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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SARA ACEVEDO, and JESUS SOTO,
individually, and on behalf of all others similarly
situated,

Plaintiffs,

v.

DEANCO HEALTHCARE, LLC, a limited
liability company, and DOES 1 through 10,
inclusive,

Defendants.

Case No. 21STCV34724

*[Assigned for all purposes to Judge William
F. Highberger, Dept. 10]*

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND TO CONSOLIDATE
THE ACTIONS FOR SETTLEMENT
PURPOSES ONLY; MEMORANDUM OF
POINTS AND AUTHORITIES**

*[Filed concurrently with: Declaration of
Justin F. Marquez in Support of Plaintiffs'
Motion for Preliminary Approval of Class
Action Settlement; Declaration of David S.
Winston in Support of Plaintiffs' Motion for
Preliminary Approval of Class Action
Settlement and [Proposed] Order Granting
Plaintiffs' Motion for Preliminary Approval
of Class Action Settlement]*

PRELIMINARY APPROVAL HEARING

Date: November 1, 2022

Time: 1:30 pm

Dept: 10

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Attorneys for Plaintiff Ronald Flores Nunfio

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

2 PLEASE TAKE NOTICE that on November 1, 2022, at 1:30 p.m., in Department 10 of the
3 Los Angeles County Superior Court, 312 North Spring Street, Los Angeles, California 90012,
4 pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*, Plaintiff
5 Sara Acevedo (“Plaintiff”) will move the Court for an Order granting preliminary approval of the
6 proposed class action and PAGA settlement between Plaintiff and Defendant Deanco Healthcare,
7 LLC (“Defendant”). Plaintiff also seeks an order consolidating this Action with *Ronald Flores vs.*
8 *Deanco Healthcare, LLC*, Los Angeles County Superior Court Case No. 21STCV02209 for
9 settlement purposes only in accordance with the directions of Judge Beaudet of Department 50 of
10 the Los Angeles County Superior Court and with the permission of Plaintiff Ronald Flores Nunfio
11 in that action. Plaintiff Acevedo further move the Court for an Order:

- 12 1. Granting preliminary approval of the Stipulation for Class Action Settlement;
- 13 2. Certifying a Class for settlement purposes;
- 14 3. Approving the Notice and Settlement Information Form (collectively, the “Notice
15 Packet”) and the plan for distribution of the Notice Packet to Settlement Class
16 Members;
- 17 4. Appointing Plaintiffs Sara Acevedo as Class Representative for settlement purposes;
- 18 5. Appointing Plaintiff Ronald Flores Nunfio and Sara Acevedo as PAGA
19 representatives for settlement purposes;
- 20 6. Appointing Plaintiff’s Counsel, David S. Winston of Winston Law Group, P.C. and
21 Justin F. Marquez of Wilshire Law Firm, PLC, as Class Counsel for settlement
22 purposes;
- 23 7. Appointing ILYM Group, Inc. as the Settlement Administrator; and
- 24 8. Scheduling a Final Approval Hearing.

25 The Motion will be based upon this Notice, the attached Memorandum of Points and
26 Authorities, the Declaration of Justin F. Marquez, the Declaration of David S. Winston, the
27 Declaration of Ronald Flores Nunfio, the Declaration of Sara Acevedo filed concurrently herewith,
28 the records and files in this action, and any other further evidence or argument that the Court may

properly receive at or before the hearing.

Dated: October 6, 2022

**WILSHIRE LAW FIRM
WINSTON LAW GROUP, P.C.**

By: _____

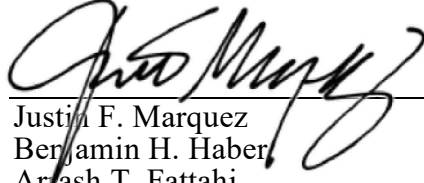

Justin F. Marquez
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Sara Acevedo along with the Plaintiff in another action brought by Ronald Flores
4 Nunfio (Los Angeles County Superior Court Case No. 21STCV02209) (collectively, “Plaintiffs”)
5 seek preliminary approval of a proposed \$2,350,000.00 non-reversionary, wage and hour class action
6 settlement with Defendant Deanco Healthcare, LLC (“Defendant,” and together with Plaintiffs, the
7 “Parties”). Notably, this action resolves this action, the *Flores* action (Los Angeles County Superior
8 Court Case No. 21STCV02209), and a PAGA only action brought by Plaintiffs Sara Acevedo and
9 Jesus Soto (Los Angeles County Superior Court Case No. 21STCV34724. The Parties are seeking
10 approval of their global settlement covering all three (3) matters in this Action.

11 The Parties previously sought approval of their proposed settlement on June 8, 2022 in
12 Department 50 of this Court since that action is the low numbered case. Declaration of David S.
13 Winston In Support of Preliminary Approval (hereafter the “Winston Decl.”), ¶ 24, Exh. 4.) During
14 the proceedings the Parties and the Court discussed Judge Beaudet’s view that the settlement should
15 be considered by the Complex Department, that neither Counsel nor the Court knew of a way to
16 consolidate the matters in the complex department given the procedural posture, the claims in the
17 various cases, and the inability of Jesus Soto’s Counsel to contact him. (Winston Decl., ¶ 24.) During
18 the hearing Judge Beaudet directed the Parties to seek approval of their Proposed Settlement in this
19 Court and to ask this Court to consolidate the matters for settlement purposes only. (Winston Decl.,
20 ¶ 24, Exh. 4.)¹ Consistent with Judge Beaudet’s instructions, the Parties now ask this Court to
21 consider and preliminarily approve their Proposed Class and PAGA Settlement and to consolidate
22 the cases for settlement purposes only.

23 Under the terms of the original agreement that the Parties intended to seek preliminary
24 approval under, Defendant was only obligated to pay \$2,250,000.00. (Declaration of Justin F.
25 Marquez in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement
26 [“Marquez Decl.”], ¶ 9.) The prior Settlement Agreement also required Defendant to cooperate with
27

28 ¹ Class Counsel do not believe that it is legally necessary to formally consolidate the cases in order to grant approval of the Parties Settlement, but is nevertheless following the instructions provided to them.

1 Plaintiffs to seek modifications to the Settlement unless the Court denies the Proposed Settlement
2 with prejudice. (*Id.*) Although Defendants agreed to the minor modifications of the Settlement
3 Agreement, including the changing of the caption page and case number, to permit it to be considered
4 in this Court instead of Judge Beaudet's Court per Judge Beaudet's instructions, Defendant refused
5 to return the signature pages for the revised settlement agreement. (*Id.* at ¶ 12.) Instead, Defendant
6 advised Plaintiffs that its secured lender had issued a notice of default and that Defendant would not
7 cooperate in the execution of the revised settlement agreement. (*Id.*) The Parties have attempted to
8 work cooperatively through the issues together and have reached an agreement on an Amended
9 Settlement Agreement. (*Id.* at ¶ 13.) The current Settlement Agreement pending before the Court
10 requires Defendants to pay an additional \$100,000.00 to resolve the claims than they were obligated
11 to pay under the prior settlement agreement, requires Defendants to make regular \$100,000.00
12 payments starting in September 2022, and allows Defendants to pay the outstanding balance
13 independent of the monthly \$100,000.00 payments in November 2023. (*Id.* at ¶ 14, Exh. 1.) Should
14 the Settlement not be approved, the Parties will return to the status quo under the prior existing
15 agreement. Given Defendant's financial challenges and cash flow issues that caused it to receive a
16 notice of breach, the Parties urge the Court to work with them to avoid any additional delays.

17 The non-reversionary, checks mailed Settlement requires Defendants to make a meaningful
18 monetary payment of \$2,350,000.00 to the 1,813 class members. (Marquez Decl., ¶ 14, Exh. 1)
19 And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement
20 approval under California law. The Settlement was reached after extensive investigation, discovery,
21 and negotiations. The negotiations were at arms-length and were facilitated by an experienced class
22 action mediator, David Phillips, Esq., over the course of a full day of mediation and was only reached
23 as a result of a mediator's proposal and a work-out that required Defendant to pay an extra
24 \$100,000.00. (Marquez Decl., ¶ 8, 14, Exh. 1.) Accordingly, Plaintiffs request that the Court
25 preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the
26 proposed notice, and set a Final Approval Hearing.

