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Attorneys for Plaintiffs JULIO C. ROVIRA, LORENA RENTERIA, and VIRGILIO SANTOS,
On behalf of themselves 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. Lon F. Hurwitz

Dept.: CX-103

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: February 24, 2023

Time: 1:30 p.m.

Dept: Dept. CX-103

Date Action Filed: March 5, 2020

Trial Date: N/A

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. SUMMARY OF PRELIMINARILY APPROVED SETTLEMENT TERMS2

III. THE SETTLEMENT ADMINISTRATOR MAILED THE NOTICE2

IV. THE SETTLEMENT SATISFIES THE REQUIREMENTS FOR FINAL APPROVAL.....3

 A. Legal Standard for Final Approval of Class Action Settlement.4

 B. The Strength of Plaintiffs’ Case, the Risk of Maintaining Class Action Status, and the Expense of Further Litigation Favor the Court’s Final Approval.....5

 C. The Value and Fairness of the Settlement Favors the Court’s Final Approval.6

 D. The Parties’ Investigation Favors the Court’s Final Approval7

 E. The Endorsement of the Parties’ Counsel Favors Final Approval8

V. THE SETTLEMENT ADMINISTRATOR'S REQUESTED EXPENSES ARE REASONABLE AND APPROPRIATE.....8

VI. THE PLAINTIFFS’ REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS ARE REASONABLE AND APPROPRIATE.....9

VII. CONCLUSION10

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal. App. 4th 1140	4
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. Aug. 22, 1979) 485 F. Supp. 610	8
<i>Chavez v. Netflix, Inc.</i> (2018) 162 Cal. App. 4th 43	5
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal. App. 4th 1794	4-5, 7-8
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	5-6
<i>In re Cellphone Fee Termination Cases</i> (2010) 186 Cal. App. 4th 1380	5
<i>In re LinkedIn User Privacy Litig.</i> , 309 F.R.D. 573 (N.D. Cal. 2015)	7
<i>In re Mego Fin. Corp. Sec. Litig.</i> (9th Cir. 2000) 213 F.3d 454	6
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal. App. 4th 116	7
<i>Larsen v. Trader Joe’s Company</i> (N.D. Cal. July 11, 2014) No. 11cv05188-WHO, 2014 WL 3404531.....	8
<i>Officers for Justice v. Civil Serv. Comm. of the City and Cnty. & S.F.</i> (9th Cir. 1982) 688 F.2d 615.....	4
<i>Van Bronkhorst v. Safeco Corp.</i> (9th Cir. 1976) 529 F.2d 943	5
<i>Wershba v. Apple Comp., Inc.</i> (2001) 91 Cal. App. 4th 224	4-5

Rules

Cal. Rules of Court 3.769	4-5
Cal. Rules of Court 3.770	4

Treatises

MANUAL FOR COMPLEX LITIGATION (4th ed. 2008) § 21.61.....	4
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1 **I. INTRODUCTION**

2 This motion seeks final approval of a common fund, non-reversionary wage and hour
3 class action and PAGA settlement of \$750,000.00 by and between Plaintiffs Julio C. Rovira,
4 Lorena Renteria, and Virgilio Santos (“Plaintiffs”), on behalf of themselves and the conditionally
5 certified Class, and Defendant Silverado Senior Living Managements, Inc. (“Defendant”).

6 The Settlement was preliminarily approved on November 8, 2022. The Parties and the
7 Settlement Administrator carried out the notice and other procedures ordered by this Court. The
8 Class Members have until January 31, 2023 to submit a request for exclusion, object to the
9 Settlement or dispute their gross wages. The results of the notice procedures indicate that there
10 has been no opposition to the Settlement and that the Class Members overwhelmingly approve
11 the Settlement. To date, ILYM Group has received no objections to the Settlement and only one
12 Class Member has requested exclusion from the Settlement. Accordingly, Plaintiffs now seek
13 final approval of the Settlement.

14 The proposed Settlement is both fair and reasonable, particularly in light of Defendants
15 asserted legal and factual defenses. Both Class Counsel and Defendants’ Counsel are experienced
16 in wage and hour class action litigation, and both counsel agree the Settlement reached by the
17 Parties is fair, reasonable, and adequate. The meaningful monetary recovery provided for the
18 Class Members in the Settlement Agreement supports a finding that the settlement is adequate
19 and reasonable particularly in light of the material and substantial risks maintaining class action
20 status through trial, the complexity of the case, the time spent by the Parties in investigation,
21 discovery, mediation, preliminary approval, notice procedures, and final approval.

