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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ELIA REZKALLA, Individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff

v.

CORECIVIC, INC., a Maryland Corporation;
and CORECIVIC OF TENNESSEE, LLC, a
Tennessee Limited Liability Company, and
DOES 1-10, inclusive.

Defendants

CASE NO. 37-2021-00045841-CU-OE-CTL

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S *UNOPPOSED* MOTION FOR
CONDITIONAL CERTIFICATION OF
SETTLEMENT CLASS AND
PRELIMINARY APPROVAL OF GOOD
FAITH DETERMINATION OF CLASS
ACTION SETTLEMENT**

Date: March 30, 2023
Time: 1:30 p.m.
Dept: C-72
Judge: Hon. Timothy Taylor

TABLE OF CONTENTS

I.	Summary of Motion.....	1
II.	Factual and Procedural History.....	2
1.	The Operative Claims, Investigation and Informal Discovery Conducted.....	2
2.	Settlement Discussions.....	3
III.	Settlement Terms.....	3
1.	Contingent Nature of the Settlement.....	3
2.	Description of the Settlement Classes.....	4
3.	Appointment of Settlement Administrator.....	4
4.	Scope of the Release.....	4
5.	Cash Payment and Allocation.....	4
6.	Proposed Settlement and Notice Program.....	5
7.	Contingent Costs.....	6
IV.	Summary of Claims and Estimates of Potential Damages.....	6
A.	Failure to Pay All Compensation Claims	7
B.	Meal and Rest Period Claims.....	8
C.	Plaintiff's Wage Statement Claims	9
D.	Plaintiff's Reimbursement Claims.....	9
E.	Other "Derivative" Claims (PAGA, Labor Code Section 203).....	9
F.	Case Law Supports a Further Reduction on Any Recovery	10
V.	Provisional Certification of the Class Is Appropriate.....	11
A.	The Proposed Settlement Class Is Ascertainable.....	12
B.	The Proposed Settlement Class Is Sufficiently Numerous.....	12
C.	The Commonality Requirement Was Met.....	12
D.	The Typicality Requirement Is Met.....	12
E.	The Adequacy Requirement Is Met.....	13
F.	Common Issues Predominate and Class-Wide Settlement Is Superior to Other Available Methods of Resolution.....	13

1	VI. Preliminary Approval of the Class Action Settlement Is Proper.....	14
2	A. Fairness of the Settlement.....	14
3	B. Strength of Plaintiff's Case.....	15
4	C. The Risk, Expense, Complexity, and Likely Duration of Further Litigation.....	16
5	D. The Risk of Maintaining Class Action Status Through The Trial.....	17
6	E. The Amount Offered In The Settlement.....	17
7	F. The Extent of Discovery Completed.....	17
8	G. The Stage of the Proceedings.....	18
9	H. The Experience and Views of Counsel.....	18
10	I. Presence of a Governmental Actor.....	19
11	J. Reaction of the Class Members to the Proposed Settlement.....	19
12	VII. Proposed Timeline of Events and Final Approval.....	19
13	VIII. Conclusion.....	20
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

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<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal. App. 4th 1135, 1150	7
<i>Capitol People First v. Dep't of Developmental Servs.</i> (2007) 155 Cal. App. 4th 676.....	13
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	10
<i>Chaves v. Netflix, Inc.</i> (2008) 162 Cal. App. 4th 43,52.....	14
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal. App. 4th 1794.....	14
<i>Duran v. U.S. Bank National Assn.</i> (2018) 19 Cal.App.5th 630.....	8
<i>Fleming v. Covidien, Inc.</i> No. ED-CV-10-1487-RGK(OPx), 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011)	10
<i>Garcia v. Gordon Trucking, Inc.</i> (E.D. Cal., Oct. 31, 2012, No. 1:10-CV-0324 AWI SKO) 2012 WL 5364575, at *7	9
<i>Hanlon v. Chrysler Corp.</i> (9 th Cir. 1998) 150 F. 3d 1011.....	11,12
<i>Hernandez v. Vitamin Shoppe Indust., Inc.</i> (2009) 174 Cal. App. 4th 1441.....	14
<i>In re Microsoft I-V Cases</i> (2006) 135 Cal. App. 4th 706.....	13,14
<i>In re Tobacco II Cases</i> (2009) 46 Cal. 4th 298.....	12
<i>In re Uber FCRA Litigation</i> (N.D. Cal., June 29, 2017, No. 14-CV-05200-EMC) 2017 WL 2806698	10
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal. App. 4th 116,133.....	6,14,15
<i>Linney v. Cellular Alaska P'ship.</i> (9 th Cir. 1998) 151 F.3d 1234, 1242	7
<i>Naranjo v. Spectrum Sec. Servs., Inc.</i> (2022) 2022 Cal. LEXIS 2878.....	9
<i>Officers for Justice v. Civil Servo Com.</i> (9 th Cir. 1982) 688 F.2d 615, 625	7

1	<i>Richmond v. Dart Industries, Inc.</i>	
2	(1981) 29 Cal.3d 462.....	13
3	<i>Robinson v. S. Ctys. Oil Co.</i>	
4	(2020) 53 Cal. App. 5th 476, 482–83, review denied (Nov. 24, 2020).....	6
5	<i>Rose v. City of Hayward</i>	
6	(1981) 126 Cal.App.3d 926	11
7	<i>Ruelas v. Costco Wholesale Corporation</i>	
8	(N.D. Cal. 2014) 67 F.Supp.3d 1137	10
9	<i>Sav-On Drug Stores, Inc. v. Sup. Ct.</i>	
10	(2004) 34 Cal.4th 319	11
11	<i>Syed v. M-I, L.L.C.</i>	
12	(E.D. Cal., Feb. 22, 2017, No. 112CV01718DADMJS) 2017 WL 714367, at *13	10
13	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
14	(2012) 203 Cal.App.4th 1112, 1135	10,17
15	<i>Viceral v. Mistras Group, Inc.</i>	
16	(N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869	10
17	<i>Wehner v. Syntex Corp.</i>	
18	(N.D. Cal. 1987) 117 F.R.D. 641.....	12
19	<i>Wershba v. Apple Computer, Inc.</i>	
20	(2001) 91 Cal. App. 4 th 224.....	11
21	STATUTES, RULES AND REGULATIONS	
22	Cal. Code Civ. Proc. § 382	11
23	California Rules of Court § 3.766(d)	19
24	California Rules of Court § 3.769(f)	19
25	Fed. R. Civ. P. 23(a).....	11
26	OTHER	
27	1 Newberg §53.13 at 3-76-77.....	12
28		

1 **I. SUMMARY OF MOTION**

2 This matter is a “Wage and Hour” representative (*i.e.* “PAGA”) and *proposed* class action.
3 Plaintiff ELIA REZKALLA, Individually, and on behalf of other members of the general public
4 similarly situated (“Plaintiff” or “REZKALLA”) bring Labor Code claims against Defendants
5 CORECIVIC, INC. and CORECIVIC OF TENNESSEE, LLC (hereinafter, “Defendants” or
6 “CORECIVIC”).

