICE THAT** on July 24, 2023, in Department 8 of the above-
3 entitled court located at 1500 Court Street, Shasta, California 96001, Plaintiff Eva Rockwell
4 (“Plaintiff”) will and hereby does move the Court for an Order: (1) provisionally certifying the
5 Class for Settlement purposes only; (2) provisionally approving James R. Hawkins, Isandra Y.
6 Fernandez and Lance Dacre, from the law firm of James Hawkins, APLC, as counsel for Plaintiff
7 and the Class Members in this matter, (3) provisionally approving Eva Rockwell as the Class
8 Representative; (4) approving ILYM Group, Inc., as the Settlement Administrator; (5)
9 preliminarily approving the class action settlement; and (6) approving and directing distribution
10 of the Notice of Pendency of Class Action and Proposed Settlement and Notice of Settlement
11 Award.

12 This Motion is made pursuant to Rule 3.769 of the California *Rules of Court*, which
13 provides for court approval of the settlement of a purported class action and allows the Court to
14 preliminarily certify a class for settlement purposes. The basis for this Motion is that the
15 proposed Settlement is fair, adequate, and reasonable and the procedures proposed by the Parties
16 are adequate to ensure the opportunity of Class Members to participate in, opt out of, or object to
17 the Settlement.

18 This Motion will be based on the Memorandum of Points and Authorities included herein,
19 the Declaration of James R. Hawkins, the Stipulation of Settlement attached to the Declaration of
20 James R. Hawkins as Exhibit A, and upon the oral arguments of counsel (should there be any)
21 and upon the complete records and file herein.

22
23 **DATED: June 29, 2023**

24 **JAMES R. HAWKINS, APLC**

25 By: 
26 James R. Hawkins
27 Isandra Y. Fernandez
28 Kacey E. Cook
 Attorneys for Plaintiff
 Eva Rockwell

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On May 5, 2021, Plaintiff Eva Rockwell filed this wage and hour class action (“Lawsuit”
4 or “Action”) on behalf of herself and all employees employed by, or formerly employed by
5 California Mentor Family Home Agency, LLC., (hereinafter “Defendant” and/or “California
6 Mentor”) (Plaintiff and Defendant collectively referred to as “Parties”) who occupied non-exempt
7 positions, or primarily employed in executive, professional or administrative capacities in the
8 state of California (“Class Action Complaint”). The Lawsuit seeks recovery of alleged unpaid
9 wages, premium wages and penalties pursuant to the California Labor Code, California Industrial
10 Welfare Commission (“IWC”) Wage Orders, Bus. & Prof. Code § 17200 and the Private
11 Attorneys’ General Act (“PAGA”). The action further seeks an award of attorneys’ fees, interest
12 and costs. California Mentor denies the claims alleged and disputes any liability for the damages
13 sought.

14 Subject to Court approval, the Parties have reached a settlement of the claims asserted on
15 behalf of the class and representative PAGA group in this Lawsuit for a total of Six Hundred
16 Seventy Five Thousand Dollars \$675,000 (hereinafter “Maximum Settlement Amount” or
17 “MSA”), which includes Individual Settlement Payments, PAGA Amounts, the Labor and
18 Workforce Development Agency Payment, Plaintiff’s Class Counsel Fees, Plaintiff’s Class
19 Counsel Expenses, the Class Representative Service Award and the Administrator’s Expenses
20 (the “Action”) **This is a cash settlement.** Every Class Member who does not opt out of the
21 Settlement will automatically be mailed an individual settlement payment. However, every Class
22 Member who is also within the PAGA group will be mailed their respective individual class
23 payment associated with the PAGA penalty portion of the settlement amount regardless of opt-out
24 status. There is no claims filing process, and Class Members do not have to file a claim to be
25 mailed a payment.

26 As discussed more thoroughly below, the proposed Settlement satisfies all of the criteria
27 for preliminary settlement approval under California law and falls well within the range of proper
28 approval. As such, Plaintiff moves this Court to: (i) provisionally certify the proposed Class; (ii)

1 provisionally approve James R. Hawkins, Isandra Y. Fernandez and Lance Dacre, from the law
2 firm of JAMES HAWKINS, APLC as class counsel for Plaintiff and the Class in this matter; (iii)
3 provisionally approve named Plaintiff Eva Rockwell as the class representative; (iv) appoint
4 ILYM Group, Inc., as the settlement administrator; (v) grant preliminary approval of the
5 Stipulation of Settlement (hereinafter “Settlement Agreement”); (vi) direct distribution of the
6 Notice of Pendency of Class Action and Proposed Settlement and Notice of Settlement Award on
7 the terms and conditions set forth in the Settlement Agreement; and (vii) schedule a final approval
8 hearing.

9 **II. FACTUAL BACKGROUND**

10 On May 5, 2021, Plaintiff Eva Rockwell initiated this action in the Superior Court for the
11 County of Shasta on behalf of herself and all others similarly situated, styled *Eva Rockwell v.*
12 *California Mentor Family Home Agency, LLC et al.*, (Shasta County Case No.
13 SCRDCVCV21-0197240-001.) The Complaint asserts causes of action for; (1) failure to pay
14 lawful wages including overtime wages; (2) failure to provide lawful meal periods or
15 compensation in lieu thereof; (3) failure to provide lawful rest periods or compensation in lieu
16 thereof; (4) failure to indemnify employee expenses; (5) failure to pay timely wages; (6) knowing
17 and intentional failure to comply with itemized employee wage statement provisions; (7) failure
18 to pay correct sick pay; and (8) violations of the unfair competition law (Bus. & Prof. Code §
19 17200 *et seq.*) (the “Action”) (See Declaration of James R. Hawkins “Hawkins Decl.” ¶ 2.)

20 On May 4, 2021, Plaintiff provided notice to the Labor and Workforce Development
21 Agency (“LWDA”) of her intent to pursue Defendant for all civil penalties arising from
22 Defendant’s alleged failure to, inter alia, pay all wages earned including failure to provide proper
23 rest periods and meal breaks, failure to reimburse employee expenses, failure to pay correct sick
24 pay, and failure to provide accurate wage statements to Plaintiff and other similarly situated
25 aggrieved employees (Hawkins Decl. ¶ 3). On May 9, 2023, Plaintiff filed a First Amended
26 Complaint, which included one additional cause of action for violations of the Private Attorneys
27 General Act (Labor Code § 2699 *et seq.*) (“PAGA”). (Hawkins Decl., ¶ 4.)

