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On behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

JULIO C. ROVIRA, individually and on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

SILVERADO SENIOR LIVING
MANAGEMENTS, INC., a Delaware
Corporation, and DOES 1-50, inclusive,

Defendants.

Case No. 30-2020-01136565-CU-OE-CXC

Assigned for All Purposes To:
Hon. Glenda Sanders
Dept.: CX-101

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT,
APPROVAL OF CLASS NOTICE, AND
CONDITIONAL CERTIFICATION OF
SETTLEMENT CLASS**

Date: March 4, 2022
Time: 1:30 p.m.
Place: Dept. CX-101

Date Action Filed: March 5, 2020
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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rule 3.769(d) and (e), JULIO C. ROVIRA,
3 LORENA RENTERIA, and VIRGILIO SANTOS (“Plaintiffs”) respectfully request that the
4 Court grant preliminary approval of the proposed Class Action Settlement Agreement and
5 Release (“Settlement Agreement”) with defendant SILVERADO SENIOR LIVING
6 MANAGEMENT, INC. (“Defendant” or “Silverado”).

7 The basic terms of the Settlement Agreement provide for the following:

- 8 1. The Maximum Settlement Amount (“Maximum Settlement Amount”) of \$750,000.00;
- 9 2. A Net Settlement Amount (Maximum Settlement Amount less Class Counsel Fees, Class
10 Counsel Costs, Service Awards, Settlement Administrator’s Costs and Fees, the portion of
11 PAGA Allocation payable to the LWDA)) allocated pro rata to approximately 688 Class
12 Members based on Class Members’ Qualifying Weeks worked during the Class Period of
13 September 20, 2017, to September 13, 2021;
- 14 3. An award of one-third of the Maximum Settlement Amount (up to \$250,000.00) in attorneys’
15 fees and reimbursement of costs to Class Counsel of up to \$25,000.00;
- 16 4. Service award to Plaintiff Rovira in the amount of up to \$7,500.00 and to Plaintiff Renteria
17 and Plaintiff Santos in the amount of up to \$2,500.00 each (“Service Payment”);
- 18 5. Settlement Administrator Costs estimated to be \$16,400.00 (“Settlement Administrator
19 Costs”) paid to ILYM Group, Inc.;
- 20 6. The PAGA allocation of \$50,000, with 75% or \$37,500.00 to be paid to the LWDA; and 25%
21 or \$2,500 allocated to the Net Settlement Amount.

22 As discussed below, the proposed Settlement satisfies all criteria for preliminary approval under
23 California law and falls well within the range of reasonableness. The Settlement was reached through
24 informed, arms-length bargaining between experienced attorneys after extensive formal and informal
25 discovery and mediation. It was the product of hard-fought negotiations with the assistance of an
26 experienced mediator, Steve Serratore. Accordingly, Plaintiffs respectfully request that the Court grant
27 preliminary approval of the Settlement, approve the Notice Packet, conditionally certify the proposed
28 Class for settlement purposes only, appoint Plaintiffs as the Class Representatives and Plaintiffs’ Counsel

1 as Class Counsel, authorize the Administrator to send the Notice Packet to the Class Members and set a
2 final approval hearing date.

3 **II. SUMMARY OF THE LITIGATION**

4 Plaintiff Rovira filed a putative class action lawsuit against Defendant on March 5, 2020, and
5 initiated the action entitled *Rovira v. Silverado Senior Living Management, Inc.*, Orange County Superior
6 Court Case NO. 30-2020-01136565-CU-OE-CXC (the “Class Action Complaint”). (Hawkins Decl. ¶6.)
7 Plaintiff Rovira’s initial Class Action Complaint alleged causes of action for (1) failure to pay all wages
8 owed, including minimum wages and overtime; (2) failure to provide lawful meal periods; (3) failure to
9 authorize and permit rest periods; (4) failure to timely pay wages owed upon separation from employment;
10 (5) failure to reimburse necessary expenses; and (6) violation of the Unfair Competition Law. (Hawkins
11 Decl. ¶6.) Plaintiff Rovira files the Class Action Complaint on behalf of “any and all person who are or
12 were employed by Defendants as non-exempt employees, however titled, providing caregiving or
13 supervisions services or related functions in the State of California within four (4) years prior to the filing
14 of the Complaint in this action until the resolution of this lawsuit and whose duties did not consist of over
15 50% administrative, executive or professional duties (collectively referred to as the “Class” or “Class
16 Members” or “Non-Exempt Employees”). (Id.) The Complaint also defined seven subclasses detailed in
17 James Hawkins Declaration. (Hawkins Decl. ¶7(a) – (g))

18 On June 3, 2020, Defendant filed an Answer the Complaint generally denying all allegations and
19 asserting affirmative defenses. (Hawkins Decl. ¶8.)

20 In connection with the Settlement, the Parties have agreed that a First Amended Complaint
21 (“FAC”) will be filed to add Mr. Santos and Ms. Renteria as Named Plaintiffs, clarify the class definition
22 to encompass all non-exempt employees, and encompass an additional claim under the Private Attorneys’
23 General Act, Labor Code section 2698 et seq. (“PAGA”) The “PAGA Employees” are defined as any and
24 all current and former hourly-paid or non-exempt employees who worked for Defendant within the State
25 of California from September 22, 2020 to September 13, 2021, and that did not execute an arbitration
26 agreement related to their work for Defendant. The claims in the FAC were raised and considered by the
27 Parties at the mediation which led to the resolution of the action. With this motion, the Parties are filing a
28 stipulation for the filing of the First Amended Complaint. (Hawkins Decl. ¶12.)

