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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

COORDINATION PROCEEDING SPECIAL TITLE [RULE 3.550] ALTUM SENIOR LIVING WAGE AND HOUR CASES Included actions: *Valdies vs. Altum Senior Living, LLC, et al.*, Superior Court of California, County of San Diego, Case No. 37-2021-00032142 *Ortiz vs. Altum Senior Living, LLC*, Superior Court of California, County of San Francisco, Case No. CGC-21-595150.	Judicial Council Coordination Proceeding No.: CJC-22-005258 [*Assigned to:* Hon Jeffrey S. Ross, Dept. 606] **CLASS ACTION** **PLAINTIFFS' NOTICE OF MOTION AND SECOND RENEWED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [*Filed concurrently with*: Declarations of Benjamin H. Haber, Selena Matavosian, Kylee Valdies, Paloma Ortiz Cruz, Jarrett Gorlick, Jennifer Jones, and Jennifer Beliveau; [Proposed] Order; Proof of Service] PRELIMINARY APPROVAL HEARING Date: June 11, 2025 Time: 10:00 a.m. Dept: 606

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

PLEASE TAKE NOTICE that on June 11, 2025 at 10:00 a.m., in Department 606 of the Superior Court of California for the County of San Francisco, located at 400 McAllister Street, San Francisco, California 94102, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq*., Plaintiffs Kylee Valdies and Paloma Ortiz Cruz (together, "Plaintiffs" or "Class Representatives") will move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiffs and Defendants Altum Senior Living, LLC and Crescendo Senior Living of Placentia (erroneously sued as Crescendo Senior Living of Placentia) (together, "Defendants"). Plaintiffs further move the Court for an Order:

1. Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Fifth Amended Class and PAGA Action Settlement and Release Agreement ("Settlement," "Agreement," or "Settlement Agreement"), attached as **EXHIBIT 1** to the Declaration of Benjamin H. Haber, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys' Fees and Costs to Class Counsel, Class Representative Enhancement Awards to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
2. Conditionally certifying the Class for settlement purposes;
3. Approving the Notice and the plan for distribution of the Notice;
4. Preliminarily appointing Plaintiffs Kylee Valdies and Paloma Ortiz Cruz as Class Representatives;
5. Preliminarily appointing Arby Aiwazian, Joanna Ghosh, and Yasmin Hosseini of Lawyers *for* Justice, PC and Benjamin H. Haber and Chase M. Stern of Wilshire Law Firm, PLC as Class Counsel for settlement purposes;
6. Appointing Simpluris, Inc. as the Settlement Administrator; and
7. Scheduling a final approval hearing.

The motion will be based upon this notice, the attached memorandum of points and authorities, the Declarations of Benjamin H. Haber, Selena Matavosian, Paloma Ortiz Cruz, and Kylee Valdies, Jarrett Gorlick, Jennifer Jones, and Jennifer Beliveau filed concurrently herewith, 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.

Respectfully submitted,

Dated: May 9, 2025

WILSHIRE LAW FIRM, PLC

By: ______________________

Benjamin H. Haber
Chase M. Stern

Attorneys for Plaintiff Paloma Ortiz Cruz

Dated: May 9, 2025

LAWYERS *for* JUSTICE, PC

By: /s/ Selena Matavosian

Arby Aiwazian
Joanna Ghosh
Yasmin Hosseini
Selena Matavosian

Attorneys for Plaintiff Kylee Valdies

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

<u>State Statutes</u>

RULES

TREATISES

OTHER AUTHORITIES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Kylee Valdies and Paloma Ortiz Cruz (together, "Plaintiffs" or "Class Representatives") seek preliminary approval of a proposed $517,500 non-reversionary, wage and hour class action settlement with Defendants Altum Senior Living and Crescendo Senior Living LLC ("Defendants," and together with Plaintiffs, the "Parties.")