27 ///

28 ///

1 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

2 **A. Plaintiffs' Claims**

3 This motion involves three separately filed actions. On January 20, 2021, Plaintiff
4 Ronald Flores Nunfio filed a wage and hour Private Attorneys General Act ("PAGA") (Cal.
5 Lab. Code §§ 2699, *et seq.*) action against Defendant in Los Angeles County Superior Court.
6 (Marquez Decl., ¶ 4.) On September 21, 2021, Plaintiffs Sara Acevedo and Jesus Soto filed a
7 wage and hour class action against Defendant in Los Angeles County Superior Court for (1)
8 failure to pay minimum and straight time wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and
9 1197); (2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and 1198); (3) failure to
10 provide meal periods (Cal. Lab. Code §§ 226.7 and 512); (4) failure to authorize and permit rest
11 periods (Cal. Lab. Code §§ 226.7); (5) failure to timely pay final wages at termination (Cal.
12 Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Cal. Lab.
13 Code § 226); (7) failure to indemnify employees for expenditures (Cal. Lab. Code § 2802); and
14 (8) unfair business practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). (*Id.*, ¶ 5.) Additionally,
15 on November 21, 2021, Plaintiffs Sara Acevedo and Jesus Soto filed a wage and hour PAGA
16 representative action against Defendant in Los Angeles County Superior for the same
17 underlying Labor Code violations. (*Id.*) Plaintiffs and the putative class members worked in
18 California as hourly-paid, non-exempt employees for Defendant during the class period. (*Id.*,
19 at ¶ 2.)

20 Plaintiffs allege that Defendant's payroll, timekeeping, and wage and hour practices
21 resulted in Labor Code violations. (Marquez Decl., ¶ 3.) Specifically, Plaintiffs allege that
22 Defendant failed to pay for all hours worked by failing to pay for the time associated with
23 responding to afterhours text messages and rounding time entries. (*Id.*) Plaintiffs further allege
24 that Defendant failed to include all non-discretionary remuneration, including hazard pay, when
25 calculating and paying overtime wages as well as meal/rest period premiums. (*Id.*) Plaintiffs
26 further allege that Defendant failed to provide employees with legally compliant meal and rest
27 periods. (*Id.*) Plaintiffs also allege that Defendants failed to reimburse employees for expenses
28 associated with the use of their cell phones. (*Id.*, at ¶ 28.) Based on these allegations, Plaintiffs

1 assert claims against Defendant for failure to pay minimum and straight time wages, failure to
2 pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods,
3 failure to timely pay all final wages at termination, failure to provide accurate itemized wage
4 statements, failure to indemnify employees for expenditures, unfair business practices, and civil
5 penalties under PAGA. (*Id.* at ¶ 3.)

6 **B. Discovery and Investigation**

7 Following the filing of the Complaint, Plaintiff Flores propounded four (4) sets of
8 discovery on May 21, 2021 consisting of Request for Production of Documents, Special
9 Interrogatories, Requests for Admission, and Employment Form Interrogatories. Defendant
10 failed to timely respond to Plaintiff's discovery requests leading Plaintiff to file four (4) motions
11 to compel. (Winston Decl., ¶ 10). During the pendency of these Motions and in an effort to
12 minimize the potential impact caused by the mandatory sanctions on resolution efforts, Plaintiff
13 and Defendant entered into a stipulation requiring Defendant to produce a significant number
14 of documents and information. Plaintiffs' relied upon this formal production along with
15 additional informal discovery requested by Plaintiffs in advance of the Mediation. (Winston
16 Decl., ¶ 11.)

17 In advance of the Mediation, Defendants provided Plaintiffs with the time and pay
18 records for all of the aggrieved employees as well as information about the number of class
19 members, the number of pay periods, the number of aggrieved employees, the number of pay
20 periods where aggrieved employees' worked overtime during the PAGA period, the number of
21 aggrieved employees who worked overtime and received hazard pay within the same pay period,
22 the number of pay periods where aggrieved employees earned overtime and hazard pay within
23 the same pay period, the number of employees who worked a graveyard shift, the number of
24 pay periods with graveyard shifts, the number of pay periods with a shift of at least 5 hours, the
25 number of pay periods with a shift worked in excess of 6 hours, the number of pay periods with
26 a shift worked in excess of 10 hours, and the number of pay periods with a shift worked in
27 excess of 12 hours. Defendant also provided documents of their wage and hour policies and
28 practices during the class period, and information regarding the total number of current and

1 former employees in its informal discovery responses. (Marquez Decl., ¶ 6.)

2 After reviewing the documents regarding Defendant's wage and hour policies and
3 practices and analyzing Defendant's timekeeping and payroll records with the assistance of a
4 third-party data expert, Class Counsel was able to evaluate the probability of class certification,
5 success on the merits, and Defendant's maximum monetary exposure for all claims. (Winston
6 Decl., ¶¶ 5, 7; Marquez Decl., ¶ 22.) Class Counsel also investigated the applicable law
7 regarding the claims and defenses asserted in the litigation. (*Id.*) Class Counsel reviewed these
8 records and utilized an expert to prepare a damages analysis prior to mediation. (*Id.*; Marquez
9 Decl., ¶ 22.)

10 C. Settlement Negotiations

11 On December 20, 2021, the Parties participated in private mediation with experienced
12 class action mediator, David Phillips, Esq. (Marquez Decl., ¶ 8.) The mediation was conducted
13 via Zoom. The settlement negotiations were at arm's length and, although conducted in a
14 professional manner, were adversarial. The Parties went into the mediation willing to explore
15 the potential for a settlement of the dispute, but each side was also prepared to litigate their
16 position through trial and appeal if a settlement had not been reached. (*Id.*)

17 After extensive negotiations and discussions regarding the strengths and weaknesses of
18 Plaintiffs' claims and Defendant's defenses, the Parties were able to reach a resolution, the
19 material terms of which are encompassed within the Settlement Agreement. (*Id.* at ¶¶ 9, 14; Ex.
20 1 [Joint Stipulation of Class Action and Representative PAGA Settlement ("Settlement" or
21 "Settlement Agreement")].)

22 Class Counsel has conducted a thorough investigation into the facts of this case. Based
23 on the foregoing discovery and their own independent investigation and evaluation, Class
24 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
25 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
26 of significant delay, the defenses that could be asserted by Defendant both to certification and
27 on the merits, trial risk, and appellate risk. (Marquez Decl., ¶ 21.)

28 Indeed, the \$2,350,000.00 Settlement represents approximately **60.19%** of **the realistic**

1 **maximum recovery of \$3,904,336.02.** (*Id.* at ¶ 31.) Although Class Counsel estimated that
2 Defendant’s maximum potential liability for all claims was approximately \$19,021,680 million,
3 when the risk of prevailing at certification and trial are factored into the equation, Class Counsel
4 believes that Defendant’s realistic exposure was \$3,904,336.02, meaning the Settlement
5 achieves a significant recovery. (*Id.* at ¶¶ 23-35.) Considering the risk and uncertainty of
6 prevailing at class certification and at trial, this is an excellent result for the Class. Indeed,
7 because of the proposed Settlement, class members will receive timely, guaranteed relief and
8 will avoid the risk of an unfavorable judgment.

9 **D. Key Terms of the Proposed Settlement**

10 Under the Settlement, Defendant will pay \$2,350,000.00 to resolve this litigation. This
11 amount is all-inclusive. The Settlement’s key terms include:

12 1. Settlement Class: For settlement purposes only, the Parties agree to the certification
13 of a class pursuant to California Code of Civil Procedure § 382 defined as: “all individuals who
14 were employed by Deanco Healthcare, LLC as a non-exempt hourly employee in California at any
15 point between September 21, 2017 to June 8, 2022.” (Settlement, § I (F).)

16 2. Settlement Period: The Settlement Period means the period from September 21,
17 2017 to the date of Preliminary Approval of this Settlement. (Settlement, § I (I).)

18 3. Gross Settlement Amount: This amount is \$2,350,000.00, for all claims, including
19 wages, interest, the Class Counsel Award, litigation costs, Settlement Administration Costs,
20 payment to the Labor and Workforce Development Agency (“LWDA”) for the alleged PAGA
21 penalties, all other penalties, and the Class Representative Service Award. (Settlement, § I (S).)