Plaintiffs’ counsel’s investigation included research and interviews, the exchange of information

1 and documents (including pertinent financial information), conferences with defense counsel, and informal
2 discovery. (Hawkins Decl. ¶16.) It also included preparing for and attending mediation with wage-and-
3 hour class action mediator, Steve Serratore, and assessing the evidence with an eye towards class
4 certification. (Hawkins Decl. ¶16.) The Parties engaged in a significant amount of research, investigation,
5 and information exchange prior to mediation. (Id.) Informal discovery and information exchange included
6 the production of class size information, Plaintiffs' employment files (including employment agreements
7 and wage statements), Defendants' handbook, policy and procedure documentation, timekeeping
8 information, pertinent financial information, local manager agreements, Class Members' time and pay
9 records and other relevant documentation. (Id.) Defendants produced substantial class information, time
10 and pay records for the putative class. (Id.) The Parties conducted their own evaluations of the potential
11 recoveries based on the claims alleged in the Action (Id.).

12 On June 9, 2021, the Parties participated in mediation before Steve Serratore. The mediation was a
13 successful, arms-length negotiation, which resulted in a mediator's proposal ultimately accepted by both
14 parties, with the Parties agreeing to settle this matter. (Hawkins Decl. ¶17.) The information exchange
15 between the Parties allowed then to assess the merits of the claims and defenses, and to reach a
16 compromise of the issues. (Hawkins Decl. ¶19.)

17 In connection with this Settlement, Plaintiffs seek to represent the Settlement Class. The
18 "Settlement Class" or "Class Members" are defined as any and all current and former hourly-paid or non-
19 exempt employees who worked for Defendant within the State of California at any time from September
20 20, 2017, to September 13, 2021, and that did not execute an arbitration agreement related to their work
21 for Defendant. (Hawkins Decl. ¶26.)

22 **III. SUMMARY OF THE SETTLEMENT**

23 **a. Terms of Settlement**

24 The Settlement Agreement provides for a Gross Settlement Amount of \$750,000.00 to resolve the
25 claims of approximately 688 Class Members. (Settlement, ¶1.8) The "Settlement Class" is comprised of
26 "any and all current and former hourly-paid or non-exempt employees who worked for Defendant within
27 the State of California at any time from September 20, 2017 to September 13, 2021, and that did not
28 execute an arbitration agreement related to their work for Defendant" (Settlement, ¶1.1) Class Counsel
will request attorneys' fees in the amount of one-third of the Gross Settlement Amount (up to

1 \$250,000.00), and up to \$25,000.00 in costs (Settlement. at ¶1.12(1)) Plaintiffs will seek Service Payments
2 of the amount up to \$7,500.00 to Plaintiff Rovira and the amount of up to \$2,500 to Plaintiff Renteria and
3 Plaintiff Santos, each. (Settlement ¶1.12(2)) and will execute a broad general release. (Settlement ¶3.5.2))
4 The PAGA allocation will be \$50,000.00, with 75% or \$37,500.00 paid to the LWDA. (Id. at ¶1.16) The
5 Parties have selected ILYM Group, Inc. to administer the Settlement, and the Settlement Administration
6 fee will be approximately \$16,400.00. (Id. ¶1.12(3)) The Net Settlement Amount is estimated to be
7 approximately Four Hundred Eight Thousand Six-Hundred Dollars (\$408,600.00) (including the 25% of
8 the PAGA Payment allocated to the PAGA Group.) (Hawkins Decl. ¶34.; Settlement ¶1.12)

9 Individual Settlement Amounts will be calculated by multiplying the Net Settlement Amount by
10 the Payment Ratio Fraction of each Participating Class Member. (Settlement ¶1.9) “Payment Ratio
11 Fraction” means a fraction that has its numerator the Participating Class Member’s individual Workweeks
12 and has as its denominator the total aggregate Workweeks of all Participating Class Members. (Settlement
13 ¶1.18). “Workweeks” means the number of workweeks worked by the Class Members as hourly-paid or
14 non-exempt employees for Defendant during the Class Period. (Settlement ¶1.31)

15 The entire Net Settlement Amount will be distributed to all Class Members who do not submit
16 timely and valid Requests for Exclusion. (Hawkins Decl. ¶36.)