The proposed Settlement will provide substantial monetary payments to approximately 460 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and multiple phases of negotiations that were initially facilitated by well-respected mediator and former complex judge, Honorable Daniel Buckley (Ret.), and then later advanced between the Parties, whereby Plaintiffs were able to negotiate for ***additional*** compensation to the class members. After comprehensive settlement discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses, the Parties reached a proposed settlement that was fully executed by the Parties in January 2025.

This is the Plaintiff's second renewed motion seeking preliminary approval of the claims in Plaintiffs' coordinated wage-and-hour class action proceeding. The Court previously rejected the Parties' prior settlement terms, thus prompting the Parties to re-engage in further negotiations that ultimately led to the new proposed Settlement that provides (1) a ***<u>15% increase</u>*** to the prior Gross Settlement Amount (from $450,000 to $517,500); (2) a shortened class period to further increase the recovery for each Participating Class Member on a per workweek basis; (3) a ***reduction of the requested attorney's fees*** to 25%; and (4) a ***reduction of the requested enhancement awards*** to $5,000. Ultimately, the Parties' new proposed Settlement Agreement provides an **average <u>net</u> payout of *approximately $683.70 per class member.*** [1]

For all the reasons addressed herein, Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the

[1] This figure is calculated by dividing the proposed Net Settlement Amount of $314,500 [$517,500 settlement amount, *minus* $129,375 in requested attorney's fees, *minus* $25,000 in maximum litigation costs subject to proof at final approval, *minus* $9,000 in maximum settlement administration costs subject to proof at final approval, *minus* $10,000 in combined enhancement awards, minus $30,000 to the Labor Workforce Development Agency] by the approximate number of class members [460].

proposed notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims and Relevant Procedural History

This is a coordinated wage and hour class action that was first initiated in 2021. Plaintiffs and other putative class members worked in California as hourly-paid or non-exempt employees for Defendants during the class period. Defendants are a senior living operations and management company that provides independent living, assisted living, memory support, and respite care. (Declaration of Benjamin H. Haber in Support of Plaintiffs' Second Renewed Motion for Preliminary Approval of Class Action Settlement ["Haber Decl."], ¶ 2.)

On July 28, 2021, Plaintiff Valdies filed a Class Action Complaint in the Superior Court of California for the County of San Diego, Case No. 37-2021-00032142 ("*Valdies* Action"). (Declaration of Selena Matavosian in Support of Plaintiffs' Second Renewed Motion for Preliminary Approval of Class Action Settlement ["Matavosian Decl."], ¶ 19.)

On September 10, 2021, Plaintiff Ortiz filed a Class Action Complaint in the Superior Court of California for the County of San Francisco ("Court"), Case No. CGC-21-595150 ("*Ortiz* Action"). (Haber Decl."], ¶ 3.)

Plaintiffs allege that Defendants violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs, the Class Members, and Aggrieved Employees by, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, and failing to reimburse necessary business expenses. Plaintiffs contend that they and other employees are entitled to unpaid wages, penalties, and attorneys' fees. Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Litigation. (Haber Decl., ¶ 4.)

On September 16, 2022, Defendants filed a Petition for Coordination and Request for Order Staying Proceedings. Defendants sought to coordinate the *Valdies* Action with the *Ortiz* Action and designate the San Francisco County Superior Court as the situs for the coordinated actions, which the Court granted on December 7, 2022, thereby commencing the above-captioned lawsuit (together with the *Valdies* Action and *Ortiz* Action are referred to as "Litigation"). (Haber Decl., ¶ 5.)

B. Discovery, Investigation, and Mediation

On January 12, 2022, Plaintiff Valdies propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Set One & Two); and Form Interrogatories - General, (Set One), on Defendants, which Defendants responded to on March 22, 2022. (Matavosian Decl., ¶ 23.)