7 After approximately 1 and ½ years of extensive litigation, exchanges on at least 24 sets of
8 formal discovery devices, and a full day Mediation, the parties have agreed to the terms of a proposed
9 class action. The parties have drafted and executed a Joint Stipulation of Class and PAGA Action
10 Settlement (the “Agreement”), lodged as **Exhibit A**¹ to the declaration of Eric Yaeckel. Briefly, the
11 parties’ settlement figures are estimated as follows:

12	Approximate size of class:	1,051 individuals
13	Gross settlement amount (“GSA”):	\$950,000.00
14	Claims administration:	\$12,500.00 (or less)
15	Costs/expenses of litigation:	\$12,500.00 (or less)
16	Claims Period:	30 days from Mailing of Notice
17	Class representative incentive:	\$5,000
18	LWDA payment:	\$37,500.00 (75% Share of \$50,000 allocation)
19	Attorney's fees:	1/3 of GSA (\$316,666.67)

20 Estimated average payment (before taxes) to each Class Member based on the above figures
21 will be **\$538.38**. These estimates are an “average” only, and do not account for the fact that class
22 members will receive more or less than an “average” share, as the amounts owed are calculated based
23 on the number of workweeks each individual worked for Defendants during the class period.

24 **Please Note:** This is a **non reversionary** settlement, in that the entire net settlement amount,
25 after the awarded costs, taxes and fees are deducted, will be automatically disbursed to all class
26 members who do not file a request to “opt-out” of participation in the lawsuit. (**Exhibit A** at ¶ 10).

27
28 ¹ This Memorandum incorporates by reference the definitions in the Agreement and the terms used
herein are intended to have the same meaning as set forth in the Agreement.

1 The parties now move the Court for an order: (1) provisionally certifying the proposed class;
2 (2) preliminarily approving the proposed class action settlement; (3) directing that Notice (defined
3 below) of the proposed settlement be provided to Class Members; and (4) scheduling a hearing for
4 final approval of the proposed settlement and entry of the parties' proposed Final Order Approving
5 Class Action Settlement.

6 II. FACTUAL AND PROCEDURAL HISTORY

7 The putative class is comprised of Defendant's California-based, nonexempt employees. The
8 relevant procedural history is set forth below.

9 1. The Operative Claims, Investigation and Informal Discovery Conducted

10 On October 27, 2021, Rezkalla filed the Complaint in this matter. The original Complaint
11 alleged class action claims, under the California Labor code involving, inter alia, (1) Meal and Rest
12 Period violations; (2) Minimum wage violations; (3) Overtime violations; (4) Wage statement
13 violations; (5) Failure to reimburse business expenses; and (6) Failure to pay wages upon separation.
14 (Yaeckel Decl. ¶ 3; ROA # 1.)

15 Plaintiff filed a First Amended Complaint by a separate stipulation, which added Class Action
16 Claims the parties have now agreed to settle. (Yaeckel Decl. ¶ 4; ROA # 7).

17 On November 21, 2021, Plaintiff propounded discovery requests on each of Defendants,
18 including requests for admission, special interrogatories, requests for production of documents, and
19 general and employment form interrogatories. (Yaeckel decl. ¶ 6). Through these requests, Plaintiff
20 sought, among other information and documents, the identities of putative class members, Defendants'
21 compensation policies, meal and rest period policies, employee handbooks, wage statements, payroll
22 records, time records, job descriptions, and reimbursement policies. (*Id.*).

23 Defendants provided discovery responses, documents, and objections to Plaintiff's requests.
24 After a lengthy meet and confer processes, Defendants produced, *inter alia*, Plaintiff's time and wage
25 records, copies of the relevant employee handbooks, copies of all other relevant employee policies,
26 the contents of Plaintiff's employee file, Plaintiff's time records, and itemized wage statements.
27 (Yaeckel decl. ¶ 7).
28

1 Following substantive discovery, Defendants (through its counsel), reached out to attempt to
2 explore early resolution of this matter. As part of the settlement discussions, Defendants agreed to
3 voluntarily produce and verify thousands of pages of documents. The production included all relevant
4 policies and procedures. It also included large electronic sampling of other class members' time and
5 wage data. (Yaeckel decl. ¶ 8).

6 Plaintiff also requested Defendants provide additional informal discovery so that the parties
7 could experience a meaningful mediation. (Yaeckel decl. ¶ 9). Defendants provided informal discovery
8 which consisted of, *inter alia*, the number of current and former employees who worked for
9 Defendants during the limitations period, meal and rest period premiums paid, pay periods at issue,
10 a redacted sampling of employee time records and wage statements, as well as confirmation that
11 various policies and agreements were standard as to the class. (*Id*).

12 **2. Settlement Discussions**

13 On October 13, 2022, the Parties attended a full day mediation before the experienced "Wage
14 and Hour" mediator, Lisa Klerman. (Yaeckel decl. ¶ 10). Prior to the mediation, counsel for both
15 parties agreed to the informal exchange of information pertinent to a class-wide settlement. Both
16 parties prepared and exchanged detailed mediation briefs. (*Id*). At the conclusion of mediation, the
17 parties agreed on the key terms of a settlement that would globally resolve all class and representative
18 wage and hour claims asserted in the operative Complaint in this Action. (*Id*).

19 The parties continued negotiation over final settlement terms. As of January 26, 2023, the
20 parties agreed on all final terms of the settlement which was memorialized in the Agreement, which
21 is attached to the declaration of Eric K. Yaeckel as **Exhibit A**. The parties now seek the Court's
22 preliminary approval of the Agreement.