17 Payment to each Settlement Class Member shall be allocated as twenty percent (20%) wages and
18 eighty percent (80%) interest and penalties. (Settlement ¶1.9) All settlement payments for wages shall be
19 subject to required withholdings and deductions as W-2 wage payments. With regard to payments in
20 settlement of claims for penalties and interest, these payments shall be issued through a 1099 form and not
21 subject to withholdings or deductions. (Settlement ¶2.5) Defendant’s share of payroll taxes with respect to
22 the wages portion of Individual Settlement Amounts, will be paid by Defendant separately and in addition
23 to the Maximum Settlement Amount. (Settlement ¶1.6)

24 **b. Proposed Notice Process**

25 Each Class Member will be advised of the Settlement terms by the Notice of Class Action
26 Settlement (“Class Notice”) that will be mailed to Class Members and will explain how to timely dispute
27 the amount owed under the distribution formula, opt-out of the Settlement, and object to the Settlement
28 (Settlement, ¶1.13) The proposed Notice includes (a) information regarding the nature of the Action; (b) a
summary of the Settlement’s principal terms; (c) the Settlement Class definition; (d) the formula for

1 calculating the Individual Settlement Payment for Class Members; (e) the dates which comprise the Class
2 Period; (f) instructions on how to dispute the amount owed under the distribution formula, opt out of the
3 settlement or submit an objection; (g) the deadlines by which the Class Member must postmark his or her
4 opt-out or objection; (h) the claims to be released; and (i) an estimate of each Class Member's
5 Individual Settlement Payment. (See **Exhibit 1** to **Exhibit A** to Hawkins Decl.)

6 As soon as practicable, but no later than fourteen (14) calendar days after the Preliminary
7 Approval Date, Defendant will provide the Settlement Administrator the Class List in an electronically
8 usable format. (Settlement, ¶3.2.2.) "Class List" means the list prepared by Defendant containing for each
9 Class Members, to the extent Defendant has such information, the following: the full name, Last Known
10 Address, dates of employment as a non-exempt or hourly-paid employee of Defendant during the Class
11 Period. (*Id.*)

12 For Class Members who were not employed by Defendant as of the Preliminary Approval Date
13 prior to mailing the Class Notice, the Settlement Administrator will undertake a Reasonable Address
14 Verification to ascertain the accuracy of the Last Known Address of the Class Member. (Settlement
15 ¶3.2.4) For Class Members who were employees of Defendant as of the Preliminary Approval Date, no
16 Reasonable Address Verification will be conducted. (Settlement ¶3.2.3) No later than twenty (20) calendar
17 days after the Preliminary Approval Date, the Settlement Administrator will mail the Court-approved
18 Class Notice to all Class Members. The Class Notice will be mailed via first class mail through the United
19 States Postal Service. (Settlement ¶3.2.1.)

20 Unless the Settlement Administrator received a Class Notice returned from the United States
21 Postal Service for reasons discussed below in this paragraph on or before the Response Deadline, that
22 Class Notice will be deemed to have been mailed and received by the Class Member to whom it was sent
23 five (5) calendar days after the mailing. (Settlement ¶3.2.6.) The Settlement Administrator will conduct a
24 skip trace to obtain a new address for Notice packets that are returned undeliverable in accordance with the
25 terms of the Settlement (Settlement ¶3.2.6)

26 No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator
27 will provide Class Counsel and counsel for Defendant with a declaration attesting to completion of the
28 notice proceed, including any attempts to obtain Updated Addresses for, and the re-sending of, any
returned Class Notices, to be filed with the Court by Class Counsel. (Settlement ¶3.2.7)

1 If a Class Member disagrees with the number of Workweeks credited to him or her as set forth in
2 his or her Class Notice, he or she must submit a written dispute along with documentation that supports his
3 or her belief that he or she should be credited with a different number of Workweeks. The dispute must be
4 submitted to the Settlement Administrator by mail, postmarked on or before the Response Deadline. The
5 Settlement Administrator will review the Workweeks dispute and supporting documentation and make a
6 determination based upon the submitted documentation as to the validity of the Class Member's claim.
7 The decision of the Settlement Administrator on any disputes will be final. (Settlement ¶3.3.1)

8 Any Class Members wishing to object to the Settlement shall inform the Settlement Administrator
9 in writing of his or her intent to object and all legal and factual bases for objection to the Settlement,
10 whether the Class Member intends to appear at the Final Approval Hearing, and whether the Class
11 Member is represented by legal counsel (and if to, identifying the legal counsel and providing said legal
12 counsel's mailing address). Alternatively, Class Members may choose to voice their objections at the
13 Final Approval Hearing. A Class Member who objects to the Settlement will still be considered a
14 Participating Class Member who is subject to the Settlement. (Settlement ¶3.3.3.)

15 Class Members may elect to Opt Out of the Settlement, and thus, exclude themselves from the
16 Settlement. Class Members who wish to exercise this option must submit a timely and valid Request for
17 Exclusion to the Settlement Administrator, postmarked on or before the Response Deadline. If a valid
18 Request for Exclusion is not received by the Settlement Administrator from a Class Member on or before
19 the Response Deadline, then that Class member will be deemed to have forever waived his or her right to
20 Opt Out. The Class Notice will advise Class Members of their option to Opt Out and will contain
21 instructions on how to do so. Class Members who do not Opt Out by submitting valid and timely Requests
22 for Exclusion will be deemed to be Participating Class Members, will be bound by the Settlement and the
23 Judgment entered based thereon. Class Members who Opt Out by submitting valid and timely Requests
24 for Exclusion will not be bound by the Settlement, will not be entitled to any benefits thereunder, or to
25 make any objection to the Settlement. (Settlement ¶3.3.4.) The Parties agree that the Response Deadline
26 will not be extended, and no untimely submissions will be honored, under any circumstances, unless
27 mutually agreeable by the Parties and/or if a Class Notice was re-mailed less than ten (10) calendar days
28 before the Response Deadline. (Settlement ¶¶3.3.6, 3.2.6)