1 Plaintiff brings this action pursuant to Labor Code 201, 202, 203, 204, 210, 226, 226.7,
2 246, 218.5, 510, 512, 1194, 1198, 2802 and California Code of Regulations, Title 8, section
3 11050 *et seq.* seeking unpaid lawful wages, unpaid rest and meal period compensation,
4 unreimbursed business expenses, improper sick leave compensation, penalties and other equitable
5 relief, and reasonable attorneys' fees and costs. Pursuant to Business and Professions Code
6 sections 17200 through 17208, Plaintiff also seeks restitution for unpaid wages, as well as civil
7 penalties pursuant to PAGA based on the alleged violations of the aforementioned Labor Code
8 sections.

9 Throughout this litigation, Defendant has denied Plaintiff's allegations and raised defenses
10 to her claims, both individually and on a representative basis. (Hawkins Decl. ¶ 5.) Defendant
11 maintains that its employment policies and practices meet the requirements of the Labor Code
12 and applicable Wage Orders (*Id.*) To date, no motion for class certification has been filed, no
13 class has been certified and the Court has not made any findings that California Mentor engaged
14 in any wrongdoing or in violation of any state law, rule or regulation, with respect to the issues
15 presented in the litigation (Hawkins Decl. ¶ 6.)

16 Through formal and informal discovery, Plaintiff and California Mentor have exchanged
17 extensive documents and information related to the claims asserted (Hawkins Decl. ¶ 7.)
18 Defendant has produced thousands of pages of information, including timecard records and wage
19 reports of putative Class Members (*Id.*) Defendant also provided Plaintiff with class data and
20 random samples of time records, wage statements, information regarding the number of non-
21 exempt employees during the relevant time period (Hawkins Decl. ¶ 8.)

22 After conducting formal and informal discovery, exchanging relevant information and
23 engaging in numerous discussions regarding the claims alleged, on December 20, 2022, the
24 parties participated in a private mediation with mediator Tripper Ortman, an experienced wage
25 and hour class action mediator (Hawkins Decl. ¶ 9.) During the course of the mediation, the
26 parties exchanged further information and documentation concerning Plaintiff's claims and
27

1 California Mentor’s defenses thereto, and aggressively advocated for their respective positions;
2 however, they did not reach a settlement (*Id.*)

3 After the mediation, the Parties continued in settlement negotiations with the assistance
4 of the mediator (Hawkins Decl. ¶ 10.) On or about December 22, 2022, the Parties reached a
5 settlement in principle of this Action for a maximum settlement amount of \$675,000 (*Id.*)
6 Thereafter, the Parties exchanged multiple drafts of the proposed settlement agreement and class
7 notice documents and engaged in communications regarding the settlement terms (*Id.*) The final
8 terms and provisions of the settlement agreement were approved and executed by all the parties
9 on or about February 7, 2023 (Hawkins Decl. ¶ 11; Exhibit A- Settlement Agreement.)

10 Based on their own respective independent investigations and evaluations and after taking
11 into account the sharply disputed factual and legal issues involved in this matter, the risks
12 attending further prosecution in light of certification issues faced due to the *Brinker Rest. Corp. v.*
13 *Super. Ct.*, (2012) 53 Cal. 4th 1004 (“*Brinker*”) decision, the discovery and investigation
14 conducted to date, Plaintiff and her counsel are of the opinion that settlement for the
15 consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and
16 adequate and is in the best interests of the named Plaintiff and Class Members (Hawkins Decl. ¶
17 12.)

18 **III. SUMMARY OF SETTLEMENT TERMS**

19 **A. Settlement Class**

20 “Settlement Class”, “Class Member”, or “Member of the Settlement Class” means all
21 current and former non-exempt employees employed by California Mentor Family Home
22 Agency, LLC in California at any time from May 5, 2017 through December 20, 2022 (the
23 “Class Period”), except during the time period(s) in which they held the positions of Mentor
24 Recruiter, Mentor Recruiter, CA, or Mentor Recruiter, CA, or Mentor Recruitment
25 Specialist. Participating Class Member(s) are Members of the Settlement Class who do not
26 submit a valid and timely Request for Exclusion (Settlement Agreement, p.1, ¶ 1,2.)
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1 5. Subject to Court approval, the total amount of PAGA civil penalties to be paid
2 from the Maximum Settlement Amount is \$75,000, of which 25% (\$18,750.00) will be allocated
3 to the Aggrieved Employees (“PAGA Amount”) and 75% (\$56,250.00) to LWDA (the “LWDA”
4 or “LWDA Payment”) in settlement of PAGA claims (Settlement Agreement, p. 3, ¶ 5 (C) (5).)

5 6. Subject to Court approval, the Settlement Administrator shall first deduct from
6 the Maximum Settlement Amount the amounts approved by the Court for Class Counsel's
7 Attorneys' Fees, Class Counsel's Costs and Expenses, Plaintiff's Class Representative Service
8 Award, the Settlement Administrator's fees and expenses for administration, and the total
9 amount designated as PAGA civil penalties. The remaining amount shall be known as the "Net
10 Settlement Fund"("NSF") (Settlement Agreement, p. 4, ¶ 4 (A).)

11 7. Each Individual Settlement Payment shall be allocated as follows (1) for payments
12 out of the NSF, thirty percent (30%) as wages, thirty percent (30%) as reimbursement, thirty
13 percent (30%) as penalties, and ten percent (10%) as interest; and (2) for payments out of the
14 PAGA Amount, one hundred percent (100%) as penalties. The Settlement Administrator will be
15 responsible for issuing to participating Settlement Class members an IRS Form W-2 for amounts
16 deemed "wages" and an IRS Form 1099 for the portions allocated as penalties and interest
17 (Settlement Agreement, p. 4, ¶ 4 (E).)