22 4. No Reversion: This is a non-reversionary settlement. Settlement checks will be
23 valid for one hundred and eighty (180) days from the date of issuance. Pursuant to California Code
24 of Civil Procedure § 384(a), any unpaid cash residue or unclaimed or abandoned class member
25 funds, plus any accrued interest thereon, will be sent to the CASA of Los Angeles (“CASA”), 201
26 Centre Plaza Drive, Suite 1100, Monterey Park, CA 91754-2142. (Settlement, § VII (H).) Neither
27 Plaintiffs or Class Counsel have any interest, financial or otherwise, in the proposed *cy pres*
28 recipient. (Marquez Decl., ¶¶ 18-19; Winston Decl., ¶ 23; Declaration of Ronald Flores Nunfio ¶

1 10 (hereafter the “Flores Decl.”); and Declaration of Sara Acevedo (hereafter the “Acevedo
2 Decl.”), ¶ 10.)

3 5. Release as to All Settlement Class Members: The class release is limited to “mean
4 any and all causes of action or claims that were asserted or could have been asserted based upon
5 the facts alleged in the Actions, in the January 19 , 2021 PAGA Notice in *Flores*, the January 19,
6 2021 Complaint in *Flores*, the September 21, 2021 Complaint in *Acevedo*, the September 22, 2021
7 PAGA Notice in *Acevedo*, or the November 29, 2021 Complaint in *Acevedo* including Defendant’s
8 alleged failure to pay minimum wages, overtime wages, provide lawful meal periods, provide
9 lawful rest periods, provide accurate itemized wage statements, timely pay wages during and after
10 employment, as well as timely produce personnel and pay records. This includes alleged violations
11 of Labor Code §§ 201 202, 203, 204, 210, 226(a), (c), and (e), 226.3, 226.7, 510, 512, 558, 1174,
12 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 2802, as well as IWC Wage Order No. 5-2001 and
13 related claims under PAGA based upon the facts alleged in the Actions. The Released claims do
14 not include any claims for workers compensation, unemployment, or disability benefits or any
15 other claims other than those specified herein.”

16 6. PAGA Allocation: The settlement includes \$100,000.00 allocated to Plaintiffs’
17 claims under PAGA, with 75% of which (\$75,000.00) being paid to the LWDA and 25%
18 (\$25,000.00) being paid to the participating Aggrieved Employees. (Settlement, § VII(A).) Class
19 Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary
20 Approval. (Marquez Decl., ¶ 15.)

21 With respect to the allocation of PAGA penalties within the gross settlement amount, the
22 Parties considered the guidance provided by the Department of Industrial Relations on behalf of
23 the Labor Commissioner in *Price v. Uber Technologies, Inc.*, Case No. BC554512 (Los Angeles
24 County Superior Court). (Winston Decl., ¶ 13, Exh. 1.) As the DIR explained in *Price*, “the Labor
25 Commissioner believes that courts evaluating PAGA settlement should utilize the standard
26 employed in qui tam and other representative actions: is the settlement fair, adequate, and
27 reasonable under all of the circumstances in light of the public policies underlying California’s
28 Labor Standards.” *Id.* at 3:1-11. The DIR on behalf of the Labor Commissioner further explained

1 that the state’s primary interest is not necessarily collecting penalties, but also in affirmative
2 actions and the correction of allegedly unlawful practices and that multiple forms of relief could
3 be considered:

4 [T]he Court may consider multiple forms of relief...nothing precludes an aggrieved
5 employee from seeking...injunctive relief to end ongoing violations....Consequently,
6 where a settlement solely provides for the recovery of monetary penalties, and does
7 not otherwise effectuate the State’s interests through affirmative actions, a court should
weigh the full monetary value of relevant penalties and determine if the proposed
penalties effectively minimize the economic advantages employers gain by non-
compliance.

8 (Winston Decl., ¶ 13, Exh. 1.) Given the Department of Industrial Relations’ emphasis on
9 affirmative non-monetary relief in measuring the utility of a PAGA settlement and willingness
10 to consider other alternatives aside from penalties, Plaintiffs structured the settlement in a
11 manner that provided genuine and meaningful relief in the form of a six-figure penalty, while
12 also maximizing the recovery for the affected employees. (Winston Decl., ¶ 14.) Thus, while
13 the vast majority of the potential damages in this action stem from the discretionary PAGA
14 penalties, Plaintiff Flores and the other Plaintiffs emphasized obtaining affirmative relief for
15 the impacted employees. Notice of the Proposed Settlement was provided to the LWDA as
16 required by PAGA. (Winston Decl., ¶ 21, Exh. 3.)

17 7. Net Settlement Fund: The “Net Settlement Fund” or “Net Settlement Amount” is
18 the amount that remains and that shall be paid to Settlement Class Members after the following
19 amounts are subtracted: (1) Settlement Administration Expenses, (2) Class Attorney Fees and
20 Expenses, (3) amount paid to the LWDA for its share of the PAGA penalties, and (4) Service
21 Awards. (Settlement, § I (V).)

22 8. Distribution Formula: Each Settlement Class Member shall receive a proportional
23 share of the Settlement based upon the number of pay periods worked between September 21, 2017
24 to June 8, 2022. Specifically, Settlement Class Members’ shares shall be calculated using the
25 following method: the Settlement Administrator shall divide the Net Settlement Amount by the
26 total number of wage statements issued to the Class Members during the Class Period in order to
27 determine the amount each Class Member is entitled to for each pay period s/he was employed by
28

1 Defendant during the Class Period (“Pay Period Amount”). The Settlement Administrator will
2 multiply the Pay Period Amount by the total number of pay periods worked by each Class Member
3 during the Class Period to arrive at the Individual Settlement Amount for each Class Member.
4 (Section VII(A) of the Settlement Agreement).)

5 9. Tax Allocation: Any settlement money paid to Settlement Class Members will be
6 allocated as 20% wages and 80% penalties and interest. (Settlement, § IV(F).)

7 10. Class Representative Service Award: “[T]he rationale for making enhancement or
8 incentive awards to named plaintiffs is that they should be compensated for the expense or risk
9 they have incurred in conferring a benefit on other members of the class.” (*Cellphone Termination*
10 *Fee Cases* (2010) 186 Cal. App.4th 1380, 1394–95 [citing *Clark v. American Residential Services*
11 *LLC* (2009) 175 Cal.App.4th 785, 806].) “[C]riteria courts may consider in determining whether
12 to make an incentive award include: 1) the risk to the class representative in commencing suit, both
13 financial and otherwise; 2) the notoriety and personal difficulties encountered by the class
14 representative; 3) the amount of time and effort spent by the class representative; 4) the duration
15 of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as
16 a result of the litigation.” *Cellphone Termination Fee Cases, supra*, 186 Cal.App. 4th at p. 1394-
17 1395 [citing *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal.1995) 901 F.Supp. 294, 299].)

18 Here, the subject to Court approval, Plaintiff Ronald Flores Nunfio will be paid an
19 enhancement award not to exceed \$5,000.00 and Plaintiffs Sara Acevedo will be paid an
20 enhancement award not to exceed \$10,000.00. (Settlement, § I (GG).) The Proposed Service
21 Awards reflect the fact that Plaintiffs Acevedo are entering into broad, general releases that include
22 a Code of Civil Procedure section 1542 release. Plaintiff Flores’ service award reflects his
23 contributions in structuring the settlement in a manner that maximized the recovery for the affected
24 employees/class members and not merely the amount of PAGA penalties obtained. Plaintiff Flores’
25 initiation of his PAGA action in January 2021 created an additional 8 months of available PAGA
26 penalties that, although discretionary, greatly outweighed the potential recovery for the
27 underpayments and other wage and hour violations. (Winston Decl., ¶ 16.) This allowed the Class
28 to obtain a significantly larger settlement than otherwise available and provided an extended

1 recovery period of approximately 166% in comparison to the typical PAGA statutory period.
2 (Winston Decl., ¶ 17.). This greatly benefitted both the Class and the State of California.

3 Plaintiffs Acevedo and Soto's service award reflects their time and effort in bringing and
4 presenting the action, and in exchange for a general release of all claims, known or unknown,
5 pursuant to Civil Code Section 1542. (Settlement, § IV (B-C).) If the Court approves a lesser
6 enhancement, then the unapproved portion or portions shall revert into the Net Settlement Amount
7 to be distributed between the participating Settlement Class Members on a pro-rata basis.
8 (Settlement, § IV (D).)