The Parties subsequently agreed to engage in a global mediation involving the *Valdies* Action and the *Ortiz* Action. In advance of the mediation, Defendant produced additional documents through an informal discovery exchange, which included all of Defendant's relevant policy documents in effect during the class period and a randomized sampling of timekeeping and payroll records for the class members that included 16,169 shifts (or approximately 20% of all shifts during the class period) for Plaintiffs' counsel and expert to analyze. When entered into a sample size calculator, the number of shifts in the sampling indicated a 0.94% margin of error on a 99% confidence interval. Plaintiffs' expert analyzed the data, which allowed Plaintiffs' counsel to make a reasonable and informed assessment of the risks that both Parties would face at class certification and trial. (Haber Decl., ¶ 7.)

On December 8, 2022, the Parties participated in a formal, full-day mediation conducted by Honorable Daniel Buckley (Ret.), a well-regarded mediator with extensive experience overseeing complex wage-and-hour matters in Los Angeles Superior Court. With the aid of the mediator's evaluation and after months of extensive settlement negotiations, the Parties initially reached a proposed settlement for Defendants to pay $450,000 to resolve the Litigation in its entirety. (Haber Decl., ¶ 8.)

C. Plaintiffs' Efforts to Preliminarily Approve a Class Settlement

On August 17, 2023, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement ("Original MPA") and supporting documents seeking approval of the settlement reached by the parties following the December 8, 2022 mediation. Plaintiffs then submitted supplemental briefing in support of the Original MPA on or around October 18, 2023 and January 29, 2024 in order to respond to the Court's guidance regarding issues related to the settlement terms. On March 11, 2024, the Court issued an Order Denying Plaintiff's Motion for Preliminary Approval of Class Action Settlement. (Haber Decl., ¶ 9.)

Based on the Court's guidance, the Parties negotiated and executed a subsequent amended settlement agreement, which Plaintiffs presented to the Court by way of their Renewed Motion for Preliminary Approval of Class Action Settlement ("Renewed MPA") that was filed on April 22, 2024. Plaintiffs also submitted supplemental briefing in support of the Renewed MPA on or around June 10, 2024 to respond to additional guidance from the Court related to the settlement terms. On July 3, 2024, the Court issued an Order Denying Plaintiff's Renewed MPA ("July 2024 Order"). (Haber Decl., ¶ 10.)

D. <u>The Updated Settlement Agreement</u>

After considering the feedback provided by the Court in connection with the prior proposed settlements, the Parties engaged in further negotiations and discussions regarding the Court's concerns, the strengths and weaknesses of Plaintiff's claims, and Defendant's defenses. The settlement negotiations were always at arm's length and, although conducted in a professional manner, were adversarial. After extensive negotiations and further discussions regarding the Court's prior concerns, the Parties entered into the Fifth Amended Class and PAGA Action Settlement, which includes the following primary changes when compared to the most recent settlement reviewed by the Court:

1. The Gross Settlement Amount is increased by 15% (from $450,000 to $517,500);
2. The Class Period is narrowed to only cover claims up through the date of mediation (i.e., December 8, 2022) as opposed to the date of preliminary approval, thus providing greater recovery on a per workweek basis;
3. The requested attorney's fees are lowered to an amount not to exceed 25% of the Gross Settlement Amount (as opposed to 33 1/3%); and
4. The requested enhancement awards are lowered to an amount not to exceed $5,000 (as opposed to $7,500).

(Haber Decl., ¶¶ 11, Exs. 1-2.)

The modifications outlined in the Settlement address the Court's prior concerns regarding reasonableness and, in so doing, provide the class members with timely, fair, and just compensation in exchange for narrow releases related to the wage-and-hour claims in this coordinated action. Although the issues raised in the July 2024 Order are addressed within this memorandum, in the interest of conserving the Court's resources and to facilitate brevity, the Parties respectfully refer the Court to the accompanying Declarations of Benjamin H. Haber, Selena Matavosian, Jarrett Gorlick, Jennifer Jones, Kylee Valdies and Paloma Ortiz Cruz for additional and more detailed information.