22 Thus, the Settlement meets the criteria for final approval and Plaintiffs respectfully
23 request this Court grant final approval of the Settlement and enter the proposed Order and
24 Judgment filed concurrently herewith.

II. SUMMARY OF PRELIMINARILY APPROVED SETTLEMENT TERMS

The following is a summary of the key financial terms of the settlement and number of class members:

Gross Settlement Amount	\$750,000.00
Class Counsel Fees	\$250,000.00
Class Counsel Costs and Expenses	\$25,000.00
Class Representative Service Awards:	
• Plaintiff Rovira	\$7,500.00
• Plaintiff Renteria	\$2,500.00
• Plaintiff Santos	\$2,500.00
LWDA Payment	\$37,500.00
Settlement Administrator Costs	\$16,400.00
Net Settlement Fund	\$408,600.00¹

Total Class Members	662
Opt Outs	1
Objections	0
Participating Class Members	661

III. THE SETTLEMENT ADMINISTRATOR MAILED THE NOTICE

This Court appointed ILYM Group, Inc. as the Settlement Administrator to provide notification services and settlement administration pursuant to the terms of the Settlement Agreement. (Polites Decl. ¶ 3). On November 22, 2022, ILYM Group received the Class List and Data Report from Defendant's counsel including name, most recent mailing address, social security number, and the dates of employment for each Class Member. (Id. ¶ 4).

On December 2, 2022, ILYM Group mailed the Notice to 662 Class Members. (Id. ¶ 6). The Notices advised Class Members of their right to request exclusion from the Settlement, object to the Settlement, dispute their work weeks, or do nothing, and the implications of each such

¹ Pursuant to the Settlement Agreement, 25% of the PAGA Payment (\$12,500.00) should be allocated to Aggrieved Employees regardless of whether they opt out of the Class Settlement; Aggrieved Employees cannot opt out of the PAGA Settlement.

1 action. The Notice advised Class Members of applicable deadlines and other events, including the
2 Final Approval Hearing, and how Class Members could obtain additional information, including
3 a toll-free telephone number. The Notice also disclosed the claims that would be released upon
4 final approval and each Settlement Class Member's total weeks worked during the Class Period
5 and estimated individual settlement payment based thereon. (Id., Ex. A).

6 As of the January 25, 2023, a total of ninety-four (94) Notices were returned to ILYM
7 Group by the U.S. Postal Service. (Id. ¶ 7). Eight (8) of the returned Notices had forwarding
8 addresses and were promptly re-mailed. (Id.). ILYM Group performed a computerized skip trace
9 in an effort to obtain an updated address for purposes of re-mailing the remaining eighty-six (86)
10 returned Notices. (Id.). ILYM Group obtained updated or forwarding addresses for nineteen (19)
11 Class Members and the Notices were promptly re-mailed. (Id.). ILYM Group successfully
12 reached and delivered Notice to 595 of the 662 Class Members, which represents 89.9% of the
13 Settlement Class. (Id.).

14 The deadline to object or request exclusion from the Settlement was January 31, 2023,
15 except for those Class Members whose Notices were remailed to an updated address, in which
16 case the deadline is extended the later of January 31, 2023, or ten (10) calendar days from the re-
17 mailing date. (Id. ¶ 9)². As of the filing of this motion, one (1) Settlement Class Member has
18 requested exclusion and zero (0) have objected to the Settlement. (Id., ¶ 10, 12).

19 ILYM Group followed all the notice procedures delineated by this Court in the
20 Preliminary Approval Order. Therefore, notice to the Settlement Class of the proposed Settlement
21 was reasonably calculated, under all the circumstances, and has apprised the Class Members of
22 the pendency of the action and afforded them an opportunity to opt out or present their objections
23 or disputes.

24 **IV. THE SETTLEMENT SATISFIES THE REQUIREMENTS FOR FINAL**
25 **APPROVAL.**

26 **A. Legal Standard for Final Approval of Class Action Settlement.**

27 _____
28 ² The Parties will file a supplemental declaration prior to the Final Fairness Hearing and after the response deadline for any re-mailed Notices.