9 11. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose
10 a fee application of up to 33 1/3% (\$783,333.33) of the Gross Settlement Amount, plus out-of-
11 pocket costs not to exceed \$20,000.00. (Settlement, § IV (H).) The attorneys' fees in this action
12 shall be divided 80% to Winston Law Group, P.C. and 20% to Wilshire Law Firm, P.L.C.
13 (Settlement, § IV(H); Winston Decl., ¶ 18; Flores Decl., ¶ 11; Acevedo Decl., ¶ 11.) Plaintiffs have
14 given written consent to this division of attorneys' fees and the division of by no means increased
15 the amount of legal fees that Plaintiffs will pay or have agreed to pay for services rendered on their
16 and the Class' behalf. (Settlement, § III (H); Winston Decl., ¶ 18; Flores Decl., ¶ 11; Acevedo
17 Decl., ¶ 11.)

18 12. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a
19 statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys'
20 fees, costs, and service award being sought, and an explanation of how the settlement allocations
21 are calculated. (Settlement, Ex. A.) The Notice also sets forth the approximate amount of money
22 the class members would receive in the event all class members participate in the settlement. (*Id.*)
23 Class Members will be notified by first class mail of the settlement. (Settlement, § VI(B).) ILYM
24 Group, Inc., the proposed Settlement Administrator, will undertake its best efforts to ensure that
25 the notice is provided to the current addresses of class members, including conducting a national
26 change of address search and re-mailing the notice to updated addresses. (*Id.*) Notice will be
27 provided in English and Spanish. (Marquez Decl., ¶ 17; Ex. 2 [Settlement Administrator Bid].)
28 Class Members do not need to submit a claim to receive a settlement payment and any Class

1 Member who does not opt-out will receive a share of the Settlement. In addition to formal notice,
2 the Parties' have also arranged for ILYM to create a case specific website that Class Members can
3 use to access documents related to the case. (*Id.*)

4 Upon receiving the notice, Class Members will have an opportunity to request exclusion
5 from the Settlement Class (*i.e.*, opt out) or to object to the Settlement at the Final Approval
6 Hearing. (Settlement, § VI(B-D).) Class Members will have sixty (60) calendar days from the
7 date of mailing the Notices of Settlement within which to exclude themselves or file an
8 objection to the Settlement. (Settlement, § I(FF) and VI(B).) Class Members wishing to
9 exclude themselves from the Settlement must mail a written request for exclusion to the
10 Settlement Administrator within the 60 day-deadline. (Settlement, § VI(C).) To request
11 exclusion, a Class Member must submit a letter or postcard to the Settlement Administrator by
12 the Response Deadline that includes the Class Member's name, address for correspondence
13 and identity verification purposes, signature, and should state words to the effect of, "I WISH
14 TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN ACEVEDO VS. DEANCO
15 HEALTHCARE, LLC." (Settlement, § VI(C).) If an opt-out is deficient, the Settlement
16 Administrator shall send a deficiency notice to the Class Member. (Settlement, § VI(C).) In
17 addition, the Settlement Agreement permits the Court to accept a late request for exclusion for
18 good cause. (Settlement, § VI(C).)

19 To object, a Class Member should send to the Settlement Administrator a written
20 objection that includes the Class Member's name, current address for correspondence and
21 identity verification purposes, provide each specific reason in support of the objection, be
22 signed by the Class Member, and be postmarked by the Response Deadline. (Settlement, §
23 VI(D).) Class Members need not include legal arguments for their written objections to be
24 considered. If an objector also wishes to appear at the Final Approval and Fairness Hearing, in
25 person or through an attorney, he or she need not file a notice of intention to appear at the same
26 time as the objection is filed. (Settlement, § VI(D).) Filing the notice of intention to appear is
27 not necessary to preserve the right to appear at the Final Approval and Fairness Hearing.
28 Defendant will not discourage Class Members from participating in the Settlement or

1 encourage or advise Class Members to opt out or object to the settlement.

2 In addition, Class Members may dispute Defendant's records of the number of pay
3 periods worked during the Class Members by notifying the Settlement Administrator that they
4 dispute the amount of pay periods listed in their Class Notice by the Response Deadline.
5 (Settlement, § VI(D).) Moreover, Defendant will not retaliate against employees for
6 participating in the settlement and will not encourage or advise Class Members to opt out or
7 object to the Settlement. (Settlement, § XII(E).)

8 **E. Plaintiffs Do Not Seek Appointment of Soto as a Class Representative.**

9 Plaintiff Acevedo and Soto's Counsel has lost contact with Jesus Soto. (Marquez Decl., ¶
10 10.) In preparation for filing the Plaintiffs' Motion for Preliminary Approval, Wilshire Law Firm
11 attempted to contact Plaintiff Jesus Soto so that he could review the Settlement Agreement, Motion
12 for Preliminary Approval, and other supporting documents. (*Id.*) Plaintiff Acevedo and Soto's
13 counsel made sustained efforts to attempted to contact Plaintiff Jesus Soto via numerous telephone
14 calls, email, correspondence, and through the utilization of multiple private investigative services
15 to no avail. (*Id.*) In light of Plaintiff Jesus Soto's failure to respond, it is reasonable to conclude
16 that Plaintiff Jesus Soto no longer wishes to pursue this action against Defendant on a classwide
17 basis or serve as a class representative. (*Id.*)

18 **III. THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE AND SHOULD**
19 **BE APPROVED**

20 To prevent fraud, collusion, or unfairness to the class, the settlement of a class action
21 requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This
22 Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super.*
23 *Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached
24 through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to
25 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
26 is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

27 In considering whether a settlement is reasonable, the trial court should consider relevant
28 factors, which may include the strength of Plaintiff's case, the risk, expense, complexity and likely

1 duration of further litigation, the risk of maintaining class action status through trial, the amount
2 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
3 experience and views of counsel, the presence of a governmental participant, and the reaction of
4 the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168
5 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself
6 that the class settlement is within the “ballpark” of reasonableness. (*Id.* at p. 133.) The record
7 need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-*
8 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not
9 require “an explicit statement of the maximum amount the plaintiff class could recover if it
10 prevailed on all its claims”, but instead, only an “understanding of the amount that is in controversy
11 and the realistic range of outcomes of the litigation.”].)

12 As discussed below, Class Counsel has provided information exceeding the threshold
13 required to provide this Court with materials and information necessary to determine that the
14 proposed settlement is fair, adequate, and reasonable.

15 **A. The Settlement Is Fair, Reasonable, Adequate, and the Product of**
16 **Investigation, Litigation, and Negotiation**

17 **1. The Settlement Is the Product of Discovery, Investigation, and**
18 **Informed and Non-Collusive Arm’s-Length Negotiations**

19 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
20 evidence to the contrary is offered; thus, there is a presumption here that the negotiations were
21 conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.)
22 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super.*
23 *Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The
24 fact that a plaintiff might have received more if the case had been fully litigated is no reason not
25 to approve the settlement.”].)

26 The Settlement was reached following extensive negotiations following a full day of
27 mediation with experienced employment mediator David Phillips, Esq. (Marquez Decl., ¶¶ 8-9.)
28 The settlement negotiations were at arm’s length and, although conducted in a professional manner,

1 were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a
2 settlement of the dispute, but each side was also prepared to litigate their or its position through
3 trial and appeal if a settlement had not been reached. (*Id.*)

4 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
5 the claims set forth in the Litigation, such as a sample of the timekeeping and payroll records for
6 1,171 people, Defendant's policies and procedures concerning the payment of wages, the provision
7 of meal and rest breaks, issuance of wage statements, and providing all wages at separation, as
8 well as information regarding the number of putative class members and the mix of current versus
9 former employees, the wage rates in effect, and the amount of meal and rest period premium wages
10 paid to class members. (*Id.* at ¶¶ 6-7.) In conjunction with their extensive factual investigation,
11 Class Counsel investigated the applicable law regarding the claims and defenses asserted in the
12 litigation. (*Id.*) Thus, Plaintiffs and their counsel were able to act intelligently and effectively in
13 negotiating the proposed Settlement. (*Id.*)

14 Class Counsel also has considerable experience and has demonstrated competence with
15 litigating wage and hour class actions. (*Id.* at ¶¶ 48-58.) Again, this supports the position that the
16 terms of the Settlement are premised on objective evidence that has been considered and weighed
17 in light of the risks, expenses, and time consumption to both sides of continued litigation of this
18 action.