The $517,500.00 Settlement represents **68**% of **the *realistic* maximum recovery of $756,961.20**.[2] (Haber Decl., ¶ 23.) Although Class Counsel estimated that Defendants' maximum potential liability for all claims and time periods covered within the Settlement was approximately $4.3 million, when the risk of prevailing at certification and trial are factored into the equation, and when factoring in the discretionary penalties that likely would be reduced, Class Counsel believes that Defendants' realistic exposure was $756,9631.20, meaning the Settlement achieves a significant recovery. (*Id.*) Considering the risk and uncertainty of prevailing at class certification and at trial, and the financial documents that Defendant - a management company - provided, this is an excellent result for the Class. (*Id.*) Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

E. <u>Key Terms of the Proposed Settlement</u>

The Settlement's key terms include:

1. <u>Class Definition</u>: For settlement purposes only, the Parties agree to the certification of a class pursuant to California Code of Civil Procedure § 382 defined as: "all current and former employees of Defendant Altum who performed work for Defendants as non-exempt, hourly-paid employees in California at any time during the Class Period." (Settlement, § 1.5.)

2. <u>Class Period</u>: "means the period of time from July 28, 2017 through December 8, 2022." (Settlement, § 1.7.)

3. <u>Participating Class Members:</u> "means all Class Members who do not submit a valid and timely Request for Exclusion." (Settlement, § 1.31.)

4. <u>Gross Settlement Amount:</u> This amount is $517,500.00, for all claims, including wages, interest, the Attorneys' Fees and Costs to Class Counsel, Settlement Administration Costs, and the Class Representative Enhancement Awards. (Settlement, § 1.19.)

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[2] These percentages are notably higher than the percentages offered in Plaintiffs' Original MPA and Renewed MPA as a result of (1) the increased Gross Settlement Amount, (2) the decreased class period and decreased employee count, (3) a reevaluation of the time of pay and records to provide updated damages figures, and (4) and comprehensive review of the discounting factors.

5. Uncashed Checks: Any settlement checks remaining uncashed after one hundred and eighty (180) days shall be transmitted to the intended Cy Pres Recipient, California CASA Association, in accordance with California Code of Civil Procedure § 284, subd. (b). (Settlement, §§ 1.12, 7.3.5.)

6. Release: Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiffs and all Participating Class Members release "all claims that were asserted in the Complaints, arising during the Class Period, under state, federal, or local law, such as those under the California Labor Code (including, *inter alia*, §§ 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d0, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2082), Industrial Welfare Commission Wage Orders (including, *inter alia*, Wage Orders No. 4-2001), regulations, and/or other provisions of law, for: (1) failure to pay overtime wages; (2) failure to provide compliant meal periods and pay associated premiums (3) failure to provide compliant rest periods and pay associated premiums; (4) failure to pay minimum wages; (5) failure to timely pay wages upon termination; (6) failure to timely pay wages during employment; (7) failure to provide compliant wage statements; (8) failure to keep requisite payroll records; (9) failure to reimburse necessary business expenses; and (10) violation of California's unfair competition law based on the aforementioned claims." (Settlement, §§ 1.34, 8.3.)

7. No Reversion: No portion of the Gross Settlement Amount shall revert to Defendants. (Settlement, § 4.1.)

8. Net Settlement Amount: The "Net Settlement Amount" is the portion of the Gross Settlement Amount available for payment to Participating Class Members, which is the Gross Settlement Amount less the following subject to Court approval: Attorneys' Fees and Costs to Class Counsel, the LWDA Payment to the LWDA, Class Representative Enhancement Awards to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator. (Settlement, § 1.23.)

9. Tax Allocation: Any settlement money paid to Settlement Class Members will be allocated as 20% wages, 80% to penalties and interest. (Settlement, § 7.3.3.)

10. Class Representative Enhancement Award: Subject to Court approval, Plaintiffs seek enhancement awards not to exceed $5,000.00. (Settlement, § 4.2.) This amount is for Plaintiffs' time and effort in bringing and presenting the action, and in exchange for a general

release of all claims, known or unknown, pursuant to Civil Code Section 1542. (Settlement, § 8.1.) If the Court approves a lesser enhancement, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class Members on a pro-rata basis. (Settlement, § 4.2.)