18 8. Employer's share of payroll taxes will be paid separately by Defendant (Settlement
19 Agreement (Settlement Agreement, p. 4, ¶ 5 (D).)

20 Here, there are approximately 810 putative Class Members (Dec of Hawkins ¶ .) The
21 NSF, subject to Court approval, is Three Hundred Thirty-Two Five Hundred Thousand Dollars
22 (\$332,500) Thus, the estimated average net recovery of Class Members will be approximately
23 \$410.50 (332,500/810) These average net recovery amounts are significantly more than other
24 wage and hour class action settlements approved by California state and federal courts. *See, e.g.,*
25 *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.)
26 (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-
27 3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately \$65); *Sorenson v.*

1 *Defendants, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of
2 approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County
3 Super. Ct.) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case
4 No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20); and *Jones v.*
5 *Bath& Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of
6 approximately \$50.)

7 **C. Released Claims Summary**

8 Plaintiff and every member of the Settlement Class will fully release and discharge
9 Defendant and all of its past and present parent companies, affiliates, controlling persons,
10 subsidiaries, joint employers, directors, officers, members, shareholders and investors, agents,
11 attorneys, employees, and benefit plans sponsored by any such entities (collectively the "Released
12 Parties") as set forth below: (Settlement Agreement, p. 2, ¶ 4.)

13 1) **Release by Participating Class Members**

14 All Participating Class Members, on behalf of themselves and their respective former and
15 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
16 the Released Parties from all claims and causes of action, alleged or which could have reasonably
17 been alleged based on the allegations in the Action, including claims for: (i) failure to pay lawful
18 wages; (ii) meal period violations; (iii) rest period violations; (iv) unreimbursed expenses; (iv)
19 sick pay violations; (v) failure to keep proper records; (vi) failure to provide accurate itemized
20 wage statements; (vi) waiting time penalties; (vii) unfair competition; (viii) declaratory relief that
21 could have been premised on the claims, causes of action or legal theories applied in the Action;
22 and (ix) all damages, penalties, interest, costs (including attorneys' fees) and other amounts
23 recoverable under said claims or causes of action as to the facts and/or legal theories alleged in
24 the Action (collectively, the "Non-PAGA Released Claims"). The period of the Release shall
25 extend to the limits of the Class Period. The *res judicata* effect of the judgment will be the same
26 as that of the Release (Settlement Agreement, p. 2, ¶ 4 (A).)

27 2) **Release of PAGA Claims by Aggrieved Employees**

1 Plaintiff and all Aggrieved Employees shall release all claims for civil penalties
2 under PAGA (the "PAGA Released Claims") The period of the Release shall extend to
3 the limits of the PAGA Period. The *res judicata* effect of the judgment will be the same as that
4 of the Release (Settlement Agreement, p. 2, ¶ 4 (B).) Collectively, the Non-PAGA Released
5 Claims and PAGA Released Claims are referred to as the "Released Claims") (Settlement
6 Agreement, p. 2, ¶ 4 (C).)

7 3) Plaintiff's Release

8 In light of her Plaintiff's Class Representative Service Award, Plaintiff Eva Rockwell has
9 agreed to release, in addition to the Released Claims described above, all claims, whether known
10 or unknown, under federal law, state law, or local law against the Released Parties. Plaintiff
11 understands that this release includes unknown claims and that she is, as a result, waiving all
12 rights and benefits afforded by Section 1542 of the California Civil Code, which provides: "A
13 general release does not extend to claims that the creditor or releasing party does not know or
14 suspect to exist in his or her favor at the time of executing the release and that, if known by him
15 or her, would have materially affected his or her settlement with the debtor or released party
16 Specifically excluded from Plaintiff's Released Claims are any claims for workers' compensation
17 benefits, which cannot be released as a matter of law." (Settlement Agreement, p.2, ¶ 4 (D).)

18 **D. Notice to Settlement Class**

19 Subject to Court approval, within ten (10) business days after entry of an order
20 preliminarily approving this Agreement, Defendant will provide the Settlement Administrator
21 with the names, last known addresses, and social security numbers (in electronic format) of
22 the members of the Settlement Class, including the dates of employment and the pay periods
23 worked by each Settlement Class member while employed in a position covered by the
24 Settlement Class definition during the Class Period (Settlement Agreement, p. 6, ¶ 9 (A).)

25 Within ten (10) business days from receipt of this information, the Settlement
26 Administrator shall: (i) run the names of all Settlement Class members through the National
27 Change of Address ("NCOA") database to determine any updated addresses for Settlement

1 Class members; (ii) update the addresses of any Settlement Class member for whom an
2 updated address was found through the NCOA search; (iii) calculate the estimated Individual
3 Settlement Payment for each Settlement Class member; (iv) provide its calculations to Counsel
4 for approval; and (v) mail the Notice Packet to each Settlement Class member at his or her last
5 known address or at the updated address found through the NCOA search, and retain proof of
6 mailing (Settlement Agreement, p.7 ¶ 9 (B).)

7 The Settlement Administrator shall use its best professional efforts, including
8 performing a “skip trace,” to track any Settlement Class member's mailing returned as
9 undeliverable, and will re-send the Notice Packet promptly, and in any event within three (3)
10 business days of identifying updated mailing addresses through such efforts. The address
11 identified by the Settlement Administrator as the current mailing address shall be presumed to
12 be the best mailing address for each Settlement Class member. It will be conclusively
13 presumed that, if an envelope so mailed has not been returned within thirty (30) days of the
14 mailing, the Settlement Class member received the Notice Packet (Settlement Agreement, p.7, ¶ 9
15 (C).) Subject to Court approval, the Notice Packet will be comprised of the Class Notice and the
16 Notice of Settlement Award (attached to the Settlement Agreement as Exhibits 1 and 2,
17 respectively) (Settlement Agreement, p. 6 ¶ 8 (F).)

18 Any Settlement Class member who wishes to opt-out of the settlement must complete and
19 mail a Request for Exclusion to the Settlement Administrator within forty-five (45) calendar days
20 of the date of the initial mailing of the Notice Packets (the "Response Deadline") (Settlement
21 Agreement, p. 7 ¶ 9 (D).)