23 **III. SETTLEMENT TERMS**

24 The Agreement includes the following key terms:

25 **1. Contingent Nature of the Settlement**

26 The parties entered into the Agreement exclusively for the purpose of resolving the action and
27 facilitating the negotiated settlement. Should the Court, for any reason, not preliminarily and/or finally
28

1 approve the Agreement, or if the Agreement is terminated for any reason, then the parties have agreed
2 that the Agreement will be null and void and this action will revert to its status with respect to any and
3 all matters as they existed prior to the parties signing the Agreement. (Ex. A at ¶ 9).

4 **2. Description of the Settlement Classes**

5 Solely for the purposes of the Agreement, the parties have agreed that the term “Class
6 Member” is defined as:

7 all current and former nonexempt employees of Defendants who were employed
8 in California between March 1, 2019 through January 1, 2023. (Exhibit A at ¶ I.Y.).

9 The parties agree that the Settlement Class consists of approximately one thousand and fifty-
10 one hundred (1,051) individuals, as determined by Defendant’s employment records. (Ex. A at ¶ I. Y.).

11 **3. Appointment of Settlement Administrator**

12 The parties agreed to use CAC Services, LLC, as the “Settlement Administrator” for purposes
13 of providing the Notice to Settlement Class Members, issuing payments pursuant to the Agreement,
14 and to administer the claims. (Ex. A at ¶¶ I. W.). CAC’s sole business has been the administration of
15 class action settlements and class action notices, and has extensive experience. (Yaeckel decl. ¶ 11).

16 **4. Scope of the Release**

17 For purposes of the Agreement, Class Members release all “Wage and Hour” claims that are
18 either or both: (1) alleged in the First Amended Complaint; or (2) or which relate to or arise out of the
19 allegations and claims asserted in the First Amended Complaint and could have been alleged in the
20 complaint relating in any way to violations of the wage and hour provisions of the California Labor
21 Code or the California Wage Orders, or any other wage and hour provisions of California law. The
22 precise release language is reflected in (Exhibit A at ¶ I.Q.).

23 **5. Cash Payment and Allocation**

24 The Agreement provides for an automatic cash payment to the members of the Class. No
25 claims need be submitted. Class Members will be entitled to an average share of approximately
26 \$538.38. (Yaeckel Decl. ¶12.) The actual share will depend on the amount of pay periods they were
27 employed during the limitations period. The Cash Payment will be allocated as follows: twenty-five
28 percent (25%) constitutes wages (subject to withholdings and deductions and reported as wage income

1 on a Form W-2) and seventy-five percent (75%) constitutes non-wage penalties, and interest. (**Exhibit**
2 **A** at ¶¶ 10, 28).

3 **6. Proposed Settlement and Notice Program**

4 Subject to Court approval, the Parties agree that, within fifteen (15) days after the Court enters
5 any Order granting preliminary approval of the Settlement, Defendant will provide to the Settlement
6 Administrator the following information for each Settlement Class Member in a reasonable format
7 requested by the Settlement Administrator: class member names and last known home addresses,
8 telephone numbers, social security numbers, weeks worked with Defendant based on Defendant's
9 records, and last known mailing addresses for each member of the Class. (See **Exhibit A**, at ¶ 14). The
10 Settlement Administrator will perform address updates and verifications, as necessary, prior to the first
11 mailing. Within 15 days of receipt of the Class List, the Settlement Administrator will mail the Class
12 Notice ("Notice") to each Class Member, by first class mail. (See **Exhibit A**, at ¶ 15). The Notice is
13 attached to the declaration of Eric Yaeckel as **Exhibit B**.

14 The Notice is designed to provide Class Members with detailed information about the lawsuit,
15 the Agreement, their rights and the settlement benefits, and how to participate, exclude themselves,
16 or object. (See **Exhibit B**.) From the date the Notices are mailed, the Class Members will have thirty
17 (30) calendar days to request to be excluded, or file objections. (See **Exhibit A**, at ¶ I. U.; **Exhibit B**.)

18 The Class members will be given notice of the release and information about their expected
19 settlement amount based on the workweeks they were employed with Defendants during the Class
20 period. If they wish to receive a share of the Settlement, class members need not take any additional
21 action. Class Members are also given instructions on how to exclude themselves, file objections, or
22 appear at the final approval hearing to state objections. (**Exhibit B** §V).

23 The Notice program also has additional safeguards. For instance, for Notices returned as non-
24 deliverable, the Class Administrator will perform a skip-trace and mail or re-mail Notice to an updated
25 address (if any), upon receipt of the returned mail. (See **Exhibit A** at ¶ 16). It is the intent of the parties
26 that all reasonable means be used to locate Class Members.

27 The Notice will inform Class Members of the number of weeks worked during the Class Period
28 (according to Defendant's records) and their estimated settlement amounts. (See **Exhibit A** at ¶ 17).

1 Class members will have the opportunity to dispute the workweek calculation by submitting written
2 documentation to the Claims Administrator. (**Exhibit B** at § IV(C)).

3 PAGA Members do **not** require notice prior to a settlement nor may they opt out of the PAGA
4 penalty portion of the settlement. *Robinson v. S. Ctys. Oil Co.*, (2020) 53 Cal. App. 5th 476, 482–83,
5 review denied (Nov. 24, 2020). However, all PAGA members are also Class Members and can opt-out
6 to retain their individual claims. This is explained in the Class Notice. (**Exhibit B** at § IV(C)).

7 **7. Contingent Costs**

8 Defendant agrees to pay Three Hundred and Sixteen Thousand Six Hundred and Sixty Six
9 Dollars and Sixty Seven Cents (\$316,666.67) in attorneys' fees, which is thirty-three and one-third
10 (33 1/3%) of the total settlement, and up to Twelve Thousand and Five Hundred Dollars (\$12,500.00)
11 in litigation costs. (See **Exhibit A** at ¶ 5). For costs incurred in administering the settlement,
12 Defendant will pay no more than Twelve Thousand and Five Hundred (\$12,500.00). (See **Exhibit A**
13 at ¶ 7).

14 Defendant also agrees to allocate Fifty Thousand Dollars (\$50,000.00) to Plaintiffs' PAGA
15 claims with 75% of the amount, or \$37,500.00, being paid to the LWDA, and 25%, or \$12,500.00,
16 being distributed amongst the class members. (See **Exhibit A** at ¶ 8).