1 **c. Proposed Class Release**

2 Upon the Effective Date, each of the Participating Class Members (including Class
3 Representatives) will be deemed to have, and by operation of the Judgment will have fully, finally, and
4 forever release, relinquished, and discharged Defendant and the Released Parties from any and all
5 Released Claims. (Settlement ¶3.5.1)

6 The “Released Parties” means Defendant Silverado Senior Living Management, Inc., and each of
7 its parent companies, subsidiaries, affiliates, current and former management companies, shareholders,
8 members, agents (including any investment bankers, accountants, insurers, reinsurers, attorneys and any
9 past, present, or future officers, directors, and employees) predecessors, successors, and assigns.
10 (Settlement ¶1.24)

11 The “Released Claims” means all claims, demands, rights, liabilities and causes of action of every
12 nature and description whatsoever including without limitation statutory, constitutional, contractual or
13 common law claims, against the Released Parties (as defined below), and any of them, for relief and
14 penalties, that accrued during the Class Period, and as a result of Class Members’ employment by
15 Defendant in California, that arise under any state or local law or state administrative order that was or
16 could have been pled based on the facts alleged in the Operative Complaint, including claims of failure to
17 pay minimum wages, failure to pay overtime wages, failure to provide compliant meal periods and/or
18 associated premiums, failure to provide compliant rest periods and/or associated premiums, failure to pay
19 wages timely at termination, failure to reimburse for business, unfair competition, PAGA penalties and
20 violations of California Labor Code §§ 201, 202, 203, 204, 226.7, 510, 512(a), 1174(d), 1194, 1197,
21 1197.1, 1198, 17200, 2800, 2802 the applicable Wage Order of the Industrial Wage Commission, civil
22 penalties pursuant to § 2698, et seq. and other related penalties, and California Business & Professions
23 Code §§ 17200 to 17208, including without limitation all related claims for restitution and other equitable
24 relief arising from California Business and Professions Code §§ 17200, et seq., interest on unpaid wages,
25 unpaid wages, attorneys’ fees or litigation costs, and any other related claims and/or penalties, including
26 civil penalties. The release does not extend to any claims not alleged in the operative Class Action
27 Complaint (including without limitation for PAGA penalties for violations not specified in the Operative
28 Complaint) and specifically excludes claims for workers’ compensation, personal injuries, unemployment
insurance, state disability compensation, claims under the Employment Retirement Income Security Act

1 of 1974, previously vested benefits under any employer sponsored benefits plan, wrongful termination,
2 discrimination, retaliation, and harassment including but not limited to those arising under the Age
3 Discrimination In Employment Act, the California Fair Employment and Housing Act, Title VII of the
4 Federal Civil Rights Act of 1964, and/or Federal Civil Rights Act of 1991, or any similar state or federal
5 laws, the California Family Rights Act, the Federal Family Medical Leave Act, the California Pregnancy
6 Leave Law, or similar state or federal laws, the Federal Equal Pay Act of 1963, violations of the
7 Americans with Disabilities Act of 1990 or violations of any other state or federal law, rule or regulation
8 concerning discrimination, retaliation and/or harassment. (Settlement ¶1.23)

9 **d. Class Representative General Release**

10 In addition to those releases set forth above, upon the Effective Date, the Class Representatives
11 will expressly and will be deemed to have and by operation of the Judgment will have, waived the
12 provisions, rights, and benefits of California Civil Code §1542 with respect to the Released Claims.
13 (Settlement ¶3.5.2(i))

14 **e. Funding of the Settlement and Payments**

15 Defendant shall deposit the required maximum payout of \$750,000.00 with the Settlement
16 Administrator in one installment no later than thirty (30) days after the Effective Date. (Settlement ¶2.1)
17 The “Effective Date” means the later of: (a) if no objections to the Settlement are submitted, the date on
18 which the Court issues the Final Approval Order and Judgment; (b) if any objections to the Settlement are
19 submitted, the date which is forty-five (45) calendar days after notice of entry of the Final Approval Order
20 and Judgment if no notice is filed within that time seeking appeal of the Final Approval order and
21 Judgment and if no motion for extension to appeal is filed; or (c) if a notice of appeal is filed, the date
22 upon which all appellate and/or other proceedings resulting from the notice of appeal have been
23 terminated in such a manner as to permit the Final Approval Order and Judgment to take effect in
24 substantially the form described herein. (Settlement ¶1.5)

25 Defendant, through the Settlement Administrator, will distribute payments as follows: (1) Class
26 Representative Enhancement Payment subject to court approval, the Plaintiff Rovira shall received a
27 service award of \$7,500.00 and Plaintiff Renteria and Santos shall receive service awards of \$2,500.00
28 each; (Settlement ¶2.4(a)) (2) Attorneys’ Fees and Litigation Costs in the amount of \$250,000.00 and
actual costs up to \$25,000.00, subject to court approval (Settlement ¶2.4.(b)); (3) Claims Administration

Costs not to exceed \$16,400.00 subject to court approval (Settlement ¶2.4.(c)); and (4) individual settlement payments to participating Settlement Class Members based on the formula set forth herein. (Settlement ¶2.6)

To the extent that there are excess funds from uncashed checks or Class Members who cannot be located, the parties agree that such funds shall be submitted to Taller San Jose Hope Builders, a 2.6. U.S. Code section 501(c)(3) non-profit organization that served indigent and at-risk youth by providing job training around Southern California, 180 days after the checks have been mailed to the Class Members. (Settlement ¶2.8)