22 **IV. CALIFORNIA RULES OF COURT § 3.769 APPROVAL PROCESS**

23 A class action may not be dismissed, compromised or settled without approval of the
24 Court. (*Wershba v. Apple Computer, Inc.*, (2001) 91 Cal. App. 4th 224, 240; Cal. Rules of Court,
25 Rule 3.769.) The approval or rejection of the proposed settlement is committed to this Court's
26 sound discretion (*Wershba*, 91 Cal. App. 4th at 234-235.) A court's decision to approve a class
27 action settlement may be reversed only upon a strong showing of “clear abuse of discretion.”

1 (*Class Plaintiffs v. City of Seattle*, (9th Cir. 1992) 955 F.2d 1268, 1276.) The purpose of the
2 court’s preliminary evaluation of the proposed settlement is to determine whether it is within the
3 “range of reasonableness” and thus, whether the notice to the class is appropriate (NEWBERG,
4 §11.25 at 11-36-37.)

5 According to this procedure, Plaintiff requests this Court to provisionally certify the
6 proposed class for settlement purposes – conditional upon final approval of the settlement. The
7 practical purpose of provisional class certification is to facilitate distribution to all Class Members
8 of notice of the terms of the proposed Settlement and the date and time of the final approving
9 hearing. Additionally, Plaintiff requests that this Court preliminarily approve the Settlement as
10 fair, adequate and reasonable as set forth below.

11 **V. PRELIMINARY APPROVAL OF SETTLEMENT IS APPROPRIATE**

12 The law favors settlement, particularly in class actions and other complex cases in which
13 substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation.
14 (*City of Seattle* 955 F.2d at 1276; *Potter v. Pacific Coast Lumber Company*, (1951) 37 Cal. 2d.
15 592, 602-603.; 4 NEWBERG § 11.41.) To grant preliminary approval of this class action
16 settlement, the Court need find only that the settlement falls within the “range of reasonableness.”
17 (*North County Contractor’s Ass. Inc. v. Touchstone Ins. Svcs.*, (1994) 27 Cal. App. 4th 1085,
18 1089-1090.) In determining whether a class settlement is fair, adequate and reasonable, courts
19 must consider the following relevant factors: the strength of the plaintiff’s case, the risk, expense,
20 complexity and likely duration of further litigation, the risk of maintaining class action status
21 through trial, the amount of offered settlement, the extent of discovery completed and the range of
22 the proceedings, and the experience and views of counsel. (*Dunk v. Ford Motor Co.*, (1996) 48
23 Cal. App. 4th 1794, 1801; *Clark v. American Residential Services, LLC*, (2009) 175 Cal. App.
24 4th. 785,799.) The list of factors is not exclusive and the court is free to engage in a balancing and
25 weighing of the factors depending on the circumstances of each case.” (*Clark*, 175 Cal. App. 4th
26 at 799; *Wershba*, 91 Cal. App. 4th at 245.)

1 Furthermore, courts must give “proper deference to the private consensual decision of the
2 parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement
3 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a
4 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
5 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
6 adequate to all concerned.” (*Hanlon v. Chrysler Corp.*, (9th Cir. 1998), 150 F.3d 1011, 1027.)

7 **A. The Terms of the Proposed Settlement are Fair**

8 A preliminary review of the terms of the Settlement Agreement provides no reason to
9 doubt its fairness. A presumption of fairness exists where: 1) the settlement is reached through
10 arms-length negotiations; 2) investigation and discovery are sufficient to allow counsel and the
11 court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of
12 objectors is small (*Dunk v. Ford Motor Co.*, *supra*, at 1802.) The first three of these factors apply
13 at the preliminary approval stage; the percentage of objectors is determinable only at the final
14 approval stage.

15 1. The Settlement Was Reached Through Extensive Arm’s Length Bargaining and
16 Based on the Recommendation Proposed by the Mediator

17 As already discussed herein, the Parties have conducted themselves in informed, good
18 faith arm's-length negotiations after exchanging extensive information about the claims and
19 defenses of this lawsuit and engaging in pre-mediation and post mediation discussions aimed at
20 settling their dispute. In attempts to settle this lawsuit, the Parties participated in a full day
21 mediation with mediator Tripper Ortman (Hawkins Decl., ¶ 9.) In sum, armed with all of the
22 relevant information and with the help of an experienced mediator, counsel for the Parties
23 participated in lengthy, serious and informed negotiations which has resulted in the proposed
24 Settlement Agreement that is now placed before this Court.

1 2. Investigation and Discovery Were Sufficient For the Parties to Evaluate the Risks
2 Intelligently

3 Plaintiff conducted significant investigation of the facts and law both before and after the
4 Action was filed. Plaintiff's counsel reviewed voluminous supporting documents provided by
5 Defendant through formal discovery and in exchanges of information in preparation for mediation
6 (Hawkins Decl., ¶¶ 6-9.)

7 3. Plaintiff's Counsel is Experienced in Similar Litigation

8 Moreover, counsel for Plaintiff has represented, mediated and settled other employee class
9 actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the
10 claims against California Mentor and the benefits of the proposed Settlement under the
11 circumstances of the case (Hawkins Decl., ¶ 13,-16.)

12 **B. The Settlement Provides for Reasonable Compensation to Class Members**

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

26 Settling parties are not, however, required to partake in a hypothetical accounting
27 exercise: **"Kullar does not ... require any such explicit statement of [maximum] value; it**

1 requires a record which allows ‘an understanding of the amount that is in controversy and the
2 realistic range of outcomes of the litigation.’ *Munoz v. BCI Coca-Cola Bottling Co.*, (2010), 186
3 Cal. App. 4th 399, 409-10 (citing *Kullar*, 168 Cal. App. 4th at 120 (emphasis added). Overall,
4 “the most important factor” in determining “whether a settlement is fair and reasonable” is the
5 “strength of the case for plaintiffs on the merits, balanced against the amount offered in the
6 settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As discussed further
7 below, the recovery of \$675,000 for the Settlement Class and Aggrieved Employees is well
8 within the range of reasonableness and undeniably fair, adequate and reasonable considering the
9 risks and hurdles of continued litigation.