17 The agreement allows Plaintiff Rezkalla to seek up to Ten Thousand Dollars (\$10,000.00), as
18 an enhancement award in consideration for his service as Class Representative. (See **Exhibit A** at ¶
19 I. F.). However, Plaintiff is aware of His Honor's prior rulings on Class Representative enhancements.
20 Plaintiff therefore limits his request for an enhancement of \$5,000.00. The enhancement award was
21 decided pursuant to good faith negotiations and is intended to recognize that it was the class
22 representative who initiated the lawsuit, initiated the PAGA claims, provided critical documents and
23 witnesses to his attorneys, and worked with his attorney to propound and prepare written discovery,
24 all in an effort to obtain moneys allegedly owed not only to himself, but to hundreds of other
25 employees. (Yaeckel Decl. ¶14).

26 **IV. SUMMARY OF CLAIMS AND ESTIMATES OF POTENTIAL DAMAGES**

27 Counsel hereby submits estimates and calculations for the total potential value of all claims
28 so this Court may evaluate if the amount to be paid to the class ultimately could be determined to be

1 fair and reasonable when balanced against the probable outcome of the future litigation. *Kullar v. Foot*
2 *Locker Retail, Inc.*, (2008) 168 Cal. App. 4th 116, 133.

3 Concerning the strength of the plaintiff's case, the California Court of Appeal has said that the
4 "merits of the underlying class claims are not a basis for upsetting the settlement of a class action; the
5 operative word is 'settlement.'" *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
6 Cal. App. 4th 1135, 1150 [citing, *inter alia*, *City of Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d
7 448,455 ("The fact that a proposed settlement may only amount to a fraction the potential recovery
8 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
9 disapproved"); see also *Linney v. Cellular Alaska P'ship.* (9th Cir. 1998) 151 F.3d 1234, 1242 ("This
10 court has aptly held that 'it is the very uncertainty of outcome in litigation and avoidance of wasteful
11 and expensive litigation that induce consensual settlements'"); *Officers for Justice v. Civil Servo Com.*
12 (9th Cir. 1982) 688 F.2d 615, 625 ("The proposed settlement is not to be judged against a hypothetical
13 or speculative measure of what might have been achieved by the negotiators.")

14 Each of the primary claims also had risks to obtaining both class certification and a finding of
15 liability. If Defendants' asserted defenses were successful, the class would not receive anything. As
16 is set forth below, Plaintiff submits that the most realistic "best case" scenario would be an average
17 recovery per class member of approximately \$3,882.70 and a worst case scenario would be a recovery
18 of \$0, by way of denial of class certification or defense verdict.

19 **A. FAILURE TO PAY ALL COMPENSATION CLAIMS**

20 Plaintiff' 'unpaid wages (and unpaid overtime) claims were based on the allegation that
21 employees were performing unpaid work due to the CORE CIVIC standard timekeeping system which
22 "rounded" employee time entries and caused other loses due to certain alleged "transitional math
23 errors" caused by the payroll system. Plaintiffs alleged this resulted in regular time and overtime pay
24 being owed where Defendants were on notice of work being performed without pay.

25 Defendants argued that rounding of total hours worked has been recognized under California
26 law. Defendants also denied that any unpaid work occurred, and even if some did occur, CORE CIVIC
27 claimed it was not on notice of these alleged Labor Code violations and had a strict written prohibition
28 against off-the-clock work and a mandate that all time worked must be accurately recorded. CORE

1 CIVIC asserted proof of these alleged violations would require individualized inquiries, which could
2 preclude class certification and make any PAGA claims unmanageable. (Yaeckel decl. ¶ 27).

3 Based on Class Counsels' analysis, this claim was worth as little as \$0 (a defense verdict or
4 denial of class certification) or as much as \$102,375.00. (Yaeckel decl. ¶ 18.)

5 **B. MEAL AND REST PERIOD CLAIMS**

6 Plaintiffs were able to identify hundreds of examples of missing or late meal periods without
7 the provision of a meal period penalty payment. However, Defendants argued that these records do not
8 conclusively show whether (1) CORE CIVIC actually failed to provide the meal period, (2) there was
9 a voluntary waiver, (3) employees forgot to clock out, or (4) employees voluntarily chose to skip or
10 take them late even though they were provided. Additionally, in light of CORE CIVIC's written meal
11 period policy and the wide variations in alleged violations and departments at the prison, Defendants
12 contended there was no uniform policy or practice, requiring individualized inquiries that would
13 preclude class certification and make any PAGA claims unmanageable. (Yaeckel decl. ¶ 28.)

14 Plaintiffs also alleged the CORE CIVIC written policies improperly restricted class members
15 from leaving the premises during their rest breaks. Defendants pointed out that the policy contained
16 no such restriction and argued that witness testimony would demonstrate that in practice, no such
17 "leave the premises" restriction was ever enforced. Defendants also contended individualized inquiries
18 will abound as to why individual employees may have failed to take appropriate meal periods or rest
19 breaks. (Yaeckel decl. ¶ 29.) CORE CIVIC did not have a meal or rest period policy for approximately
20 one year of Mr. Rezkalla's employment. Moreover, CORE CIVIC required employees to monitor their
21 radios during break periods, thereby retaining control over the non-exempt employees.

22 While there are time records to support the existence of meal period violations, there are no
23 corresponding rest period records, making this aspect of the claim much harder to prove. Some Courts
24 have been disinclined to accept survey evidence that may have been needed to help establish rest
25 period violations. See e.g. *Duran v. U.S. Bank National Assn.* (2018) 19 Cal.App.5th 630.

26 Based on counsels' analysis, this claim was worth as little as \$0 (a defense verdict or denial
27 of class certification) or as much as \$4,252,500.00. (Yaeckel decl. ¶ 18.)

28 ///

1 **C. PLAINTIFF’S WAGE STATEMENT CLAIMS**

2 Plaintiffs acknowledge that these claims are largely derivative, in that both the gross and net
3 wages could be found to be inaccurate, due to the above-referenced claims.

4 CORE CIVIC argued that the failure to list gross and net wages are derivative of other claims
5 that may ultimately fail and as a result there is no “knowing and intentional failure” to list information,
6 which triggers liability under Labor Code §226(e). (Yaeckel decl. ¶ 30.)

7 The California Supreme Court has recently held that the failure to pay meal and rest period
8 premiums *may* give rise to a claim for inaccurate wage statements (or waiting time penalties).
9 However, such derivative liability is not automatic and the Plaintiff still must show a “knowing and
10 intentional” or “wilful” failure to comply with the Labor Code. See *Naranjo v. Spectrum Security*
11 *Services, Inc.*, (2022) 2022 Cal. LEXIS 2878. Defendants (as with the underlying meal and rest period
12 claims) maintained individualized inquiries would abound as to why breaks were missed and whether
13 meal period premiums should have been paid in the first place, requiring individualized inquiries that
14 would preclude class certification and make any PAGA claims unmanageable. (Yaeckel decl. ¶ 31.)