IV. LEGAL ARGUMENT IN FAVOR OF PRELIMINARY APPROVAL

When a proposed class-wide settlement is reached, the settlement must be submitted to the court for approval. (2H. Newberg & A. Conte, *Newberg on Class Actions*, at § 11.41, p. 11-87 (3d. ed. 1192). Preliminary approval is the first of three steps that comprise the approval procedure for settlement of class actions. The second step is the dissemination of notice of the settlement to all Class Members. The third step is a final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented and Class Members may be heard regarding the settlement. (*See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *Manual for Complex Litigation, Second*, §30.44 (1993); Cal. Rule of Court, rule 3.769.) The primary question presented on an application for preliminary approval of a proposed class action settlement is whether the proposed settlement is “within the range of possible approval.” (*Manual for Complex Litigation, Second* §30.44, at p. 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982)) Preliminary approval is the prerequisite to giving notice so that “the proposed settlement...may be submitted to members of the prospective Class for their acceptance or rejection.” (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*, (323 F. Supp. 364, 372 (E.D. Pa. 1970)). There is an initial presumption of fairness when a proposed settlement negotiated at arm’s length by counsel is presented for court approval. (*Newberg*, 3d Ed., § 11.41, 11-88.) The ultimate question of whether the proposed settlement should be approved is made at a final approval hearing after notice is given.

a. Provisional Certification of the Class is Appropriate

California law authorizes conditional class certification for settlement purposes when the moving party proves the class is ascertainable and sufficiently numerous, a well-defined community of interest

1 exists among class members, and certification is a fair and efficient means of adjudicating the action,
2 rending proceeding as a class superior to alternative means. *Brinker Restaurant Corp. v. Superior Court*,
3 53 Cal. 4th 1004, 2021 (2012). For settlement purposes only, Defendant has stipulated to class certification
4 and entered into the Agreement in order to avoid the burden, expense, and uncertainty associated with
5 litigation. (Hawkins Decl. ¶54.)

6 b. The Proposed Class Is Numerous and Ascertainable

7 Whether the class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is
8 “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for
9 identifying class members.” *Reyes v. Bd. Of Supervisors*, 196 Cal.App.3d 1263, 1271 (1987). In this case,
10 the proposed Class consists of any and all current former hourly-paid or non-exempt employees who
11 worked for Defendant within the State of California at any time from September 20, 2017, to September
12 13, 2021, and that did not execute an arbitration agreement related to their work Defendant. (Hawkins
13 Decl. ¶26.; Settlement ¶1.1) The class size of approximately 688 Class Members is sufficiently numerous
14 to warrant conditional class certification and satisfies the numerosity requirement. (Hawkins Decl. ¶68.)
15 Further, the class is readily ascertainable from Defendants’ business records because all Class Members
16 are current or former employees of Defendants. (Hawkins Decl., ¶70 - 71.)

17 c. Common Questions Predominate

18 To assess whether common questions predominate, courts focus on whether the theories of
19 recovery advanced are likely to prove amendable to class treatment. *Sav-On Drug Stores, Inc. v. Super. Ct.*
20 (*Rocher*), 34 Cal. 4th 319, 327 (2004). In other words, courts determine whether the elements necessary to
21 establish liability are susceptible to common proof, even if the class members must individually prove
22 their damages. (*Brinker*, 53 Cal.4th at 1024) Here, Plaintiffs’ allegations of common illegal policies
23 provide a sufficient basis for predominance of common issues. *See Brinker*, 53 Cal. 4th at p. 1033 (“The
24 theory of liability – that [the employer] has a uniform policy, and that that policy, measured against wage
25 order requirements, allegedly violates the law—is by its nature a common question eminently suited for
26 class treatment.”).

27 Class Certification, as requested by the parties for the purposes of the Settlement only, should be
28 granted because Plaintiff alleged that the proposed Class Members’ claims all stem from the same alleged
conduct, and Defendant’s policies and practices. (Hawkins Decl. ¶66.) Plaintiffs have alleged that

1 Defendant violated California laws by its : (1) failure to pay all wages owed, including minimum wages
2 and overtime; (2) failure to provide lawful meal periods; (3) failure to authorize and permit rest periods;
3 (4) failure to timely pay wages owed upon separation from employment; (5) failure to reimburse necessary
4 expenses; (6) violation of the unfair competition law; and (7) for penalties under the Private Attorneys'
5 General Act. The claims of Plaintiffs and the Class Members all flow from the same facts and legal
6 claims, i.e., that Defendant's policies, practices, and procedures resulted in Defendant's failure to pay in
7 full Class Members' earned wages, provide Class Members with meal and rest breaks, and reimburse
8 expenses. The nature and types of claims available to the Class Members are identical and arise out of
9 application of uniform policies relating to the compensation structure, standardized practices and
10 procedures, and labor allocations, as well as uniform policies (or lack of) regarding timekeeping, payment
11 of wages, reimbursements and meal and rest period policies/procedures. For purposes of the Settlement,
12 the main individualized differences between Class Members relate to the amount of compensation each
13 Class Member would be entitled to receive and any differences in compensation structure were accounted
14 for in the formula for payment of individual shares. This Action seeks recovery of alleges unpaid wages
15 and penalties pursuant to the California Labor Code, California Industrial Welfare Commissions ("IWC")
16 Wage Orders and Section 17200 of the Business and Profession Code on behalf of Plaintiff and the rest of
17 the Class members, who all share claims arising out of the same policies and practices. Commonality
18 further exists because each Class Member's claim has one common factor: workweeks. Under these
19 circumstances, the commonality requirement for certification for settlement purposes is satisfied.
(Hawkins Decl. ¶66.)