10 Based on documents and information produced by Defendant in formal discovery, in
11 preparation for mediation and during settlement negotiations and taking into account the nature of
12 the claim and Defendant’s defenses thereto, Plaintiff’s counsel estimated the maximum potential
13 liability as follows:

14 a. Failure to Pay Lawful Wages for All Hours Worked

15 From the records provided, and based on Defendant’s representation, Plaintiff understood
16 the average hourly rate of pay for non-exempt employees to be approximately \$19.00. During the
17 Class Period, the Class Members worked a collective total of approximately 46,850
18 workweeks/234,250 shifts.

19 Plaintiff’s claim for failure to pay wages owed is based on allegations that she and Class
20 Members worked “off the clock” to complete certain tasks for which they did not receive
21 compensation. During the liability period, Plaintiff contends that she and Class Members were
22 required to work during their meal periods by taking calls from management and/or clients.
23 Plaintiff alleges that she was required to answer calls from her managers, clients, and various
24 medical providers while she was off the clock/after the end of her shifts. Plaintiff contends that
25 she and Class Members were not compensated for this “off the clock” work and thus not paid all
26 lawful wages owed including overtime and/or minimum wage (*Id.*)

27 Defendant adamantly disputes Plaintiff’s allegations that employees were required to

1 perform any work “off the clock” during meal breaks and/or at the end of their shifts and claimed
2 that Plaintiff lacked evidence of any “off the clock” work. Further, Defendant asserts that this
3 claim would be difficult to certify given the predominance of the individualized inquiry as to the
4 whether, and to what extent, each Class Member performed work “off the clock.” (*Id.*)

5 Plaintiff calculated the estimated, potential maximum value for this claim based on an
6 allocated 60 minutes of underpaid overtime per shift as \$6,676,125 (Class Members \$27.00
7 hourly overtime rate x 1 x 234,250 = \$6,676,125.) Taking into consideration the nature of the
8 claim and Defendant’s defenses thereto including the inability to establish the violation with
9 respect to all of the Class Members, this claim was valued between an estimated maximum of
10 \$667,612.5 (10%) and \$333,806.25 (5%) for purposes of settlement (Hawkins Decl., ¶ 18(a).)

11 b. Meal Period Claim

12 The meal period violation claim is based primarily on allegations that California Mentor
13 failed to provide an uninterrupted 30-minute meal break by the end of the fifth hour and failed to
14 pay putative Class Members, one hour of pay at their regular rate of compensation for each
15 workday that a meal period was not lawfully provided. As already discussed herein, due to the
16 workload requirements, and Defendant’s policies and practices, Plaintiff alleges that she and
17 Class Members routinely worked in excess of five hours without being provided a compliant
18 thirty-minute meal break. By way of example, Plaintiff contends that she was required to use
19 meal break time to drive to various job sites, and/or answer calls during her meal period (Hawkins
20 Decl., ¶ 18 (b).)

21 Defendant denies Plaintiff’s allegations and maintains that they and Class Members were
22 provided with the opportunity to take full, 30-minute meal periods to which they were entitled as
23 per compliant company policies. Further, Defendant adamantly disputes the propriety of
24 certification in this case. Defendant’s position is that, under the holding in *Brinker* and other state
25 and federal decisions, Defendant fulfilled its legal obligations to non-exempt employees by
26 providing them with timely and proper meal periods. The maximum estimated liability for the
27

1 meal break claim, based on a 100% violation is \$3,729,454 (234,250¹ shifts x \$19.00 =
2 \$3,729,454) which assumes a meal break violation during every work shift. However, taking into
3 consideration the nature of the claim, Defendant's defenses and certification issues faced due to
4 *Brinker*, for purposes of settlement, the meal break claim was valued between and estimated
5 maximum of \$372,945 (10%) and \$186,473 (5%) (*Id.*)

6 c. Rest Period Claim

7 The rest period violation claim is primarily based on allegations that, as with the meal
8 breaks, and work performed "off the clock", due to the workload, policies, and practices of
9 Defendant, Plaintiff and Class Members during the liability period, were required to work without
10 being permitted or authorized to take compliant rest breaks. California Mentor disputes
11 Plaintiff's rest break claim and contends that Class Members were allowed to take ten minute rest
12 periods and regularly took such breaks. The maximum estimated liability for the rest break claim,
13 based on a 100% violation is \$3,729,454 (234,250 shifts x \$19.00 = \$3,729,454) which assumes
14 a rest break violation during every work shift. Taking into consideration the nature of the claim,
15 Defendant's defenses and certification issues faced due to *Brinker*, for purposes of settlement,
16 the rest break claim was valued between an estimated maximum of \$186,473 (5%) and \$0
17 (Hawkins Decl., ¶ 18 (c).)

18 d. Failure to Reimburse Employee Expenses

19 This claim is based on Plaintiff's allegations that, during the Class Period, she and Class
20 Members were required to use their personal phones in the performance of their job duties. For
21 example, Plaintiff and Class Members were required to clock in and out for their shifts and meal
22 breaks on the Sideline App. It appears that some Class Members were required to download the
23 App onto their personal phones. Plaintiff and other Class Members were frequently contacted on
24 their personal phones, especially when not on the clock. Plaintiff and Class Members did not
25 receive complaint reimbursement from Defendant for the use of their personal phones in the

26 _____
27 ¹ This number assumes that all shifts were meal break eligible.

1 performance of their job duties (Hawkins Decl. ¶ 18(d).)

2 Defendant disputes this allegation and contends that the Class Members were not required
3 to use their personal phones in the performance of their job duties and, in fact, were issued a
4 stipend for the use of the Sideline App. The estimated maximum liability assuming \$10 per
5 month is \$468,500. Upon further review and evaluation of the facts and circumstances
6 surrounding this claim and taking into consideration that it would require individualized inquiries
7 into whether and to what extent Class Members used their personal phones, this claim was valued
8 in the range of from 1% to 0% violation rate and therefore between an estimated maximum of
9 \$4,685 and \$0. (*Id.*)

10 e. Failure to Provide Accurate Itemized Wage Statements

11 Under Lab. Code § 226(e), an employee suffering “injury as a result of a knowing and
12 intentional failure by an employer” to provide accurate wage statements is entitled to \$50 for the
13 initial violation and \$100 for each subsequent violation up to \$4,000. California Mentor denies
14 that it provided inaccurate wage statements. Further, California Mentor argues that, if any wage
15 statements were in fact inaccurate, they did not “knowingly and intentionally” fail to provide
16 accurate statements and that Plaintiff and the class did not suffer any “injury” from such
17 inaccurate wage statements (Hawkins Decl. ¶ 18 (e).)