15 As is broken down further in the declaration of Eric K. Yaeckel, this claim was valued at as
16 little as \$0.00 and as much as \$1,134,000.00. (Yaeckel decl. ¶ 18.)

17 **D. PLAINTIFF’S REIMBURSEMENT CLAIMS**

18 Plaintiffs contend that CORE CIVIC violated Labor Code section 2802 by failing to reimburse
19 its employees for certain costs, including cellular phone costs, work supplies and mileage.

20 CORE CIVIC countered that it has a comprehensive written policy for expense reimbursements
21 in its employee handbook. The majority of CORE CIVIC employees were not able to do remote work
22 due the nature of the work involving direct patient care. CORE CIVIC further contended that
23 Maldonado’s (and others’) positions did not require the use of a cell phone.

24 As is broken down further in the declaration of Eric K. Yaeckel, this claim was valued at as
25 little as \$0.00 and as much as \$10,510.00. (Yaeckel decl. ¶ 18.)

26 **E. OTHER DERIVATIVE CLAIMS (PAGA, LABOR CODE SECTION 203)**

27 The remaining claims are derivative in that PAGA and Labor Code § 203 penalties would only
28 be permissible if the above claims are proven.

1 The parties agreed to allocate \$50,000 to the PAGA claims, which is 5.3% of the total
2 settlement. This PAGA allocation is in the range routinely approved by California Courts. *See Garcia*
3 *v. Gordon Trucking, Inc.* (E.D. Cal., Oct. 31, 2012, No. 1:10-CV-0324 AWISKO) 2012 WL 5364575,
4 at *7 (approving \$10,000 PAGA penalty for a California class with a \$3.7 million gross settlement
5 payment); *Syed v. M-I, L.L.C.* (E.D. Cal., Feb. 22, 2017, No. 112CV01718DADMJS) 2017 WL
6 714367, at *13 (approving 2.53% of the estimated \$3.95 million gross settlement amount allocated
7 to the California class); *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No.
8 15-CV-02198-EMC) 2016 WL 5907869 (approving allocation of \$20,000 to the PAGA claim (0.15%
9 of its total value of \$12,952,000) as reasonable in the context of the settlement as a whole); *In re Uber*
10 *FCRA Litigation* (N.D. Cal., June 29, 2017, No. 14-CV-05200-EMC) 2017 WL 2806698 (approving
11 a settlement agreement of \$7.5 million, where the amount allocated to the PAGA claims was only
12 \$7,500 – .01% of the total settlement amount).

13 Based on Class Counsel's analysis, the PAGA and Labor Code § 203 claims were worth as little
14 as \$0 (a PAGA defense verdict or denial of certification of the § 203 claim) or as much as
15 \$2,600,640.00 and \$13,500,000.00 respectively. (Yaeckel decl. ¶ 18.)

16 **F. CASE LAW SUPPORTS A FURTHER REDUCTION ON ANY RECOVERY**

17 Plaintiff concedes he would be highly unlikely to ever be awarded an amount approaching the
18 maximum damages set forth above. To wit, the majority of the recovery would be "derivative"
19 penalties under PAGA, Labor Code § 203 and Labor Code § 226. The Court would have great
20 discretion to mitigate any penalties awarded. *Thurman v. Bayshore Transit Management, Inc.* (2012)
21 203 Cal.App.4th 1112, 1135 (disapproved on other grounds).

22 In a recent trial involving Class Counsel, the Court found liability, but then significantly
23 reduced the PAGA penalties, down to \$5 a violation. *See Carrington v. Starbucks Corp.* (2018) 30
24 Cal.App.5th 504; *See accord Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK(OPx), 2011 WL
25 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%, in part because
26 employer was "not aware" of violations). And in *Carrington*, the Court also noted that other trial courts
27 have declined to "stack" (impose multiple) penalties based on the same underlying Labor Code
28 violation. *See Ruelas v. Costco Wholesale Corporation* (N.D. Cal. 2014) 67 F.Supp.3d 1137.

1 Class Counsel believes a mitigation of the damages and potential PAGA penalties would be
2 warranted here. As in the *Carrington* case, there was evidence that CORE CIVIC attempted to provide
3 meal and rest periods in practice, and the written policies contained no facially non-compliant terms.

4 Given this, it is likely that some of the violations by CORE CIVIC were not "willful." Finally,
5 given the defenses raised by Defendants, there was a significant risk that many of the claims would
6 not have been certified or, if they were, certification could not have been maintained through trial and
7 appeal.

8 The Parties agree the failure to pay "ex employees" under § 203 is derivative of the other
9 claims. As CORE CIVIC asserts a "good faith dispute" for withholding any unpaid wages, it would
10 be difficult to establish any liability for a "willful" failure to pay wages owed.

11 Based on the above, it would be likely that PAGA penalties would be reduced to approximately
12 \$5 per violation and the Court would find no basis for imposing Labor Code §§ 203 or 226 penalties.
13 If this occurred, the average class member's pre-tax share of a realistic best case recovery would be
14 \$3,882.70. (Yaeckel decl. ¶ 25.)

15 Accordingly, Class Counsel submits the **\$538.38** average recovery secured via this Settlement,
16 is a reasonable compromise and is in the best interests of the Class given all the risks of continued
17 litigation. (Yaeckel decl. ¶¶ 25-32.)

18 **V. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

19 Under California law, a class action is appropriate when the class is ascertainable and there is
20 "a well defined community of interest in the questions of law and fact involved affecting the parties
21 to be represented." Cal. Code Civ. Proc. § 382; *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34
22 Cal. 4th 319, 341. State law requirements under California Code of Civil Procedure § 382 for class
23 certification mirror those of federal law under Rule 23 of the Federal Rules of Civil Procedure:
24 numerosity, typicality of the class representatives' claims, adequacy of representation, predominance
25 of common issues, and superiority. See Fed. R. Civ. P. 23(a); see also *Hanlon v. Chrysler Corp.* (9th
26 Cir. 1998) 150 F.3d 1011, 1019. Thus, for settlement purposes, each of these elements must be present.
27 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 237-38.