1 “ “[V]oluntary conciliation and settlement are the preferred means of dispute resolution.
2 This is especially true in complex class action litigation” *7-Eleven Owners for Fair*
3 *Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1140, 1151 (quoting *Officers for Justice*
4 *v. Civil Serv. Comm. of the City and Cnty. & S.F.* (9th Cir. 1982) 688 F.2d 615, 625). A class
5 action may not be dismissed, compromised, or settled without the Court’s approval. Cal. Rules of
6 Court (“CRC”) 3.769 and 3.770. The decision to approve or reject a proposed settlement is
7 committed to the trial court’s sound discretion. *Wershba v. Apple Comp., Inc.* (2001) 91 Cal. App.
8 4th 224, 234-35. Accordingly, when evaluating a class action settlement for final approval, the
9 Court should give “[due] regard to what is otherwise a private consensual agreement between the
10 parties.” *Id.* at 245. The Court’s inquiry thus is limited to whether the proposed settlement is “fair,
11 adequate, and reasonable.” *Id.* at 244-45; *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794,
12 1801. A settlement is “fair, adequate and reasonable” warranting final approval when “the
13 interests of the class are better served by the settlement than by further litigation.” *Manual for*
14 *Complex Litigation* (4th ed. 2008) § 21.61.

15 CRC 3.769 explains the procedure for final approval of a class action settlement, which
16 involves three distinct steps: (1) Preliminary approval of the proposed settlement at an informal
17 hearing; (2) Dissemination of mailed and/or published notice of the settlement to all affected
18 Class Members; and (3) A “formal fairness hearing,” or final settlement approval hearing, at
19 which Class Members may be heard regarding the settlement, and at which matters concerning
20 the fairness, adequacy, and reasonableness of the settlement may be presented.

21 In this case, the first step is complete. The first step was completed on November 8, 2022,
22 when the Court preliminarily approved the Settlement and determined that it was within the range
23 of possible final approval. (Hawkins Decl., Ex. B). The second step, dissemination of Notice to
24 the Settlement Class, was completed December 2, 2022. (Polites Decl., ¶ 6, Ex. A).

25 The third and final step in the settlement approval process is the Final Approval Hearing,
26 at which the Court determines whether the Settlement is fair, adequate, and reasonable. A
27 settlement agreement is presumptively fair when it is (1) the product of arm’s-length bargaining;
28 (2) supported by sufficient investigation and/or discovery to allow assessment of Plaintiffs’

1 claims; (3) supported by experienced counsel; and (4) subject to only a small percentage of
2 objections. *In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1389 quoting
3 *Dunk*, 48 Cal. App. 4th at 1802); *Chavez v. Netflix, Inc.* (2018) 162 Cal. App. 4th 43, 52 (2008).

4 Following the final approval hearing, the Court will decide whether to enter a final order
5 approving the Settlement and enter judgment thereon. CRC 3.769(h). To do so, California courts
6 consider several factors, including the strength of the Plaintiffs' case; the risk, expense,
7 complexity, and likely duration of further litigation; the risk of maintaining class action status
8 through trial; the value of the settlement; the extent of discovery completed and the stage of the
9 proceedings; the experience and views of counsel; and the reaction of the class members to the
10 proposed settlement. *Wershba*, 91 Cal. App. 4th at 244-45. "The list of factors is not exclusive
11 and the court is free to engage in a balancing and weighing of factors depending on the
12 circumstances of each case." *Id.* at 245. Courts must also give:

13 proper deference to the private consensual decision of the parties, [since] the court's
14 intrusion upon what is otherwise a private consensual agreement negotiated
15 between the parties to a lawsuit must be limited to the extent necessary to reach a
16 reasoned judgment that the agreement is not the product of fraud or overreaching
by, or collusion between, the negotiating parties, and the settlement, taken as a
whole, is fair, reasonable and adequate to all concerned.

17 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027. For the reasons set forth below,
18 the Court should complete the third step, and grant final approval of the Settlement.

19 **B. The Strength of Plaintiffs' Case, the Risk of Maintaining Class Action**
20 **Status, and the Expense of Further Litigation Favor the Court's Final**
21 **Approval.**

22 Every case involves some level of uncertainty with respect to the outcome of the merits.
23 Settlement resolves that inherent uncertainty and is therefore strongly favored by the courts,
24 particularly in class actions. See *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943,
25 950. So too here. Plaintiffs recognized several risks inherent in litigating this case including the
26 probability of certifying the action as a class action, the probability of maintaining the class action
27 status through trial and any appeals, the likelihood of class action recovery at trial after analyzing
28 the merits of Defendant's legal defenses, and the current state of the law regarding certification

1 and establishing common questions of fact. While Class Counsel believes Plaintiffs' claims are
2 meritorious, Defendant has denied liability, disputed damages, and raised factual and legal
3 arguments which could render the Class Members' claims worthless at either class certification or
4 trial. (Hawkins Decl. ¶¶ 52, 59, 63, 64).