18 Per information provided by Defendant, Plaintiff believes there were an estimated 352
19 Class Members working during the relevant time period. Thus, if a calculation is performed
20 using the maximum exposure permitted per Class Member under Labor Code section 226, this
21 amounts to a maximum exposure for Defendant of \$1,408,000 (352 Class Members x \$4,000
22 penalties.) However, some of the Class Members working during the relevant time period
23 may have worked for only one pay period during the relevant time period and some may have
24 worked for tens of pay periods. For purposes of settlement negotiations, said claim was
25 valued between an estimated maximum of \$281,600 (20%) and \$0 (*Id.*)

26 f. Failure to Timely Pay Wages

27 With respect to Lab. Code §203 claim, there were an estimated total of 415 former Class

1 Members to whom this claim applied. The estimated maximum potential liability was
2 determined to be \$1,892,400 based on the following: The estimated average daily pay rate of
3 \$152 x 30 days= \$4,560 x 415 former Class Members = \$1,892,400 (Hawkins Decl., ¶ 18(f).)

4 Defendant once again defends that no unpaid wages are owed as Defendant did not fail to
5 pay the correct wages. Defendant further contends that its actions were not willful as required for
6 penalties to issue and that, thus, waiting time penalties cannot be awarded. For purposes of
7 settlement negotiations, said claim was valued between \$189,240 (10%) and \$94,620 (5%) (*Id.*)

8 g. Bus. & Prof. Code § 17200 Claim

9 The only remedies available under the unfair competition law (“UCL”) Business and
10 Professions Code Section 17200 et seq. are restitution and injunction, as opposed to damages
11 *Clark v. Superior Court*, (2010) 50 Cal. 4th 605, 610. The UCL provides that “[t]he court may
12 make such orders or judgments ... as may be necessary to restore to any person in interest any
13 money or property, real or personal, which may have been acquired by means of such unfair
14 competition.” (Bus. & Prof. Code, § 17203.) Restitution under the UCL includes “earned wages.”
15 *Cortez v. Purolator Air Filtration Prods. Co.*, (2000) 23 Cal. 4th 163, 177-78 (Hawkins Decl., ¶
16 18(g).)

17 Restitution under the UCL is not available for all violations of the Labor Code. See
18 *Pineda v. Bank of Am., N.A.*, (2010) 50 Cal. 4th 1389, 1401-02. In *Pineda*, the California
19 Supreme Court held Labor Code § 203 is “not designed to compensate employees for work
20 performed [but] it is intended to encourage employers to pay final wages on time, and to punish
21 employers who fail to do so.” *Id.* Like Labor Code section 203, section 226 for wage statement
22 violations is also intended to “punish” the employer and is not an action brought to recover
23 wages. See *Gomez v. Jacobo Farm Labor Contractor, Inc.*, (2019) 334 FRD. 234, 267-268 (*Id.*)

24 Here, Plaintiff’s UCL claim is solely premised on the failure to pay lawful wages and
25 premium wages claims discussed above. Class Counsel assigned a zero dollar value to the UCL
26 claim because it does not provide any additional value in this Action other than to increase the
27 statute of limitations to four years for the underlying claims. Those claims are valued and

1 analyzed above based on the four year statute of limitations provided by the UCL. However, the
2 UCL claim in and of itself does not provide any additional damages. Therefore, there is no
3 additional or separate monetary value that this statute provides based on the facts of this Action
4 (*Id.*)

5 h. Lab. Code § 2699 (PAGA Claim)

6 Plaintiff's claims under PAGA are primarily predicated on or derivative of the rest and
7 meal break claims. The estimate maximum PAGA penalty was calculated as \$807,300. This
8 figure attributes a \$100 penalty to each of the pay periods in scope during the PAGA period. The
9 figure also assumes that there is a 100% violation rate during the PAGA period, such that every
10 single pay period in question involved at least one Labor Code violation, despite disputes
11 regarding Defendant's liability (Hawkins Decl., ¶ 18(h).) However, PAGA claims under the facts
12 and circumstance of this case may result in no award or at best a very minimal award by the trial
13 court. See specifically §2699(e)(2) which states in its pertinent part:

14 "... a court may award a lesser amount than the maximum civil penalty amount specified
15 by this part if, based on the facts and circumstances of the particular case, to do otherwise would
16 result in an award that is unjust, arbitrary and oppressive, or confiscatory."

17 For instance, in *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a
18 federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%,
19 because the court found maximum penalties "unjust" because the employees had suffered no
20 injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code
21 violations are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5 7 (2nd Dist.
22 Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County
23 Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist.
24 LEXIS 48557, *40 43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

25 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each
26 of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.
27 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff

1 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of
2 the Labor Code by the defendant.") Here, Plaintiff would need to prove that each Aggrieved
3 Employee suffered all violations for each pay period the employee worked. As discussed herein,
4 the nature of the PAGA based claims (i.e. rest break, meal period, wage statement, failure to pay
5 all wages owed, failure to pay correct sick pay and to timely pay wages) and Defendant's asserted
6 defenses thereto present a risk that some or all of the PAGA penalties sought may not be
7 awarded. Given the nature of these claims, as analyzed above, Class Counsel believes it to be
8 likely that if there would be any award it would be a minimal amount. Therefore, the amount of
9 \$75,000 (which has been reserved for the PAGA claim) is both fair and reasonable (*Id.*)

10 Through her counsel, Plaintiff took into consideration the significant risks that class
11 certification could be denied on the central claim, or that a merits decision on the central claim
12 would not favor the Class. Plaintiff has considered the expense and length of continued
13 proceedings necessary to continue the Action against California Mentor through trial and any
14 possible appeals. Plaintiff is also aware of the burdens of proof necessary to establish liability for
15 the claims asserted in the Action, California Mentor's defenses thereto, and the difficulties in
16 establishing Plaintiff's damages (Hawkins Decl., ¶ 19.)