28 ///

1 **A. THE PROPOSED SETTLEMENT CLASS IS ASCERTAINABLE**

2 The proposed class is ascertainable because all Class Members currently or formerly worked
3 for Defendant as a nonexempt employee and will be identified through Defendant's employment
4 records. See *Rose v. City of Hayward*, 126 Cal.App.3d 926 (1981) (finding that "Class Members are
5 'ascertainable' where they may be readily identified without unreasonable expense or time by reference
6 to official records"). Thus, the ascertainability requirement is met.

7 **B. THE PROPOSED SETTLEMENT CLASS IS SUFFICIENTLY NUMEROUS**

8 The numerosity requirement is met if the class is so large that joinder of all members would
9 be impracticable. *In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 318. Here, Defendant's records show
10 that approximately 1,051 **class members** worked for the company during the limitations period.
11 (Yaekel decl. ¶ 12). Thus, joinder of all members of the class would be impracticable.

12 **C. THE COMMONALITY REQUIREMENT WAS MET**

13 The commonality requirement is met if there are questions of law and fact common to the class.
14 See *Hanlon, supra*, 150 F.3d at 1019.

15 Here, for purposes of the Settlement only, the parties agree the claims of Class Members all
16 involve the same questions of law and fact. (See **Ex. A** at ¶ 52; and section IV *supra*,). Namely, all
17 class members were subject to the same employment policies and practices of Defendant. (Yaekel
18 decl. ¶ 33). The common question exists as to whether the policies and practices Class Members were
19 subjected to are illegal. Under these circumstances, the commonality requirement is satisfied. See
20 *Hanlon, supra*, 150 F.3d at 1019-20.

21 **D. THE TYPICALITY REQUIREMENT IS MET**

22 The typicality requirement is met if the class representatives and class counsel have no interests
23 adverse to the interests of the proposed Class Members and are committed to vigorously prosecuting
24 the case on behalf of the class. See *Wehner v. Syntex Corp.*, 117 F.R.D. 641, 644 (N.D. Cal. 1987).

25 Here, there are no such adverse interests. Plaintiff has claims substantially the same as all the
26 other Class Members. (Yaekel decl. ¶ 34). Factual differences may exist between the class
27 representatives and the Class Members so long as the claims arise from the same events or course of
28 conduct and are based on the same legal theories. See *Hanlon*, 150 F.3d at 1020; see also 1 *Newberg*

1 § 53.13 at 3-76-77 (“When it is alleged that the same unlawful conduct was directed at or affected both
2 the named plaintiff and the class sought to be represented, the typicality requirement is usually met
3 irrespective of varying fact patterns which under lie individual claims.”) Thus, the typicality
4 requirement is also satisfied.

5 **E. THE ADEQUACY REQUIREMENT IS MET**

6 The adequacy of representation component of the community of interest requirement for class
7 certification “comes into play when the party opposing certification brings forth evidence indicating
8 widespread antagonism to the class suit.” *Capitol People First v. Dep’t of Develop. Servs.* (2007) 155
9 Cal. App. 4th 676, 696-97. The adequacy inquiry “serves to uncover conflicts of interest between
10 named parties and the class they seek to represent.” *Id.* To assure “adequate” representation, the “class
11 representative’s [...] claim must not be inconsistent with the claims of other members of the class.” *Id.*

12 Here, no such “inconsistencies” exist. Plaintiff will be compensated based on the same “pay
13 period” formula as all other members of the Class. (Yaeckel decl. ¶ 35).

14 Additionally, any Class Member who wishes to “opt out” of the Settlement may do so and
15 retain all of their individual rights. (Yaeckel decl. ¶ 36). There is therefore no conflict of interest
16 between the Class Representatives and the Class Members. (*Id.*) Thus, at least for settlement purposes,
17 the adequacy prong is met. (*Id.*)

18 **F. COMMON ISSUES PREDOMINATE AND CLASS-WIDE SETTLEMENT IS**
19 **SUPERIOR TO OTHER AVAILABLE METHODS OF RESOLUTION**

20 Class certification is authorized where common questions of law and fact predominate over
21 individual questions, and where class-wide treatment of a dispute is superior to individual litigation.
22 See *Richmond v. Dart Indus., Inc.*, 29 Cal.3d 462, 469 (1981).

23 The proposed class in this case is sufficiently cohesive because, for purposes of the Settlement
24 only, the parties have stipulated that all class certification elements are met. (**Exhibit A** at ¶52). All
25 members of the Class worked under the same conditions and experienced the same policies and
26 practices of Defendant. (See section IV, *supra*). Thus, the class is sufficiently cohesive.

27 Further, it would be preferable to resolve all of the Class Members’ claims by means of a class-
28 wide settlement than to require each Class Member to litigate individual claims. (Yaeckel decl. ¶ 37).

1 **VI. PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT IS PROPER**

2 The trial court has broad discretion to determine whether a class action settlement is fair and
3 reasonable. *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. Fairness is presumed where
4 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are
5 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
6 litigation; and (4) the percentage of objectors is small. *Chaves v. Netflix, Inc.* (2008) 162 Cal.App.4th
7 43, 52; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. But, even where it appears the
8 settlement is fair, the court must still determine on the record before it whether the settlement should
9 be approved after considering "the strengths and weaknesses of the claims and risks of the particular
10 litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129. The courts will
11 consider: (i) the strength of the plaintiff's case; (ii) the risks, expense, complexity and likely duration
12 of further litigation; (iii) the risk of maintaining class action status throughout the trial; (iv) the amount
13 offered in settlement; (v) the extent of discovery completed; (vi) the stage of the proceedings; (vii) the
14 experience and views of counsel; (viii) the presence of a governmental participant; and (ix) any
15 reaction of putative class members to the proposed settlement. *Dunk*, 48 Cal.App.4th, at 1800-1801;
16 *In re Microsoft I-V Cases*, 135 Cal.App.4th, at 723.

17 When evaluating these factors, the court "must stop short of the detailed and thorough
18 investigation that it would undertake if it were actually trying the case," but nonetheless it "must
19 eschew any rubber stamp approval in favor of an independent evaluation." *Kullar*, 168 Cal.App.4th,
20 at 130. Ultimately, the court approves the proposed class action settlement when the settlement is fair
21 and falls "within the range of reasonableness." *Hernandez v. Vitamin Shoppe Indus., Inc.* (2009) 174
22 Cal.App.4th 1441, 1446.