11. Attorneys' Fees and Costs: The Settlement provides that Defendants will not oppose a fee application of up to 25% ($129,375.00) of the Gross Settlement Amount, plus out-of-pocket costs not to exceed $25,000.00. (Settlement, § 4.3.)

12. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service award being sought, and an explanation of how the settlement allocations are calculated. (Settlement, Ex. 1, Class Notice.) Class Members will be notified by first-class mail of the settlement in English and Tagalog. (Settlement, §§ 1.39, 5.4.1.) Simpluris, Inc., the proposed Settlement Administrator, will undertake its best efforts to ensure that the notice is provided to the current addresses of class members, including conducting a national change of address search and re-mailing the notice to updated addresses. (*Id.*; *see also* Declaration of Jennifer Beliveau on Behalf of Simpluris, Inc.)

III. DISCUSSION

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

In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include the strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168

Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. (*Id*. at p. 133.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require "an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims", but instead, only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."].)

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

A. <u>The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation</u>

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

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

The Settlement was reached following negotiations with experienced employment mediator, Hon. Daniely Buckley (Ret.), and extensive subsequent negotiations between the Parties. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The parties went into the mediation and settlement discussions willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position if a settlement had not been reached. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses, the Parties reached an initial agreement. (Haber Decl., ¶ 8.)

Prior to mediation, Class Counsel conducted formal and informal discovery concerning the claims set forth in the Litigation, such as a sample of class member timekeeping and payroll records, production of Defendants' policies and procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well as information regarding the number of putative class members and the mix of current versus former employees, the wage rates in effect, and the amount of meal and rest period premium wages paid to class members. (*Id*. at ¶ 6.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id*.) Thus, Plaintiffs and their counsel were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.)*

Class Counsel also has considerable experience and has demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 38-42; Matavosian Decl., ¶¶ 2-7.) Again, this supports the position that the terms of the Settlement are premised on objective evidence that has been considered and weighed in light of the risks, expenses, and time consumption to both sides of continued litigation of this action.

2. The Settlement Is Fair and Reasonable in Light of the Parties' Respective Legal Positions

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

This settlement avoids the risks and the accompanying expense of further litigation. (Haber Decl., ¶ 23.) While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as to each cause of action and Plaintiff recognizes that proving the amount of wages due to each class member would be an expensive, time-consuming, and uncertain proposition, especially when considering Defendant's position that they maintained complaint policies and practices. (*Id*. at ¶ 24; s*ee also* Declaration of Jennifer Jones.)

Class Counsel also investigated the potential ambiguity in the law regarding the standard knowledge and intent required to be liable under Labor Code sections 203 and 226, and found that the California Supreme Court addressed this ambiguity in *Naranjo v. Spectrum Security Services, Inc*. (2024) 15 Cal.5th 1056, 1090 when it concluded that "whether unpaid premiums for missed meal breaks must be reported as 'wages earned' and credited as 'hours worked' in wage statements was uncertain until we settled the issue in 2022." In determining so, the Court found that the employer, Spectrum Security Services', failure to include unpaid meal premiums in its wage statements from June 2004 to September 2007, was not "knowing and intentional" within the meaning of Labor Code section 226 (e)(1). (*Id*. at ¶ 22.)

Thus, it follows that like in *Naranjo*, any failure by Defendant to report unpaid premiums for missed breaks as "hours worked" in their wage statements, was arguably not "knowing and intentional" if the failure occurred during or before 2022 – the year the California Supreme Court settled the issue. Based on this understanding, any waiting time and wage statement penalties for a violation of Labor Code section 203 and 226, during or before 2022, could be potentially removed from Plaintiff's calculation of the total potential liability.

Here, when these penalties are removed, the **new total potential liability becomes $2,655,581**, as opposed to $4,319,327, which included $1,302,546 in waiting time penalties and $361,200 in wage statement penalties for derivative violations during the period of September 10, 2018 to December 8, 2022. (*See* Declaration of Jarrett Gorlick.; *see also* Haber Decl., ¶ 22.) Using this revised maximum potential recovery, Plaintiffs' updated Settlement Amount arguably comprises of approximately **19.5%** of the ***maximum*** potential recovery.