17 The proposed Settlement requires Defendant to pay each Class Member who does not opt
18 out a portion of the Net Settlement Fund as specifically set forth in the Settlement Agreement
19 (Hawkins Decl., ¶ 20.) The amount to be paid to the Class is undoubtedly fair, adequate and
20 reasonable especially in light of the significant risk to Plaintiff and Class Members in continuing
21 with the litigation and not prevailing on class certification or at trial (*Id.*)

22 For all the foregoing reasons, the proposed Settlement Agreement is fair, adequate and
23 reasonable, and is in the best interests of the Class Members.

24 **C. The Plaintiff's Class Representative Service Award and Class Counsel Fees**
25 **Are Reasonable and Should be Awarded**

26 The Settlement Agreement provides for an award to be paid to the Class Representative.
27 The primary purpose is to provide Plaintiff Eva Rockwell an enhancement payment, taking into

1 consideration the risks, time, effort and expenses incurred by her in coming forward to provide
2 invaluable information and negotiate and litigate this matter on behalf of all Class Member
3 (Hawkins Decl., ¶ 21.) Plaintiff has actively participated in this litigation by providing significant
4 supporting documents and information and assisting counsel in developing information necessary
5 to litigate and settle this case which has resulted in a favorable settlement for the putative Class
6 Members (*Id.*) Thus, the payment of \$7,500 to the Class Representative represents a small portion
7 of the aggregate settlement amount and should be awarded.

8 Further, as will be discussed in more detail in Plaintiff's motion for final approval of the
9 Settlement, class counsel fees in the amount of \$225,000 is reasonable within California's
10 standard benchmark and well within the range customarily approved by the California courts in
11 comparable class actions.

12 VI. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE

13 In addition to such terms as class definition, settlement amounts and payment procedures,
14 the Settlement Agreement reached between the Parties contains a provision to which the Parties
15 stipulate to the Court's provisional certification of the Class, but do so for the purposes of this
16 settlement only. Plaintiff now requests this Court to provisionally certify the Class.

17 It is well established that trial courts should use a lower standard for determining the
18 propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor*
19 *Co.*, (1996) 48 Cal.App.4th at 1794, 1807, fn. 19.) Under California law, a class action is
20 appropriate when the Class is ascertainable and there is a "well defined community of interest in
21 the questions of law and fact affecting the parties to be represented." (Code Civ. Proc., §382;
22 *Dunk*, 48 Cal. App. 4th at 1806.) State law requirements under *California Code of Civil*
23 *Procedure* section 382 for class certification largely mirrors *Federal Rules of Civil Procedure*
24 Rule 23 – namely, numerosity and typicality of the class representative's claims, adequacy of
25 representation, predominance of common issues and superiority. As discussed below, although
26 Defendant adamantly disputed and continues to dispute Plaintiff's ability to certify a litigation
27

1 class, all of the requirements of certification for settlement purposes are met for the proposed
2 settlement Class.

3 **A. The Proposed Class is Ascertainable**

4 Here, the proposed class is ascertainable because all of the Class Members are/were
5 employed directly by California Mentor and received their compensation directly from California
6 Mentor. The Class Members have been identified through Defendant's employee and personnel
7 files. (*See Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 ["Class Members are
8 'ascertainable' where they may be readily identified without unreasonable expense or time by
9 reference to official records"].)

10 **B. Numerosity of the Class is Sufficient**

11 If the class is sufficiently large that joinder of all members is impractical or that individual
12 joinder is impractical, the numerosity requirement is met. (*Hebberd v. Colgrove* (1972) 28
13 Cal.App.3d 1017, 1030.) Here, the proposed class consists of approximately 693-810 members,
14 consisting of current and former employees of Defendant. Therefore, joinder of individual claims
15 would be impractical and the numerosity requirement is met.

16 **C. There are Common Questions of Law and Fact to the Class**

17 Commonality is met if there are common questions of fact and law to the class. (*Hanlon v.*
18 *Chrysler Corp.* 150 F.3d at 1019 ["The existence of shared legal issues with divergent legal
19 factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal
20 remedies within the class"].) Here, Plaintiff alleges that the proposed Class Members' claims all
21 stem from the same alleged conduct. Specifically, Plaintiff alleges that California Mentor violated
22 California wage and hour law by (1) failure to pay lawful wages including overtime wages; (2)
23 failure to provide lawful meal periods or compensation in lieu thereof; (3) failure to provide rest
24 periods or compensation in lieu thereof; (4) failure to timely pay wages due at termination; (5)
25 knowing and intentional failure to comply with itemized employee wage statement provisions (6)
26 failure to indemnify employee expenses; (7) failure to pay correct sick pay; and (8) violations of
27 the unfair competition law. Plaintiff seeks recovery of all alleged wages, premium wages,

1 penalties and interest pursuant to the California Labor Code, the California Industrial Welfare
2 Commission (“IWC”) Wage Orders, Bus. & Prof. Code § 17200 *et seq.*, and PAGA. Although
3 Defendant disagrees with Plaintiff’s contentions for purposes of certifying a litigation class, for
4 purposes of a settlement class, these circumstances create questions of law and fact common to all
5 proposed Class Members.

6 **D. The Typicality Requirement is Met**

7 The typicality requirement is met if the claims of the named Class Representative are
8 typical of those of the class, though “they need not be substantially identical.” (*Hanlon* 150 F.3d
9 at 1020.) Factual differences may exist between the Class and the Class Representative(s) so long
10 as the claims arise from the same events or course of conduct and are based on the same legal
11 theories (*Id.*) Here, the claims of the Class Representative are typical of the other Class Members
12 because they arise from the same factual basis and are based on the same legal theories as those
13 applicable to all Class Members (*Wherner v. Syntex* (N.D. Cal. 1987) 117 F.R.D. 641, 644.)
14 Thus, for purposes of a settlement class, the typicality requirement is met.