23 **A. FAIRNESS OF THE SETTLEMENT**

24 For preliminary approval purposes, a proposed class action settlement is *presumed* to be fair
25 where, as here, (1) the settlement is reached through arm's-length bargaining; (2) investigation and
26 discovery are sufficient to allow counsel and the court to act intelligently; and (3) counsel is
27 experienced in similar litigation. *Chaves, supra*, 162 Cal.App.4th at 52.

28 The proposed settlement in this action meets these criteria, and merits preliminary approval.

1 As discussed above, the parties only entered into the Agreement after engaging in a full day of
2 mediation with experienced an mediator who routinely handle “wage and hour” class action litigation,
3 Lisa Klerman. (Yaeckel Decl. ¶10). The mediation was preceded by substantial discovery, motion
4 work, investigation into the claims at issue, interviews of numerous Class Members, disclosure and
5 review of documents detailing company-wide policies and practices, informal information exchanges
6 for mediation purposes, and ongoing discussions about the merits between the parties’ counsel during
7 the span of the litigation. (Yaeckel Decl. ¶¶ 5-10). Thereafter, the parties memorialized the details of
8 this settlement via the Agreement. (Ex. A).

9 When negotiating the settlement, both sides took into account the strengths and weaknesses
10 of their opponent’s positions as pointed out by Lisa Klerman, the data available to evaluate liability
11 and damages, the lack of data or evidence on certain issues, and the substantial and evolving law
12 applicable to the merits of the claims. The Agreement was only agreed to after extensive arms-length
13 negotiations resulting in a unique compromise that permits all parties to move forward and bring this
14 action to close. In spite of a mutual desire to resolve this action, the negotiations remained at all times
15 adversarial. (Yaeckel Decl. ¶ 37).

16 As set forth below in section H, *infra.*, counsel for both parties have extensive experience in
17 litigating wage and hour class action lawsuits. Based on this experience, counsel have determined that
18 the settlement is fair, adequate, and reasonable. (Yaeckel decl. ¶ 41).

19 **B. STRENGTH OF PLAINTIFFS’ CASE**

20 The most important factor courts consider when evaluating the fairness of the class action
21 settlement is the strength of the plaintiffs’ case balanced against the amount offered in settlement.
22 *Kullar*, 168 Cal.App.4th, at 130.

23 All of Plaintiff’s claims – individual, PAGA, and class claims – presented hurdles including
24 obtaining class certification, in addition to a substantial risk of a defense verdict by way of summary
25 judgment motion or at trial. (Yaeckel Decl. ¶¶ 26-31).

26 The exchange of mediation briefs, the assistance of an experienced “wage and hour” mediator,
27 and the parties’ ongoing negotiations all helped the parties realize the strengths and weaknesses of
28 their case, as well as the risks and expenses of continuing litigation.

1 Additionally, as trial approaches, each party's monetary risk increases significantly as
2 substantial additional attorney hours and expert witness hours would have to be devoted to this case
3 by each party. Each party bears a real risk at trial, and considering the balance of the strengths of
4 Plaintiff's claims versus the risks inherent in trial and the consideration given to settle now, the
5 settlement reflects a fair and adequate resolution to this action.

6 **C. THE RISK, EXPENSE, COMPLEXITY, AND LIKELY DURATION OF FURTHER**
7 **LITIGATION**

8 Plaintiff's Counsel's effectiveness in prosecuting this case has translated into tangible monetary
9 and non-monetary benefits for the Settlement Class Members in the following respects: (1) a
10 guaranteed favorable result; (2) guaranteed monetary recovery over a reasonably short period of time,
11 as opposed to possibly waiting additional years for a potentially worse result; and (3) significant
12 savings in attorneys' fees and costs, which would have increased had the case progressed through trial
13 and possible appeals. (Yaeckel decl. ¶ 38).

14 Without entering into the Agreement, there existed a significant chance that Defendant would
15 prevail on the merits of some or all claims and that Class Members would receive nothing. Through
16 the Agreement, participating Class Members receive guaranteed cash, and this action has also been
17 the catalyst for programmatic relief. (Yaeckel decl. ¶ 39).

18 If the litigation were to proceed in lieu of settlement, additional and substantial attorneys fees
19 and costs, expert witnesses fees would quickly accumulate. Given the numerous claims being litigated,
20 the parties may be required to hire multiple experts each (as many as 8 total). This would result in not
21 only the production of eight expert reports, but eight depositions as well. And, based on previous
22 discussions between counsel regarding the remaining claims (including the PAGA claims), the parties
23 anticipated at least one motion to compel, a motion for class certification and two dueling motions for
24 summary judgment / adjudication (one from each side). (Yaeckel decl. ¶ 40).

25 Importantly, even after engaging in all of the potential continued and protracted litigation set
26 forth above, the putative class would continue to have no guarantee of success on any of the claims
27 advanced in this case. Thus, the parties and their counsel believe in good faith that the proposed
28 resolution is a fair, reasonable, and adequate compromise. (Yaeckel decl. ¶ 41).

1 **D. THE RISK OF MAINTAINING CLASS ACTION STATUS THROUGH THE TRIAL**

2 Plaintiffs had not filed a Motion for Class Certification at the time settlement was reached.
3 (Yaeckel decl. ¶ 42). Defendants presented multiple different defenses to certification during mediation
4 and throughout litigation. Even assuming Plaintiff did obtain class certification of the claims, each
5 claim is subject to substantial risk of a Defense verdict at trial. (*Id.*)

6 Regarding the representative (PAGA) claims, there is also a substantial risk that, at trial,
7 Plaintiffs will either fail to obtain a favorable judgment on one or more of these claims, or that a
8 favorable award on one or more PAGA claims may be reduced. *See Thurman v. Bayshore Transit*
9 *Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reversed on other grounds).

10 **E. THE AMOUNT OFFERED IN THE SETTLEMENT**

11 After deduction from the total “Settlement Amount” of the projected costs of administration,
12 proposed class representative service awards, potential attorney fees and costs, the “Net Settlement
13 Amount (“NSA”) will be distributed to all Class Members who do not file a request for exclusion.
14 Participating Class Members will receive their share of the NSA based on the total pay-periods they
15 worked during the Class Period. (**Exhibit A**, ¶ 10).

16 Based on the current proposed figures, each Participating Class Member will receive an
17 average of **\$538.38**, although the actual amount will vary based on the amount of pay periods s they
18 were employed. The Class Notice will list each individual class member’s actual expected share. (See
19 **Ex. B.**) Plaintiffs’ counsel maintains this recovery was significant in light of the circumstances of the
20 case. (Yaeckel Decl. ¶ 41).