19 **2. The Strength and Risks Associated with Plaintiffs' Case**

20 *a. The Strength of and Risks Associated with Plaintiffs' Minimum Wage* 21 *Claims*

22 Plaintiffs alleged that Defendants failed to pay for off-the-clock time associated with
23 phone calls and text messages and rounded Class Members' time entries. (Marquez Decl., ¶¶
24 23-28.) Plaintiffs retained a third-party data expert to analyze the time records of 1,171 class
25 members who determined that the Class actually benefitted as a group from Defendants'
26 neutral rounding policies and practices. (Marquez Decl., ¶¶ 6-7). Since Defendants' neutral
27 rounding policy actually benefitted the Class, it is unlikely that Plaintiffs would have
28 prevailed on their rounding theory. (*See AHMC Healthcare, Inc. v. Superior Ct.* (2018) 24

1 Cal.App.5th 1014, 1028.). With respect to the off-the-clock claims, serious risk existed as to
2 the certification of these claims as even the plaintiff failed to certify similar claims in
3 *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018) after the California Supreme Court ruled in
4 their favor on the legal issue. (Winston Decl., ¶ 19, Exh. 2 [“Order Granting Defendant’s
5 Motion for Partial Summary Judgment and Denying Plaintiff’s Motion for Class
6 Certification”].).

7 *b. The Strength of and Risks Associated with Plaintiffs’ Minimum*
8 *Overtime Claims*

9 Plaintiffs alleged that Defendants violated California’s overtime laws for the same
10 reasons as with their minimum wage claims and also that Defendants’ failed to include hazard
11 pay when calculating and paying overtime wages. Although Plaintiffs likely would not have
12 prevailed on their rounding claim and serious risk existed regarding the certifiability of the
13 off-the-clock claims, Plaintiffs were confident that they would prevail on their hazard pay
14 related overtime claims. However, to Plaintiffs’ knowledge no appellate case addresses this
15 issue under California law. As such, some risk existed that Defendants could prevail on this
16 claim.

17 *c. The Strength of and Risks Associated with Plaintiff’s Meal Period*
18 *Claim*

19 Labor Code § 512 requires employers to provide employees with thirty (30) minute
20 uninterrupted and duty-free meal period within the first five (5) hours of work. Labor Code
21 § 512 states that “[a]n employer shall not employ an employee for a work period of more
22 than five hours per day without providing the employee with a meal period of not less than
23 30 minutes.” Similarly, IWC Wage Order No. 5-2001 prohibit an employer from
24 “employ[ing] any person for a work period of more than five (5) hours without a meal
25 period of not less than 30 minutes.”

26 If an employer maintains a uniform policy that does not authorize and permit the
27 amount of meal time called for under the law (as specified in the applicable Wage Order),
28 “it has violated the wage order and is liable.” *Brinker*, 53 Cal.4th at 1033 (2012). *See also*

1 *Faulkinbury v. Boyd & Associates, Inc.*, 216 Cal.App.4th 220, 236 (2013).

2 Plaintiff asserted that Defendant violated Labor Code § 512 by failing to authorize
3 and permit Class Members to receive lawful meal periods, failing to advise them of their
4 right to such meal periods, failing to authorize and permit them to take timely meal periods,
5 interrupted their meal periods, failed to authorize and permit second meal periods.

6 Defendants advised that they intended to argue that IWC Wage Order No. 5-2001, § 11(D)
7 and Labor Code § 516 permit employees in the healthcare industry to waive one of their
8 meal periods when they worked more than twelve (12) hours instead of the general
9 provision that an employee who works more than twelve (12) hours may not waive any
10 meal periods. (*See Gerard v. Orange Coast Mem'l Med. Ctr.* (2018) 6 Cal. 5th 443.)

11 Although Plaintiffs believe that a reasonable chance exists that they would prevail on this
12 claim, a reasonable chance exists that, as in *Gerard*, the defendant might prevail on this
13 claim.

14 Plaintiffs also intended to argue that Defendants failed to include hazard pay when
15 calculating and paying meal period premiums in violation of Labor Code § 226.7. (*Ferra v.*
16 *Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 878 [“we hold that the term ‘regular
17 rate of compensation’ in section 226.7(c) has the same meaning of regular rate of pay’ in
18 section 510(a) and encompasses not only hourly wages, but all nondiscretionary payments
19 for work performed by the employee.”].) Nevertheless, the amount of damages associated
20 with the meal period premium underpayment claim was less than \$10,000 because
21 Defendant only paid 3,488 meal period premiums during the entire class period and the
22 average value of the underpayment was less than a \$1.00 per meal period premium.
23 ((Marquez Decl., ¶ 21.).

24 *d. The Strength of and Risks Associated With the Rest Period Claims*

25 Under California law employers must authorize and permit rest periods for every
26 major fraction of four (4) hours worked, not every (4) hours. (*Brinker Rest. Corp. v. Sup. Ct.*
27 (2012) 53 Cal.4th 1004, 1033.). Plaintiffs alleged that Defendant failed to provide the Class
28 with duty-free rest periods of not less than ten (10) minutes for every major fraction of four

(4) hours worked. Instead, Defendant regularly and consistently required Plaintiff and the other aggrieved employees to work through and/or forgo rest periods due to their chronic understaffing issues. Notably, although Defendant's rest period policies and practices are not compliant, they also pressured and coerced employees to forgo rest periods and made it difficult for employees to take lawful duty-free rest periods both due to their understaffing policies and practices and otherwise.

While Plaintiffs were confident that they could establish liability under *Brinker*, it is possible that a court could find that individualized issues existed or that no common method of proof existed as an appellate court recently did in *Cacho v. Eurostar, Inc.*, 43 Cal.App.5th 885 (2019). While the California Supreme Court depublished *Cacho*, it did not grant review of the decision meaning that at least a modest degree of risk existed that another court might reach the same factual conclusions as the *Cacho* trial court even if *Cacho* itself is not good law. Moreover, it is not uncommon for defendants in rest period cases to obtain numerous or even hundreds of declarations from employees showing differences in rest period practices. *See e.g. Amaro v. Gerawan Farming, Inc.*, 2016 U.S. Dist. LEXIS 66842 (E.D. Cal. May 19, 2016); *Ordonez v. Radio Shack, Inc.*, 2013 U.S. Dist. LEXIS 7868, *35-41 (C.D. Cal. Jan. 17, 2013). Moreover, some courts have found that rest period violations are not suitable for class adjudication because they raised too many individualized issues. *See e.g. Campbell v. Best Buy Store, L.P.*, 2013 U.S. Dist. LEXIS 137792 (denying certification of proposed rest break class due to a lack of a uniform policy); *Ordonez*, 2013 U.S. Dist. LEXIS 7868 at *35-41 (denying certification even though the plaintiff submitted evidence of a facially unlawful policy regarding rest breaks because the predominance and superiority elements were not met based upon the employer's presentation of anecdotal evidence of lawful compliance notwithstanding the unlawful policy.). Accordingly, Plaintiffs and Class Counsel understood that some risk existed when it came to certifying this claim.

*e. The Strength of and Risks Associated With the Claim for Labor
Code § 226(e) Penalties*

Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to

1 furnish an itemized wage statement in writing showing: (1) gross wages earned; (2) total hours
2 worked by the employee;... (4) all deductions, provided that all deductions made on written
3 orders of the employee may be aggregated and shown as one item; (5) net wages earned;...(8)
4 the name and address of the legal entity that is the employer...;(9) all applicable hourly rates
5 in effect during the pay period and the corresponding number of hours worked at each hourly
6 rate by the employee...“A claim for damages under Section 226(e) requires a showing of three
7 elements: (1) a violation of Section 226(a); (2) that is “knowing and intentional”; and (3) a
8 resulting injury.” *Garnett v. ADT LLC* (E.D. Cal. Oct. 6, 2015) 139 F. Supp. 3d 1121, 1131.

9 With respect to the derivative wage statements claims, this matter was resolved before
10 the California Supreme Court’s recent decision in *Naranjo*. At the time of settlement,
11 Plaintiff did not believe it was likely that a court would award Labor Code § 226 penalties
12 based upon the alleged meal/rest period violations because of the California Court of Appeal
13 recent decision in *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (2019)
14 that employees could not recover wage statement penalties based upon an employer’s failure
15 to provide meal/rest period premiums. Although the California Supreme Court granted review
16 of *Naranjo*, the fact that the California Court of Appeal ruled in the employer’s favor on this
17 matter highlights the considerable risk faced by the Class on the derivative wage statement
18 claims. With respect to the derivative wage statements claims predicated upon alleged off-the-
19 clock minimum wage and overtime violations, Plaintiff believed that a significant probability
20 existed that Defendant would prevail on the minimum wage and overtime related wage
21 statement claims because the wage statements showed the amount of overtime wages paid.
22 *Maldonado v. Epsilon Plastics, Inc.* 22 Cal. App. 5th 1308, 1336-1337 (2018).