20 d. Plaintiffs' Claims are Typical of the Class Claims

21 Typical claims rely on legal theories and facts that are substantially similar to other Class
22 Members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983). Here, the proposed Class
23 Representatives and the Class Members have claimed that Defendant violated California law by the
24 above-specified conduct. Under these specific circumstances, the typicality requirement for class
25 certification for settlement purposes is satisfied because the Class Representative and the proposed Class
26 Members all claim that Defendants committed similar violations based upon similar conduct, policies and
27 practice and they seek the same remedies. Plaintiffs contend, and Defendant does not dispute for
28 settlement purposes, that her claims are typical of the claims of the Settlement Class because they arise

1 from the same factual basis and are based upon the same legal theories as those applicable to the Class
2 Members. (Hawkins Decl., ¶67.)

3 e. Plaintiffs and Plaintiffs' Counsel Will Adequately Represent the Interests of the Proposed
4 Class

5 Certification requires adequacy of both the proposed class representative and proposed class
6 counsel. With respect to the class representative, a plaintiff must adequately represent and protect the
7 interests of other members of the class. See *Capitol People First v. Dept. of Developmental Services*, 155
8 CA4th 676, 696-697 (2007). In the present case, Plaintiffs' interests are coextensive with the interests of
9 the Class. Plaintiffs initiated this litigation, kept in regular touch with Class Counsel, gathered and review
10 documents, participated in interviews and mediation, and obtained a fair settlement on behalf of herself
11 and Class Members. (Hawkins Decl., ¶65.; see also, Hawkins Declaration generally.) Plaintiffs' Counsel
12 has also expended considerable time and effort on this case and will continue to do so through final
13 approval. Specifically, Plaintiffs' Counsel conducted extensive investigation of the factual and legal issues,
14 negotiated with Defendant's Counsel extensively and ushered the case into mediation. Additionally,
15 Plaintiffs' Counsel's extensive experience in class action litigation makes them adequate Class Counsel.
16 (Hawkins Decl., ¶73.; Declaration of Christina Lucio ¶8.) Accordingly, Plaintiffs should be appointed
17 Class Representatives and Plaintiffs' Counsel should be appointed Class Counsel.

18 f. A Class Action is Superior to a Multitude of Individual Lawsuits

19 Class treatment is superior to other methods of adjudication when the probability is small that each
20 class members will come forward to prove his or her claims and when the class approach would deter and
21 redress the alleged wrongdoing. *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446 (2000); *Ghazaryan v.*
22 *Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, 688 Class Members have little
23 incentive to litigate their claims that were worth a relatively small amount on an individual basis where the
24 out-of-pocket expense and personal commitment necessary to litigate each claim potentially outweigh the
25 recovery. (Hawkins Decl. ¶69.) The alternative method of resolution is individual claims for potential
26 recovery of relatively small amounts of damages; however, individual cases would be uneconomical for
27 potential plaintiffs because the costs of litigation dwarf their potential recovery. (*Id.*) Further, more than
28 650 separate lawsuits would be an unnecessary drain on judicial resources and could result in conflicting
obligations being imposed upon Defendants. Therefore, class treatment is the preferred method of

1 resolution. (Hawkins Decl. ¶69.)

2 g. The Proposed Settlement Meets the Standards for Preliminary Approval

3 Preliminary approval is warranted if the settlement falls within a “reasonable range.” See *North*
4 *County Contractor’s Ass’n, Inc. v. Touchstone Ins. Serv.*, 27 Cal. App. 4th 1085, 89-90 (1994); Conte &
5 Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”). In reviewing the fairness of a
6 class action settlement, due regard should be given to what is “otherwise a private consensual agreement
7 between the parties.” *Cellphone Termination Fees Cases*, 186 Cal. App. 4th 1380, 1389 (2010). The
8 inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the
9 product of fraud or overreaching by, or conclusion between, the negotiating parties, and that the
10 settlement, taken as a whole, is fair, reasonable and adequate to all concerns.” (*Id.*) Reasonableness and
11 fairness are presumed where (1) the settlement is reached through “arm’s-length bargaining”; (2)
12 investigation and discovery are “sufficient to allow counsel and the court to act intelligently”; (3) counsel
13 is “experienced in similar litigation”; and (4) the percentage of objectors “is small.” *Dunk v. Ford Motor*
14 *Co.*, 48 Cal. App. 4th 1794, 1802, (1996). The Settlement here already satisfies the first three factors.
15 Plaintiffs will analyze the fourth factor in their motion for final approval.