15 **E. The Adequacy Requirement is Met**

16 If the named representative and his or her counsel have no interests adverse to the interest
17 of the proposed Class Members and are committed to vigorously prosecuting the case on behalf
18 of the class, then the adequacy requirement is met (*McGhee v. Bank of America*, (1976) 60 Cal.
19 App. 3d 442,450.) Here, under the proposed settlement, the Class Representative will receive a
20 reasonable award for her time and efforts assisting counsel with factual issues surrounding the
21 case and risk incurred in bringing this action on behalf of the Class Members. Other than this
22 specific payment, all Class Members will receive a percentage of the Net Settlement Fund based
23 on his or her respective number of covered work weeks. Therefore, no “settlement allocation”
24 questions are raised. (*Hanlon* 150 F.3d at 1020.)

25 Any Settlement Class member who wishes to opt-out of the settlement must complete
26 and mail a Request for Exclusion (defined herein) to the Settlement Administrator within forty-
27 five (45) calendar days of the date of the initial mailing of the Notice Packets (Settlement

1 Agreement, p. 7 ¶ 9 (D).) As a result, there is no conflict of interest between the Class
2 Representative and the Class Members. Additionally, the Class Representative and her counsel
3 have been committed to prosecuting this action on behalf of the Class.

4 **F. Common Issues Predominate and Class-wide Settlement is Superior to Other**
5 **Available Methods of Resolution**

6 Class certification is authorized where common questions of law and fact predominate
7 over individual questions and where class-wide treatment of a dispute is superior to individual
8 litigation. (*Richmond v. Dart Industries, Inc.*, (1981) 29 Cal.3d 462, 469.) The test is whether the
9 proposed class is sufficiently cohesive to warrant adjudication by representation. (*Hanlon, supra*,
10 at p. 1022.) Plaintiff contends that the proposed Class in this case is sufficiently cohesive, since
11 all Class Members share a “common nucleus of facts and potential legal remedies.” Specifically,
12 the Class Members and the Class Representative seek compensation for alleged unpaid wages,
13 premium wages for failure to provide compliant meal and rest breaks, as well as penalties and
14 interest for the allegations described herein; common questions about compensation or lack
15 thereof for worked performed by Class Members predominate over individual questions, and the
16 Class Members’ potential legal remedies are identical (*Id.*) Although Defendant disagrees with
17 Plaintiff’s contentions, it has agreed the Class may be certified for settlement purposes only.

18 Additionally, particularly in the settlement context, class resolution is superior to other
19 methods for the fair and efficient adjudication of the controversy. (*Hanlon*, 150 F. 3d at p. 1023;
20 *Dunk, supra*, 45 Cal. App. 4th at p. 1087.) The superiority requirement involves a “comparative
21 evaluation of alternative mechanisms of dispute resolution.” (*Hanlon, supra*, at p. 1023.) Here,
22 the alternative methods of resolution are a plethora of individual claims from potentially over
23 693 plaintiffs. The class action device can thus conserve judicial resources by avoiding the waste
24 and delay of repetitive proceedings and prevent inconsistent adjudication of similar issues and
25 claims. (*Sav-On Drug Stores, Inc. v Superior Court* (2004) 34 Cal. 4th 319, 340; *Bell v Farmers*
26 *Ins. Exchange* (2004) 115 Cal.App.4th 715, 741.) Therefore, settlement on a class-wide basis is
27 superior.

1 Hearing, and the procedure and deadlines for opting out of the Settlement or for submitting
2 comments and objections. (Cal. Rule of Court 3.769(f).)

3 The Notice also fulfills the requirement of neutrality in class notices. (2 NEWBERG
4 §8.39.) It summarizes the proceedings to date and the terms and conditions of the settlement in an
5 informative and coherent manner, in compliance with the MANUAL’S statement, “the notice
6 should be accurate, objective, and understandable to class members.....” (MANUAL at §30.21.)
7 The Notice clearly states the settlement does not constitute an admission of liability by California
8 Mentor and recognizes the Court has not ruled on the merits. It also states the final settlement
9 approval decision has yet to be made. Accordingly, the Notice complies with the standards of
10 fairness, completeness and neutrality required of a settlement class notice disseminated under the
11 authority of the Court. (F.R.C.P. 23(c)(2).)

12 Moreover, the Notice comports with CA Rules of Court, Rule 3.766(d). As per Rule
13 3.766, the contents of the Notice providing for an opt out procedure for the Class Members must
14 include the following:

- 15 (1) A brief explanation of the case, including the basic contentions or denials of
16 the parties;
- 17 (2) A statement that the Court will exclude the member from the class if the
18 member so requests by a specified date;
- 19 (3) A procedure for the member to follow in requesting exclusion from the class;
- 20 (4) A statement that the judgment, whether favorable or not, will bind all members
21 who do not request exclusion; and
- 22 (5) A statement that any member who does not request exclusion may, if the
23 member so desires, enter an appearance through counsel.

24 The Class Notice contains the information required under Rule 3.766(d). (See Ex. 1
25 attached to Settlement Agreement.)
26
27

1 **VIII. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully request that the Court enter the Proposed
3 Order Granting Preliminary Approval submitted concurrently herewith, and thus:

4 1. Grant preliminary approval of the Settlement Agreement, and certify the
5 Settlement Class for the purposes of settlement only;

6 2. Confirm named Plaintiff Eva Rockwell as the Class Representative and James R.
7 Hawkins, Isandra Fernandez and Lance Dacre, of the law firm of JAMES HAWKINS, APLC as
8 Class Counsel;

9 3. Approve and appoint ILYM Group, Inc., as Settlement Administrator;

10 4. Enter an Order preliminarily approving the proposed settlement and approving the
11 Notice, and;
12

13 5. Schedule the Final Approval Hearing Date on _____, 2023; (to be
14 determined by the Court at the hearing for preliminary approval of settlement.

15
16 Respectfully submitted,

17 Dated: June 29, 2023

JAMES HAWKINS, APLC

18 

19 James R. Hawkins, Esq.

20 Isandra Y. Fernandez, Esq.

21 Kacey E. Cook, Esq.

22 Attorneys for Plaintiff

23 Eva Rockwell