23 *f. The Strength of and Risks Associated With the Claim for Labor*
24 *Code § 203 Penalties*

25 Plaintiffs Acevedo and Soto also alleged that Defendants failed to timely pay all wages
26 upon separation. Plaintiffs did not believe it was likely that a court would award Labor Code §
27 203 penalties based upon the alleged meal/rest period violations because the California Court
28

1 of Appeal recently held in *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444
2 (2019) that employees could not recover waiting time penalties based upon an employer's
3 failure to provide meal/rest period premiums. Although the California Supreme Court granted
4 review of *Naranjo*, it did not depublish *Naranjo* such that, as with the Labor Code § 226
5 claims, Defendant presently possesses a strong defense of these claims. In addition, due to the
6 lack of clear appellate authority, Defendant possessed a reasonable chance of establishing its
7 affirmative defense that a good faith dispute existed regarding its alleged failure to exclude
8 hazard pay when calculating and paying overtime wages. (*See (Choate v. Celite Corp.* (2013)
9 215 Cal.App.4th 1460, 1468) [explaining that a good faith dispute exists under Labor Code
10 section 203 where no appellate case existed on the issue]); Cal. Code Regs. Tit. 8, § 13520 ["a
11 good faith dispute that any wages are due will preclude imposition of waiting time penalties
12 under Section 203."].) Due to the absence of a controlling appellate decision on this issue, real
13 risk existed that Defendant might prevail on this claim.

14 g. *The Strength of and Risks Associated with Plaintiffs'*
15 *Reimbursement Claims*

16 Plaintiffs also alleged that Defendants failed to reimburse the Class for expenses
17 incurred associated with off-the-clock text messages and communications. As with the off-the-
18 clock minimum wage claims, serious risk existed regarding the certifiability of these claims.
19 For instance, while California law requires employers to reimburse employees for a reasonable
20 percentage of their cell phone bills,² the same issues that doomed the plaintiffs in *Troester*
21 could have led the court to deny certification.

22 h. *The Strength of and Risks Associated with Plaintiffs' Claims for*
23 *Unfair Competition Under Bus. & Prof. Code § 17200*

24 Plaintiffs' claim for unfair competition under Bus. & Prof. Code section 17200 was
25 entirely derivative of their other claims. As a result, whether or not Plaintiffs or Defendant
26 would prevail on this claim depended entirely upon whether Plaintiffs could establish their
27 _____

28 ² (*Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal. App. 4th 113.)

1 other claims.

2 *i. The Strength of and Risks Associated with the PAGA Claim*

3 Plaintiffs were confident that they would prevail on their PAGA claims, as unlike with
4 class claims there are no typicality or even manageability requirements under PAGA.³
5 However, under PAGA, courts can exercise their discretion to reduce the amount of penalties
6 awarded. *See e.g. Carrington*, 30 Cal.App.5th at 529 (the trial court declined to stack PAGA
7 penalties and the Court of Appeal affirmed the reduction of the PAGA penalties to \$5.00 per
8 pay period). As discussed in section II(D)(6) above, the bulk of the damages in the case arose
9 from the PAGA claims. Nevertheless, as discussed by the DIR in *Price v. Uber Technologies,*
10 *Inc.*, Case No. BC554512 (Los Angeles County Superior Court), the state’s goal is not only
11 achieving a monetary penalty, but the settlement of a PAGA claim can involve an agreement
12 to provide additional remuneration beyond merely penalties. Indeed, the California Court of
13 Appeal affirmed an award of \$0.00 in PAGA penalties in the settlement of a wage and hour
14 class action. (*In re Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) [affirming an
15 award of \$0 in PAGA penalties in a wage and hour class action]).⁴

16 **3. The Risk of Maintaining Class Action Status Through Trial**

17 This case has not been certified to be tried as a class action. While there is strong
18 evidence to support certification, certification is always hard fought and subject to judicial
19 discretion. *Id.* Moreover, in class actions, decertification is always a possibility. *Id.*; *In re*
20 *Autozone, Inc.*, No. 3:10-md-02159-CRB, 2016 U.S. Dist. LEXIS 10574 (N.D.Cal. Aug. 10,
21 2016) (decertifying a rest period class due to the absence of a lack of a uniform policy or

22 _____
23 ³ (*Huff vs. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745 [explaining that
24 there is no typicality requirement in a PAGA action because “PAGA allows an ‘aggrieved
25 employee’—a person affected by at least one Labor Code violation committed by an
26 employer—to pursue penalties for all the Labor Code violations committed by that
27 employer.”]; *Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal. App. 5th 685, 697 [“we
28 find a court cannot strike a PAGA claim based on manageability.”].)

⁴ *See also Jack v. Hartford Fire Ins. Co.* (S.D. Cal. Oct. 13, 2011, No. 09cv1683 MMA (JMA))
2011 WL 4899942, at *6 (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer*
v. Becton Dickinson & Co. (S.D. Cal. June 1, 2010, No. 08cv821 IEG (BLM)), 2010 WL
2196104, at *2 (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v.*
Hanesbrands Inc. (N.D. Cal. Apr. 3, 2009, No. CV-08-0844 EDL, 2009 WL 928133, at *9
(approving \$1,500 PAGA allocation in \$1,026,000 settlement).

1 common measure of damages). In attempting to certify a class, the Parties would need to
2 conduct deposition of the named Plaintiff and of the person most knowledgeable regarding
3 Defendant's wage and hour policies. There is a risk for both sides as to what these depositions
4 will reveal and whether they will support class certification.

5 **4. The Amount Offered in Settlement Is Fair and Reasonable in Light of**
6 **the Parties' Respective Legal Positions**

7 A settlement is not judged against what might Plaintiff recover had he prevailed at trial, nor
8 does the settlement have to provide 100% of the damages sought to be fair and reasonable.
9 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 ["Compromise is inherent
10 and necessary in the settlement process...even if the relief afforded by the proposed settlement is
11 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar
12 to a class settlement because the public interest may indeed be served by a voluntary settlement in
13 which each side gives ground in the interest of avoiding litigation."].)

14 This settlement avoids the risks and the accompanying expense of further litigation.
15 (Marquez Decl., ¶ 33.) While Plaintiff is confident in the merits of their claims, a legitimate
16 controversy exists as to each cause of action. (*Id.* at ¶ 32.) Plaintiff also recognizes that proving
17 the amount of wages due to each class member would be an expensive, time-consuming, and
18 uncertain proposition. (*Id.*)

19 The proposed settlement of \$2,350,000.00 therefore represents a substantial recovery when
20 compared to Plaintiff's reasonably forecasted recovery. (*Id.* at ¶¶ 23-35.) Because of the proposed
21 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
22 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
23 achieving class certification, the burdens of proof necessary to establish liability, the probability
24 of appeal of a favorable judgment, it is clear that the settlement amount of \$2,350,000.00 is within
25 the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) **Indeed,**
26 ***each Settlement Class Member is eligible to receive an average net benefit of approximately***
27 ***\$786.91 (\$1,426,666.67 Net Settlement Amount when including the employees' share of***
28 ***PAGA penalties/1,813 Class Members).*** (*Id.* at ¶ 29.)

1 **5. Class Counsel Has Extensive Experience in Class Action Litigation**

2 The settlement negotiations were conducted by highly capable and experienced counsel.
3 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
4 experienced in handling complex wage and hour class action litigation. (Marquez Decl., ¶¶ 48-58;
5 Winston Decl., ¶¶ 3-8.) Although Plaintiffs and their counsel were prepared to litigate the claims
6 alleged in the litigation, they support the proposed Settlement as being in the best interests of the
7 class. After factoring in the risks explained above, Class Counsel believes that the proposed
8 Settlement is fair and reasonable. (Winston Decl., ¶ 9.)