Courts have determined that class settlements, like the one reached here, are, of course, reasonable even where Plaintiffs recover only a portion of their actual losses. (*Behrens v. Wometco Enters., Inc*. (S.D. Fla. 1988) 118 F.R.D. 534, 542, aff'd, (11th Cir. 1990) 899 F.2d 21 ("[T]he fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate."].) A settlement of 10 percent of the total maximum recovery is in line with other class settlements where plaintiffs only recover a portion of their actual losses. For example, in *Kullar v. Foot Locker Retail, Inc.* (Cal. Ct. App., Nov. 2, 2012, No. A133156) 2012 WL 5378293 at *3, *6, the appeals court stated that the trial court's conclusion that a settlement of "about 10 percent, maybe a little bit less of the total maximum claim" was fair and reasonable and was within the proper exercise of the trial court's discretion given the risks in the case. Similarly, in *Neufield v. Prof'l Transp.* (Cal. Super Ct., Jan. 13, 2023, No. 34-2021-00309849-CU-OE-GDS) 2023 Cal. Super. LEXIS 6188 *6, *9-10, the court found that the gross settlement amount represented 10 to 13 percent of the maximum recovery, and concluded that this settlement met the standards for preliminary approval. Likewise, the court in *Smith v. Space Exploration Techs. Corp.* (Cal. Super. Ct., June 12, 2017, No. BC554258) 2017 Cal. Super. LEXIS 7762 at *26, granted a motion for final approval of class action settlement after finding, among other things, that the gross settlement amount of approximately 14 percent of the total potential liability exposure was fair, adequate, and reasonable given the class counsels' experience and the risks of continued litigation.

Indeed, "[a] settlement can be satisfying even if it amounts to a hundredth or even – a thousandth of a single percent of the potential recovery." (*Id.*; See 4 William B. Rubenstein et al., Newberg on Class Actions (5th ed. 2016) § 13:15 [the range of reasonableness percentage could be as low as 1/100th or 1/1000th of 1%]*; Wise v. Ulta Salon, Cosmetics & Fragrance, Inc* (E.D. Cal. Aug. 21, 2019) 2019 WL 3943859 at *8 [granting preliminary approval where the proposed allocation to settle class claims was between 9.53 percent of Plaintiffs' maximum recovery]; *Bravo v. Gale Triangle, Inc.* (C.D. Cal. Feb 16, 2017) 2017 WL 708766 at * 10 [finding that "a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"]; *In re Omnivision Techs., Inc.* (N.D. Cal. 2008) 59 F.Supp.2d 1036, 1042 [approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party."]; *Cavazos v. Salas Concrete, Inc*. (E.D. Cal. 2022) 2022 U.S. Dist. LEXIS 132056 [granting preliminary approval of settlement representing approximately 5.8% of maximum damages]; *Ferrell v. Buckingham Prop. Mgmt*. (E.D. Cal. 2020) 2020 U.S. Dist. LEXIS 135617 [granting preliminary approval of settlement representing approximately 5.3% of maximum damages]; *Ayala v. UPS Supply Chain Solutions, Inc*. (C.D. Cal. 2021) 2021 U.S. Dist. LEXIS 194362 [granting preliminary approval of settlement representing approximately 7.8% of maximum damages]; *Perez v. Core & Main, L.P.* (C.D. Cal. 2021) 2021 U.S. Dist. LEXIS 258958 ([preliminary approval of settlement representing 10.3% of maximum damages]; *Singh v. Roadrunner Intermodal Servs., LLC* (E.D. Cal. 2018) 2018 U.S. Dist. LEXIS 89308 [granting preliminary approval of settlement representing approximately 12% of maximum damages]; *Avila v. Cold Spring Granite Co*. (E.D. Cal 2017) 2017 U.S. Dist. LEXIS 130878 [approving settlement where gross recovery was 11% of the maximum damages]; *Stovall-*

Gusman v. W.W. Granger, Inc. (N.D. Cal. 2015) 2015 U.S. Dist. LEXIS 78671, at *12 [granting final approval of settlement amount representing approximately 10% of the maximum liability]; *Bellinghausen v. Tractor Supply Co*. (N.D. Cal. 2015) 306 F.R.D. 245, 256 [approving settlement representing approximately 8.5% of the maximum damages].)