16 1. The Settlement is Entitled to a Presumption of Fairness

17 a. The Settlement is the Result of Arm’s-Length Negotiations

18 Courts presume the absence of fraud and collusion in the negotiation of a settlement, unless
19 contrary evidence is offered; thus, there is a presumption that settlement negotiations are conducted in
20 good faith. *Newberg*, § 11.51. Here, the Parties attended all-day mediation with a neutral mediator, Steve
21 Serratore. (Hawkins Decl., ¶17.) The Settlement negotiations were adversarial, conducted at arm’s-length
22 and tempered by the efforts of both sides to serve the interests of their clients and, in the case of Plaintiffs’
23 Counsel, the interests of the Class Members. (*Id.* at ¶18.)

24 b. Class Counsel Conducted Significant Investigation

25 Plaintiffs’ Counsel thoroughly investigated the proposed Class Members’ claims, applicable law,
26 and potential defenses using extensive informal discovery, and close scrutiny of the fluctuating state of
27 California’s wage and hour laws. As described more extensively in the accompanying Hawkins
28 Declaration, Plaintiffs’ Counsel conducted extensive investigation and information exchange,
investigation, research, met and conferred with defense counsel, conducted informal discovery into data

1 points for damages calculations and to obtain relevant documents, and reviewed information and
2 numerous pages of documents relating to the wage and hour claims asserted in the Complaint. Using the
3 information obtained through their research and investigation, Plaintiffs' Counsel assessed the reasonable
4 value of the class claims. (Hawkins Decl. ¶28-30).

5 c. Class Counsel is Experienced in Similar Litigation

6 Plaintiffs are represented by James Hawkins APLC ("Class Counsel"). Class Counsel has
7 extensive experience prosecuting wage and hour cases on behalf of employees and others who have had
8 their rights violated (Hawkins Decl. ¶73; Lucio Decl. ¶8.). They currently serve as plaintiffs' counsel of
9 record in dozens of wage and hour class action cases pending in both state and federal court. Class
10 Counsel have litigated many wage and hour class action cases and have successfully resolved cases
11 involving the same issues presented in this matter. (*See generally*, Hawkins Decl.)

12 2. The Proposed Settlement is Reasonable Given the Strengths of Plaintiff's Claims and
13 the Risks and Expense of Litigation

14 Courts have discretion to approve a settlement by assessing several well-recognized factors,
15 including the "strength of plaintiffs' case, risk, expense, complexity, and likely duration of further
16 litigation and risk of maintaining the class action through trial." *Munoz v. BCI Coca-Cola Bottling Co.*,
17 186 Cal.App.4th 399, 407 (2010); *see Kuller v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129 (2008).
18 A settlement does not have to provide 100% of the damages sought to be considered a fair and reasonable
19 settlement. *Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 1139 (1991), overruled on other grounds.
20 Rather, compromise is expected:

21 Compromise is inherent and necessary in the settlement process...even if "the relief afforded by
22 the proposed settlement is substantially narrower than it would be if the suits were to be
23 successfully litigated," this is no bar to a class settlement because "the public interest may indeed
24 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
25 litigation."

26 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001).

27 Here, Plaintiffs' Counsel calculated Defendants' total potential exposure assuming Plaintiffs
28 prevailed on all aspects of their claims at trial but weighed that value against the chance of succeeding in
class certification and trial. (Hawkins Decl. ¶51.) While Plaintiffs believe and continue to believe that this

1 is a strong case for certification, the significant risks and expenses associated with class certification and
2 liability proceedings must be taken into account. In determining whether the amount offered for settlement
3 was reasonable, Plaintiffs' Counsel weighed that figure against many risk factors. Defendant had many
4 strong arguments, which could render the Class Members' claims worthless at either class certification or
5 trial. (Hawkins Decl. ¶28.)

6 As set forth more extensively in the Hawkins Declaration, Defendant has denied and continues to
7 deny any liability or wrongdoing of any kind associated with Plaintiffs' claims alleged in the Action.
8 (Hawkins Decl. ¶51.) Defendant denies all allegations and contends that it complied with the applicable
9 law at all times. (Hawkins Decl. ¶53.) Defendant contended that it properly paid class members for all
10 hours worked, and included applicable differentials and bonuses into the regular rate. Defendant further
11 contended that it maintained legally compliant policies that required employees to report all hours works,
12 and that is compensated employees for all hours worked. Defendant contended, however, that if, in fact, it
13 had failed to pay Plaintiffs or any putative class member for all time worked, the time is de minimis and
14 therefore not compensable. Defendant further contended that Plaintiffs' claims for unpaid overtime wages
15 are barred because Defendant timely paid all overtime wages to Plaintiffs. (Hawkins Decl. ¶54.)
16 Defendants contended that Plaintiffs and putative class members were provided meal periods and
17 authorized and permitted to take rest periods, or were paid premiums in lieu thereof. (Hawkins Decl. ¶55.)
18 Defendants denied that employees were required to purchase any items to do their jobs or incur any
19 expenses. Defendants further produced evidence that they reimbursed expenses that were submitted, and
20 that they maintained complaint policies. (Hawkins Decl. ¶56.)

21 The Settlement compares favorable to other class settlements in terms of potential recovery. (See
22 *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) ["The fact that a proposed
23 settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the
24 proposed settlement is grossly inadequate and should be disapproved," quoting *City of Detroit v. Grinnell*
25 *Corp.*, 495 F.2d. 448, 455 & n.2 (2d Cir. 1974)]; *In re MyFord Touch Consumer Litig.*, 2019 WL
26 1411510, at *10 (N.D. Cal. Mar. 28, 2019) [observing that "the very essence of settlement is compromise"
27 and citing cases where settlements ranged from 5% to 10% of potential recover]; *Glass v. UBS Fin. Servs.*,
28 2007 WL 221862, at *9 (N.D. Cal. Jan. 26, 2007) [approving settlement that constituted approximately
25% of the estimated actual damages].) The Settlement here is consistent with these approved percentages.