9 **6. The Proposed Plan of Allocation Is Fair and Reasonable**

10 Plans of allocation are subject to the same standard of review as class action
11 settlements; they must be “fair, adequate and reasonable.” (*Officers for Justice v. Civil Service*
12 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the Net Settlement Amount
13 shall be allocated among Settlement Class members on a pro-rata basis based upon the number
14 of pay periods worked during the Class Period. The proposed method of allocation is fair and
15 reasonable and reflects the strength and value of the claims at issue in this action. As discussed
16 in section II(D)(6), the proposed six-figure PAGA allocation reflects the desire to provide a
17 significant and meaningful penalty while also providing substantial compensation to the
18 employees affected by Defendant’s alleged Labor Code violation.

19 **7. The Proposed Class Notice of Settlement Should Be Approved**

20 Plaintiff requests that the Court approve the proposed plan and form of Notice of
21 Settlement. The standard for determining the adequacy of notice is whether the notice has “a
22 reasonable chance of reaching a substantial percentage of the class members.” *Cartt v. Sup. Ct.*,
23 50 Cal. App. 3d 960, 974 (1975). With respect to the contents of the Notice of Settlement, the
24 “notice given to the class must fairly apprise the class members of the terms of the proposed
25 compromise and of the options open to dissenting class members.” *Trotsky v. L.A. Fed. Sav. &*
26 *Loan Ass’n*, 48 Cal.App.3d 134, 151–52 (1975).

27 As discussed in detail in Section II(D)(12) of this Motion, Class Members will receive a
28 detailed notice that provides class members with sufficient information to decide whether they

1 should accept the benefits offered, opt out and pursue their own remedies, or object to the
2 Settlement.

3 **B. The Proposed Attorneys' Fees and Costs Are Reasonable**

4 Under the Settlement, subject to the Court's approval, Defendant agrees to pay Class
5 Counsel reasonable attorneys' fees in amount of \$783,333.33, which is 33 1/3% of the gross
6 Settlement Amount, and up to \$20,000.00 in costs. These amounts are disclosed to all class
7 members in the Notice of Proposed Class Action Settlement and are reasonable.

8 **1. Class Counsel Request an Award of Fees Based on the "Common**
9 **Fund" Method**

10 California courts have long awarded attorneys' fees as a percentage of the benefit created
11 by counsel in pursuing claims on behalf of a class. The California Supreme Court held that "when
12 a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff
13 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff
14 or plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d
15 25, 34, quoting *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

16 Class Counsel seek an award of attorneys' fees on the "percentage of recovery/common
17 fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all
18 the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent*,
19 *supra*, 557 F.2d at p. 769.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California
20 Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund
21 from which others derive benefits may require those passive beneficiaries to bear a fair share of
22 the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet*
23 (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine
24 has been applied "consistently in California when an action brought by one party creates a fund in
25 which other persons are entitled to share." (*Id.* at p. 110.)

26 The California Supreme Court recently affirmed in *Laffitte v. Robert Half Int'l Inc.* (2016)
27 1 Cal.5th 480 that, "when class action litigation establishes a monetary fund for the benefit of the
28 class members, and the trial court in its equitable powers awards class counsel a fee out of that

1 fund, the court may determine the amount of a reasonable fee by choosing an appropriate
2 percentage of the fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages
3 of the percentage method—including relative ease of calculation, alignment of incentives between
4 counsel and the class, a better approximation of market conditions in a contingency case, and the
5 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
6 the litigation—convince us the percentage method is a valuable tool that should not be denied our
7 trial courts.” (*Id.* [internal citations omitted].)

8 **2. The Requested Fee Award Is in Line with Typical Cases**

9 According to a leading treatise on class actions, “No general rule can be articulated on what
10 is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a
11 reasonable fee award from a common fund in order to assure that the fees do not consume a
12 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
13 are not unprecedented.” (*See* Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 14.03.)
14 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty
15 to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; see also
16 *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F.Supp. 294 [stating that most
17 cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10
18 million].)

19 Here, Plaintiffs request attorneys’ fees equal to 33 1/3% of the Settlement Amount, which
20 is in line with the prevailing guidelines established in California case law and academic literature
21 and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
22 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the
23 lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)
24 Accordingly, Plaintiffs respectfully request that the Court approve the attorneys’ fees as negotiated
25 by the Parties and requested herein.

26 **3. This Matter Involves A “Fee-Shifting” Provision of the Labor Code**

27 Labor Code § 1194(a) provides for the recovery of “minimum wage or overtime
28 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this

1 section, Plaintiffs would be permitted to recover their actual attorneys' fees, even if those fees were
2 larger than the total class recovery at the conclusion of this case. This settlement is beneficial in
3 that it limits the risk of continued expenses and consumption of time, energy, and resources facing
4 Defendant while at the same time rewarding Class Counsel for their decision to assume risk by
5 taking on this matter. In fact, prosecution of this action involved significant financial risk for Class
6 Counsel. (Marquez Decl., ¶¶ 45-47.) Class Counsel undertook this matter solely on a contingent
7 basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the
8 Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class
9 ahead of all other concerns. It is also notable that as part of the Settlement, Plaintiff Flores'
10 Counsel agreed to waive the mandatory sanctions associated with Defendants' failure to provide
11 any response whatsoever to his initial sets of discovery. (Winston Decl., ¶ 20.)

12 **4. The Experience, Reputation and Ability of Class Counsel Support the**
13 **Requested Fee Award**

14 As demonstrated by their past experience in pursuing class actions on behalf of consumers
15 and employees, Class Counsel possess considerable expertise in litigating class actions. (Marquez
16 Decl., ¶¶ 48-58.) Class Counsel has been involved as lead counsel or co-counsel in several class
17 actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class
18 counsel commensurate with their skill, reputation and experience, Class Counsel's requested fee
19 award is supported here.

20 Class Counsel's experience in wage and hour class actions was integral in evaluating the
21 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
22 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
23 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
24 action litigation. Based on these and other factors, Class Counsel has frequently received fee
25 awards of this percentage from the gross recovery for the class. Therefore, the requested fee award
26 is reasonable and fair.

27 ///

28 ///

1 **C. The Service Awards to Named Plaintiffs Are Reasonable**

2 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
3 compensate them for the expense or risk they have incurred in conferring a benefit on other
4 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
5 of class action settlement agreements containing enhancements for the class representatives, which
6 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
7 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
8 2009) 563 F.3d 948, 958-59.)

9 Service awards are particularly important to plaintiffs in wage and hour cases because they
10 promote the important public policies underlying the wage and hour laws. This strong policy is
11 codified in California Labor Code section 90.5, which provides, “it is the policy of this state to
12 vigorously enforce minimum labor standards in order to ensure employees are not required or
13 permitted to work under substandard unlawful conditions....”). Nonetheless, the California
14 Supreme Court has noted that “retaliation against employees for asserting statutory rights under
15 the Labor Code is widespread,” despite anti-retaliation statutes designed to protect employees.
16 (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should
17 be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v.*
18 *Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

19 Under the settlement agreement, subject to the Court’s approval, Defendant agreed to pay
20 a Service Award in the amount of \$10,000.00 to Plaintiff Sara Acevedo and a Service Award in
21 the amount of \$5,000 to Plaintiff Ronald Flores Nunfio. This amount is also in exchange for
22 Plaintiff Acevedo’s general release of all claims against Defendant. This amount is reasonable
23 particularly in light of the substantial benefits Plaintiff generated for all class members. (*Id.*)

24 When compared with the amounts awarded in typical class action cases, the amount
25 requested here is particularly reasonable. Indeed, a 2006 study examining the average incentive
26 award given to class action plaintiffs from 1993 to 2002 found that the “average award per class
27 representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore
28 Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”,

53 UCLA L. Rev. 1303, 1308 (2006).) That same study found that named plaintiffs in employment discrimination class actions received an average award of \$69,850 and a median award of \$31,081, while named plaintiffs in other employment class actions received an average award of \$12,121 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in employment cases reflected the “courts’ wish to make representative plaintiffs whole by compensating them for the high costs of their service to the class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

D. There is Good Cause for Selecting CASA of Los Angeles As the *Cy Pres* Recipient.

Moreover, in the class action context, California Code of Civil Procedure requires unpaid cash residues in a class action settlement to be distributed to “nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent.” (Cal. Civ. Proc. Code § 384(b) (emphasis added).)