The proposed settlement of $517,500 therefore represents a substantial recovery when compared to Plaintiffs' reasonably forecasted recovery. (*Id.* at ¶¶ 13-27.) Because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of $517,500 is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed, each Settlement Class Member is eligible to receive an average <u>net</u> benefit of approximately $683.70.*** (*Id.* at ¶ 26.)

3. The Settlement is Fair and Reasonable Given Defendant's Financial Condition

During the course of the litigation, on or around November 21, 2022, Defendant provided financial information to Plaintiffs indicating its current financial status for Plaintiff and the Mediator to consider during the December 8, 2022, mediation. The financial information confirmed that, as a management company, Defendant received only a management fee and did not, and does not, own any properties involved in this litigation, nor received any profits from its particular services. During the course of this litigation, and prior to the mediation, Defendant also ceased managing two out of its three communities in California. Thus, the size of the class is finite and Defendant ceased to have any income from those properties years ago. (*Id.* at ¶ 24.)

4. Class Counsel Has Extensive Experience in Class Action Litigation

The settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel have a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage and hour class action litigation. (Haber Decl., ¶¶ 24-27, 38-45; Matavosian Decl., ¶¶ 2-7.) Although Plaintiffs and their counsel were prepared to litigate this case further, they support the proposed Settlement as being in the best interests of the class.

B. <u>The Proposed Class Notice of Settlement Should Be Approved</u>

The proposed Notice, in the form attached to the Settlement Agreement, should be approved for dissemination to the class. The Notice informs the class of the terms of the settlement and of their rights to be excluded from the settlement. And if there are class members who wish to object to this proposed class action settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing. Accordingly, the proposed Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court.

C. The Proposed Attorneys' Fees and Costs Are Reasonable

Under the Settlement, subject to the Court's approval, Defendants agrees to pay Class Counsel reasonable attorneys' fees in amount of $129,375.00, which is 25% of the gross Settlement Amount, and up to $25,000.00 in costs. These amounts are disclosed to all class members in the proposed Notice and are reasonable.

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

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

Class Counsel seeks an award of attorneys' fees on the "percentage of recovery/ common fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc*. (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*Id.* at p. 110.)

The California Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc*. (2016) 1 Cal.5th

480 that, "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Id*. at p. 503.) The court explained: "The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts." (*Id*. [internal citations omitted].)

2. The Requested Fee Award Is Below That Of Typical Cases

According to a leading treatise on class actions, "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (*See* Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 14.03.) Attorneys' fees that are 50% of the fund are typically considered the upper limit, with 30 to 40% commonly awarded in cases where the settlement is relatively small. (*Id*; see also *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million].)

Here, Plaintiff requests attorneys' fees equal to 25% of the Settlement Amount, which is *below* the prevailing guidelines established in California case law and academic literature (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Accordingly, Plaintiffs respectfully request that the Court approve the attorneys' fees as negotiated by the Parties and requested herein.

3. This Matter Involves A "Fee-Shifting" Provision of the Labor Code

Labor Code § 1194 (a) provides for the recovery of "minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Under this section, Plaintiffs would be permitted to recover their actual attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this case. This settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendants while at the same time rewarding Class Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Class Counsel. (Haber Decl., ¶¶ 36-37.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class ahead of all other concerns.

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

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possess considerable expertise in litigating class actions. (Haber Decl., ¶¶ 38-42; Matavosian Decl., ¶¶ 2-7.) Class Counsel has been involved as lead counsel or co-counsel in several class actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, Class Counsel's requested fee award is supported here.