21 **F. THE EXTENT OF DISCOVERY COMPLETED**

22 Plaintiffs propounded 24 sets of separate written discovery devices on Defendants, including
23 requests for admission, special interrogatories, requests for production of documents, and general and
24 employment form interrogatories. (Yaeckel Decl. ¶ 6.) Through these requests, Plaintiffs sought,
25 among other information and documents, the identities of putative class members, Defendants’
26 compensation policies, meal and rest period policies, employee handbooks, wage statements, time
27 records, job descriptions, and reimbursement policies. *Id.*

28 Defendant provided detailed substantive responses detailing all relevant employment policies,

1 in addition to producing thousands of pages of responsive documents. The document production also
2 included a large sampling of other putative class members time and wage records. (Yaeckel Decl. ¶
3 7-9).

4 Plaintiffs' counsel has also interviewed at least 12 Class Members in the course of investigating
5 and litigating this matter. (Yaeckel decl. ¶ 43). Counsel has also reviewed thousands of pages of
6 documents produced by Defendants, Plaintiffs, and Class Members. (*Id.*)

7 This information, along with documents and information obtained through formal discovery
8 and from Class Members, allowed Plaintiffs' counsel to prepare a detailed Mediation Brief. (*Id.*) The
9 Brief was provided to opposing counsel and contained a breakdown of potential damages based on all
10 of the information obtained. (*Id.*) CORE CIVIC also provided a detailed Mediation Brief, outlining
11 its defenses to both class certification and liability. (*Id.*)

12 Thus, sufficient discovery, both formal and informal, has been conducted to allow the parties
13 to participate in an informed, arms-length negotiation process.

14 **G. THE STAGE OF THE PROCEEDINGS**

15 Plaintiff already had possession of most of the written discovery needed for a class certification
16 motion. Had Mediation failed, Plaintiff would have amended the complaint to add class certification
17 claims. Depositions would have followed and then a motion for class certification would have been
18 filed.. Depending on that motion, Plaintiff may have lost her ability to negotiate a class-wide or
19 representative settlement agreement on certain issues. Alternatively, Defendants stood to lose a key
20 negotiating tool in the event the motion was decided in Plaintiff's favor. Therefore, the parties achieved
21 a settlement agreement at a point when neither side had a stated advantage in the litigation.

22 **H. THE EXPERIENCE AND VIEWS OF COUNSEL**

23 Class Counsel has considerable experience in wage and hour and class action litigation.
24 William Sullivan has over 28 years of experience, 27 years of which has been devoted to both
25 prosecuting and defending class action litigation. Mr. Yaeckel has over 11 years of experience in "class
26 litigation." (Yaeckel Decl. ¶ 44).

27 Plaintiff's counsel considers the Agreement to represent a fair, adequate and reasonable
28 settlement that is well within the accepted range of recoveries for similar cases. Counsel further

believes the Agreement is in the best interests of the Settlement Class Members.(Yaeckel Decl. ¶ 45).

I. PRESENCE OF A GOVERNMENTAL ACTOR

Although the State is not directly involved in this action, Plaintiff “stands in the shoes” of the Labor and Workforce Development Agency (“LWDA”) by bringing his PAGA action. Consideration has been made to compensate to Labor Workforce Development Agency (“LWDA”) in the amount of \$37,500.00, even though the LWDA declined to prosecute the claims itself. (See **Ex A** at ¶8). To confirm, 75% of the total allocation of \$50,000 amount, or **\$37,500.00**, is being paid to the LWDA, and 25%, or **\$12,500.00**, being distributed amongst the class members. (*Id.*). Counsel for the parties believe this is a fair, reasonable, and adequate allocation. (Yaeckel Decl. ¶ 46).

J. REACTION OF THE CLASS MEMBERS TO THE PROPOSED SETTLEMENT

Prior to preliminary approval, what can be said of the reaction the class members is limited. However, Plaintiff’s counsel has spoken to some Class Members since the parties reached a proposed settlement agreement, and all were in favor of the settlement. (Yaeckel Decl.¶ 47).

As explained in the Agreement, the Settlement Claims Administrator will send a Notice to the Settlement Class Members. (See **Ex A** at ¶ 34). The negotiated Notice form is attached to the declaration fo Eric K. Yaeckel as **Exhibit B**.

The proposed Notice Packet advises the Settlement Class Members of their anticipated recovery under the Agreement, how they can object, how they can exclude themselves, the amount of fees and costs sought by Settlement Class Counsel, the amount of enhancement payment sought on behalf of the class representative, and the date of the final approval hearing. (See **Exhibit B**). Thus, the proposed Notice complies with the notice requirements set forth in CRC Rule 3.766(d) and Rule 3.769(f).

VII. PROPOSED TIMELINE OF EVENTS AND FINAL APPROVAL

Assuming the Settlement merits Preliminary Approval from the Court, Plaintiffs request that the Court set a Final Approval Hearing in accordance with the chronology of events set forth in the Agreement:

- Within 15 calendar days of the Court's Preliminary Approval: CORE CIVIC will provide to the Settlement Administrator the Class List including Class Members' names, last known addresses, social security numbers, and the dates of employment during the Class Period;
- Within 7 calendar days after receipt of the class list: Settlement Administrator will mail the Notice Packets to Class Members;
- 30 Calendar Days After Settlement Administrator has mailed the Notice Packets to Class Members: Deadline for Class Members to postmark and submit all disputes of pay period information, Requests for Exclusion, or to file written objections to the settlement;
- Approximately 5 Calendar days after the conclusion of the Notice and Claims Period: Plaintiffs will file a Motion for Final Approval; and
- 16 Court days after the filing of the Final Approval motion: the Court can conduct the Final Approval Hearing.

Based on this timeline, Plaintiff requests a Final Approval hearing that is approximately 80 days (or the first available court date thereafter) after the date the Court enters an Order granting preliminary approval of the Settlement. Assuming Preliminary Approval is granted at the currently scheduled hearing, **Plaintiff requests June 23, 2023 for the Final Approval hearing.**

VI. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court issue an Order:

- i. Certifying the Proposed Settlement Class;
- ii. Preliminarily approving the settlement as set forth in the Agreement; and
- iii. Approving the proposed Notice Packet to be directed to the Settlement Class.

Dated: February 9, 2023

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