1 (Hawkins Decl. ¶63.)

2 Where both sides gave significant uncertainty, the attendant risks favor settlement. (*Hanlon v.*
3 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Even though Plaintiff disputes the merits of
4 Defendant's defenses to class certification and liability, it cannot ignore the fact that if those defenses were
5 successful, they would eliminate or substantially reduce any recovery on behalf of the Class. (Hawkins
6 Decl. ¶63.) After arm's-length, negotiations between experienced and informed counsel and with the
7 assistance of the mediator, the Parties recognized the potential risks and agreed on the Maximum
8 Settlement Amount of \$750,000, which is approximately 39.6% of the estimated liability for the class
9 claims exclusive of PAGA. (Id.) As the *Glass* court held:

10 In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and
11 likely duration of further litigation likewise favors the settlement. Regardless of how this
12 Court might have rules on the merits of the legal issues, the losing party likely would
13 have appealed, and the parties who have faced the expense and uncertainty of litigating
14 an appeal. "The expense and possible duration of the litigation should be considered in
15 evaluating the reasonableness of [a] settlement." See *In re Mego Financial Corp.*
16 *Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000).

17 (*Glass, supra*, 2007 WL 221862, at *9) As a result, the considerable risk that Defendants could defeat
18 certification, defeat the representative claims, and prevail on its defenses, thus defeating any and all
19 recovery to the class, warranted a compromise of the class claims and resulted in the parties arriving at the
20 terms of their proposed Settlement. (Hawkins Decl. ¶59.) "Generally, unless the settlement is clearly
21 inadequate, its acceptable and approval are preferable to lengthy and expensive litigation with uncertain
22 results." (*Ching v. Siemens Indus, Inc.*, 2014 WL 2926210, at *4 (quotation omitted) (N.D. Cal. June 27,
2014). This factor weighs in favor of approval.

23 h. The Requested Service Payment Should Be Provisionally Approved

24 Plaintiffs seek Class Representative Service Payments for formally agreeing to accept the
25 responsibilities of representing the interests of all Class Members and assuming risks and potential costs
26 that were not agreed to by any other Class Members. A named Plaintiff is eligible for payment that
27 reasonably compensated him for undertaking and fulfilling a fiduciary duty to represent absent class
28 members. *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393, (Cal. App. 1st Dist. 2010); *Bell*

1 *v. Farmers, Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004). Here, Plaintiffs also conducted extensive record
2 review and consultation with counsel to assist in evaluating and proving the claims and provided
3 information and documents that were vital to Class Counsel's prosecution of this matter, and dedicated
4 invaluable effort required to advance this matter to resolution. They also assisted counsel in preparing for
5 mediation and made themselves available during the course of the mediation to answer any questions that
6 arose during the courts of mediation. (See, Hawkins Decl. ¶65.)

7 No action likely would have been taken by Class Members individually, and no compensation
8 would have been recovered for them, but for Plaintiffs' service on behalf of the Class. By actively pursuing
9 this action, Plaintiffs furthered the California public policy goal of enforcing the State's wage and hour
10 laws. *See Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 340 (2004). The proposed Service
11 Payments of \$7,500 to Plaintiff Rovira and \$2,500 each to Plaintiff Renteria and Plaintiff Santos for
12 Plaintiffs' service as the class representatives and for their general release of all claims is reasonable and
13 should be approved.

14 i. The Requested Attorneys' Fees and Costs Should Be Preliminarily Approved

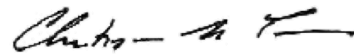
15 The purpose of an attorneys' fee award in class action litigation is to reward counsel who took risk
16 of non-payment and invested in a case that achieved a substantial positive result for the class. Attorneys'
17 fees are awarded as a matter of equity. California courts routinely award attorneys' fees equaling one-third
18 of the potential value of the common fund. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11
19 (2008) ("Empirical studies show that, regardless of whether the percentage method of the lodestar method
20 is used, fee awards in class actions average around one-third of recover"). In the present case, Plaintiffs'
21 Counsel will seek approval of one-third of the Maximum Settlement Amount or up to \$250,000.00 under
22 the common fund theory, as well as actual litigation costs up to \$25,000.00. (Hawkins Decl. ¶74-79.) At
23 final approval, Plaintiffs' Counsel will fully brief the merits of their request for attorneys' fees and costs.
24 (Hawkins Decl. ¶79.)
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1
2 **V. CONCLUSION**

3 The parties have negotiated a fair and reasonable Settlement of the class claims. Plaintiffs
4 respectfully requests that the Court preliminarily approve the Settlement, direct notice to be sent to the
5 Class Members, and schedule a date to conduct the final approval hearing.
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8 Dated: November 19, 2021

JAMES HAWKINS APLC

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10 

James R. Hawkins, Esq.

Christina M. Lucio, Esq.

11
12 Attorneys for Plaintiffs Julio Rovira, Lorena
13 Renteria, and Virgilio Santos, on behalf of
14 themselves and all others similarly situated
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