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

D. <u>The Enhancement Awards to Each Plaintiff Are Reasonable</u>

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

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

Under the settlement agreement, subject to the Court's approval, Defendant agreed to pay Enhancement Awards in the amount of $5,000 to each Plaintiff. This amount is also in exchange for Plaintiffs' general release of all claims against Defendants, which do not apply to other employees. Plaintiffs devoted a great deal of time and work assisting counsel in the case, including frequent communication with Class Counsel during the litigation, to prepare for mediation, and to assist with settlement efforts. (Haber Decl., ¶¶ 28-32; *see also, generally*, Declarations of Kylee Valdies and Paloma Ortiz Cruz.) This amount is reasonable particularly in light of the substantial benefits Plaintiffs generated for all class members.

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. Indeed, a 2006 study examining the average incentive award given to class action plaintiffs from 1993 to 2002 found that the "average award per class representative was $15,992 and the median award per class representative was $4,357." (Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev. 1303, 1308.) 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.)

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

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

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

1. The Classes Are Ascertainable and Numerous

The proposed class that Plaintiffs seek to represent is easily ascertainable and includes approximately 460 employees of Defendants.

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

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

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

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

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

3. Plaintiffs' Claims Are Typical of the Claims of the Class

The typicality requirement does not focus on the individual characteristics or circumstances of the representative plaintiff compared to those of the remainder of the class, but rather upon the typicality of the proposed representative's claims as they relate to the defendant's conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that common questions of law and fact predominate and that the class representative be similarly situated" vis-à-vis the class.].) A representative plaintiff's claims are typical of the class if they arise from the same event, practice or course of conduct, and if the claims rest on the same legal theories. (*Id.*) That is precisely the case here, where Plaintiffs are former employees of Defendants and they allege that they were subject to the same policies and practices as other employees.

4. Plaintiffs and Their Counsel Meet the Adequacy Requirement

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

All of these requirements are met here for settlement purposes. Plaintiffs retained counsel with extensive experience in prosecuting complex class actions, including similar class actions. (Haber Decl., ¶¶ 38-42; Matavosian Decl., ¶¶ 2-7.) Class Counsel unquestionably is "qualified, experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) In addition, Plaintiffs have no conflicts with each other, have agreed to a joint prosecution agreement with Class Counsel, and have litigated this case, along with their counsel, diligently and with dedication. (Haber Decl., ¶¶ 5, fn.1; 34-36; Matavosian Decl., ¶¶ 26-30.) Plaintiffs' willingness to serve as representatives also demonstrate their serious commitment to bringing about the best results possible for the class. (*McGhee*, *supra,* 60 Cal.App.3d at p. 451.)

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

Finally, in making its class certification decision, the Court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation. By consolidating many potential individual actions into a single proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-situated employees with small but nevertheless meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort and expense required to prosecute individual actions. (*Gentry v. Super. Ct*. (2007) 42 Cal. 4th 443, 457-62; *Leyva v. Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are essentially non-existent.

V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND

A. The Proposed Notice Plan Satisfies Due Process

Notice requirements are set forth in the California Rules of Court. Cal. Rules of Court, Rule 3.766 (e) and (f). California law vests the Court with broad discretion in fashioning an appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the class members will receive direct mailed notice. As the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class Members . . . ." (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided by direct mailing, the best possible form of notice.

B. The Notice is Accurate and Informative

The proposed Notice should be approved. It will be disseminated through direct U.S. first class mail to the last known address for each Class Member. It informs the Class Members of the terms of the settlement and their right to be excluded from the Settlement. And if there are Class Members who wish to object to this proposed class action settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing.

The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the terms and conditions of the settlement agreement, in an informative and coherent manner. It makes clear that the settlement agreement does not constitute an admission of liability by the Defendants, who deny all liability, and it recognizes that this Court has not ruled on the merits of the action. It also states that the final settlement approval decision has yet to be made. The Notice thus complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

VI. CONCLUSION

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

Respectfully submitted,

Dated: May 9, 2025

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