Here, under the terms of the settlement agreement, in the event settlement checks remain uncashed after 180 days, those funds shall be donated to CASA (“Court Appointed Special Advocates”) of Los Angeles as a *cy pres* beneficiary. (Settlement, § VII(H).) CASA of Los Angeles is a nonprofit organization that trains volunteers to take action and advocate for children and families in the juvenile justice court and child welfare systems in Los Angeles County.⁵ Accordingly, CASA of Los Angeles is a proper recipient of *cy pres* funds for this action.

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

A. Legal Standard

The proposed Settlement Class is well suited for class certification. All of the claims derive from a core set of alleged violations of California’s wage and hour laws and regulations. For the reasons set forth more fully below, for purposes of settlement only, the Class satisfies the

⁵ See “Our Mission,” CASA of Los Angeles website, available at <https://casala.org/about/> (May 4, 2022).

1 prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: “when
2 the question is one of a common or general interest, of many persons, or when the parties are
3 numerous, and it is impracticable to bring them all before the court, one or more may sue or defend
4 for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to section 382: “(1)
5 There must be an ascertainable class; and (2) there must be a well-defined community of interest
6 in the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow*
7 *Cab Co.* (1967) 67 Cal. 2d 695, 704 [citations omitted].) To clarify these requirements, the
8 California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the
9 community-of-interest requirement itself embodies three factors: “(1) predominant questions of
10 law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
11 representatives who can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29
12 Cal. 3d 462, 470.)

13 California law and policy favor the fullest and most flexible use of the class action device.
14 (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a
15 means to prevent a failure of justice in our judicial system” particularly where the rights of
16 consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to
17 the appropriateness of class treatment should be resolved in favor of certification. (*Richmond,*
18 *supra*, 29 Cal.3d at pp. 473-75.)

19 **B. Plaintiffs Maintain That the Criteria for Class Certification Are Satisfied for**
20 **Settlement Purposes.**

21 **1. The Classes Are Ascertainable and Numerous**

22 The proposed class that Plaintiffs seeks to represent is easily ascertainable, and includes at
23 least 1,813 employees of Defendant.

24 Plaintiff maintains that there is an easily ascertainable class, defined by objective and
25 precise criteria. Because class members are identified using specific criteria in the regular business
26 records of Defendant (i.e., job position), the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.*
27 (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the
28 subject of the lawsuit is sufficient to make the class ascertainable].)

1 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
2 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
3 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action
4 may be maintained as a class action even where the parties are numerous and it is in fact practicable
5 to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a
6 class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries
7 of a trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d
8 574; see also, *Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) Therefore,
9 Plaintiff contends that numerosity is plainly satisfied.

10 **2. There are Many Common Issues of Law and Fact Which Predominate**

11 The Court should grant conditional class certification for settlement purposes here on the
12 grounds that questions of law and fact common to all class and subclass predominate over any
13 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
14 warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
15 Cal.App.3d 605.)

16 Here, the employment practices at issue are: whether Defendant had legally compliant
17 policies and practices for all hours worked, including overtime wages; whether Defendant had
18 legally compliant policies and practices to provide employees with meal periods; whether
19 Defendant had legally compliant policies and practices authorizing and permitting its employees
20 to take rest periods; whether final payment of wages was untimely and excluded unpaid wages,
21 including meal period premium and rest period premium wages; whether the wage statements were
22 consequently non-compliant; and whether Defendant adequately reimbursed employees for
23 business expenditures. Plaintiffs contend that the factual and legal issues are the same for all of
24 the identified class members, including Plaintiffs. Further, all class members suffered from, and
25 seek redress for, the same alleged injuries.

26 **3. Plaintiffs’ Claims Are Typical of the Claims of the Class**

27 The typicality requirement does not focus on the individual characteristics or circumstances
28 of the representative plaintiff compared to those of the remainder of the class, but rather upon the

1 typicality of the proposed representative’s claims as they relate to the defendant’s conduct and
2 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 [“[t]he only requirements are that
3 common questions of law and fact predominate and that the class representative be similarly
4 situated” vis-à-vis the class.].) A representative plaintiff’s claims are typical of the class if they
5 arise from the same event, practice or course of conduct, and if the claims rest on the same legal
6 theories. (*Id.*) That is precisely the case here. Plaintiffs are former employees of Defendant; as
7 such, he alleges that he was subject to the same policies and practices as other similarly situated
8 employees.

9 **4. Plaintiffs and Their Counsel Meet the Adequacy Requirement**

10 The adequacy of representation requirements is met by fulfilling two conditions: first, a
11 named plaintiff must be represented by counsel qualified to conduct the pending litigation; second,
12 a named plaintiff’s interests cannot be antagonistic to those of the class. (*McGhee v. Bank of*
13 *America* (1976) 60 Cal.App.3d 442, 451.)

14 All of these requirements are met here for settlement purposes. Plaintiffs retained counsel
15 with extensive experience in prosecuting complex class actions, including similar class actions that
16 previously settled. (Marquez Decl., ¶¶ 48-58.) Class Counsel unquestionably is “qualified,
17 experienced and generally able to conduct the proposed litigation.” (*Miller v. Woods* (1983) 148
18 Cal.App.3d 862, 875.) In addition, Plaintiffs have no conflicts, and Plaintiffs have, with counsel,
19 litigated this case and diligently reviewed the settlement terms, showing their dedication.
20 Plaintiffs’ willingness to serve as a representative demonstrates his serious commitment to bringing
21 about the best results possible for the class and subclass. (*McGhee, supra*, 60 Cal.App.3d at p.
22 451.)

23 **5. A Class Action is Superior to a Multiplicity of Litigation**

24 Finally, in making its class certification decision, the Court must determine that a class
25 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
26 By consolidating many potential individual actions into a single proceeding, this Court’s use of the
27 class action device enables it to manage this litigation in a manner that serves the economics of
28 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-

1 situated employees with small but nevertheless meritorious claims for damages would, as a
2 practical matter, have no means of redress because of the time, effort and expense required to
3 prosecute individual actions. (*Gentry v. Super. Ct.* (2007) 42 Cal. 4th 443, 457-62; *Leyva v.*
4 *Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the
5 superiority concerns are essentially non-existent.

6 **V. THE COURT SHOULD CONSOLIDATE THE MATTERS FOR SETTLEMENT**
7 **PURPOSES ONLY**

8 Although not necessary to approve and/or consider a settlement, the Parties wish to follow
9 Judge Beaudet’s instructions and ask that the Court consolidate this matter for settlement purposes
10 only. The Parties previously sought approval of their proposed settlement on June 8, 2022 in
11 Department 50 of this Court since that action is the low numbered case. (Winston Decl., ¶ 24, Exh.
12 4). During the proceedings, Judge Beaudet’s view that the settlement should be considered by the
13 Complex Department, that neither Counsel nor the Court knew of a way to consolidate the matters
14 in the complex department given the procedural posture, the claims in the various cases, and the
15 inability of Jesus Soto’s Counsel to contact him. (*Id.*). During the hearing Judge Beaudet directed
16 the Parties to seek approval of their Proposed Settlement in this Court and to ask this Court to
17 consolidate the matters for settlement purposes only. (*Id.*).⁶ Consistent with Judge Beaudet’s
18 instructions, the Parties now ask this Court to consider and preliminarily approve their Proposed
19 Class and PAGA Settlement and to consolidate the cases for consideration of settlement only.

20 The Parties are not asking this Court to assert jurisdiction over the other courts nor to rule
21 on the other Courts jurisdiction; rather, the Parties are merely asking the Court to enter an order
22 approving their settlement and directing the Parties to advise the other courts of the Settlement to
23 enable those courts to efficiently manage their calendars.

24 ///

25 ///

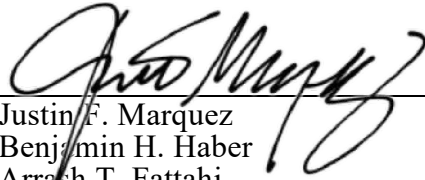
26 _____
27 ⁶ Class Counsel does not believe that it is legally necessary to formally consolidate the cases in
28 order to grant approval of the Parties Settlement, but is nevertheless following the instructions
provided to them. See e.g. *Amaro v. Anaheim Arena Mgmt. LLC*, (2021) 69 Cal. App. 5th 521,
545.

1 **VI. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary
3 approval of the proposed settlement and set a Final Approval Hearing in December 2023.

4
5 Dated: October 7, 2022

**WILSHIRE LAW FIRM
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Ronald Flores Nunfio, et al. v. Deanco Healthcare, LLC
21STCV34724

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