5 While the proposed Settlement may be less than the amount that the Class could
6 potentially recover following trial, it is highly unlikely that Plaintiffs and the Class would receive
7 the full amount to which they believe they are entitled for the reasons discussed above. As such,
8 the Gross Settlement Amount, even if only a fraction of a total potential recovery, is a fair and
9 adequate real recovery for Class Members. *In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213
10 F.3d 454, 459. ("It is well-settled law that a cash settlement amounting to only a fraction of the
11 potential recovery does not per se render the settlement inadequate or unfair.") (internal
12 quotations omitted).

13 **C. The Value and Fairness of the Settlement Favors the Court's Final**
14 **Approval.**

15 In evaluating the fairness of consideration offered in settlement, it is not the role of the
16 courts to second guess the negotiated resolution of the litigants. "[T]he court's intrusion upon
17 what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must
18 be limited to the extent necessary to reach a reasoned judgment that the agreement is not the
19 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
20 settlement, taken as a whole, is fair, reasonable, and adequate to all concerned." *Hanlon*, 150 F.
21 3d 1027. The issue is not whether the settlement could have been better in some fashion, but
22 whether it is fair. *Id.*

23 The monetary relief provided by the Settlement is a meaningful recovery to the Class
24 warranting final approval. In conjunction with Plaintiffs' Motion for Preliminary Approval, Class
25 Counsel provided the Court with a detailed description of the claims, defenses and Defendant's
26 potential exposure on those claims, thereby providing the Court with a sufficient understanding of
27 the amount in controversy and potential outcomes of the case, so that it can properly evaluate the
28 sufficiency of the Settlement, as required in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th

1 116, 129-30 (2008) (trial court needs sufficient information about the potential value of the case
2 and issues to review the reasonableness of the settlement). At the time of preliminary approval,
3 the Court made a finding that the Settlement appeared to be fair, adequate and reasonable and
4 favors preliminary approval. Moreover, only one (1) Class Member has opted out of the
5 Settlement and no Class Member has objected to the Settlement as unfair or inadequate. (Polites
6 Decl. ¶ 10). Thus, nothing has changed since the time of preliminary approval, which also favors
7 final approval.

8 Here, Plaintiffs, through Class Counsel, secured a common fund of \$750,000.00 for the
9 Settlement of the claims alleged in the class action. This is well within the ballpark of
10 reasonableness and is respectfully submitted to be a meaningful benefit to the Class Members.
11 The 662 Participating Class Members will be paid a pro-rata portion of the Net Settlement
12 Amount. As of January 5, 2023, the highest Individual Settlement Share to a Settlement Class
13 Member was estimated to be approximately \$1,067.13, the average Individual Settlement Share is
14 currently estimated to be approximately \$599.11. (Polites Decl. ¶ 13). The highest Individual
15 PAGA Share to an Aggrieved Employee is currently estimated to be approximately \$49.07, the
16 average Individual PAGA Share is currently estimated to be approximately \$46.99. (Id. ¶ 15).

17 Defendant has consistently denied liability, disputed Plaintiffs' claimed damages, and
18 raised formidable factual and legal arguments which could potentially defeat Class Members'
19 claims at either class certification or trial. Given these available grounds for defending against the
20 asserted class claims and the risks of maintaining class certification through the trial of the action
21 and throughout any appeals, the Settlement is fair, reasonable, and adequate. (Hawkins Decl. ¶¶
22 52, 59, 63, 64).

23 **D. The Parties' Investigation Favors the Court's Final Approval**

24 "[T]he extent of discovery completed and the stage of proceedings" are factors considered
25 in assessing the fairness, adequacy, and reasonableness of a class action Settlement. *Dunk*, 48 Cal.
26 App. 4th at 1801. "This factor evaluates whether the parties have sufficient information to make
27 an informed decision about settlement." *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 588
28 (N.D. Cal. 2015) (citation omitted).

1 Plaintiffs and Defendant entered into the Settlement only after conducting an extensive
2 investigation, which enabled Class Counsel and Defense Counsel to thoroughly evaluate the
3 strengths and weaknesses of the claims. Class Counsel previously provided the Court with a
4 detailed description of the investigation conducted in this action in conjunction with the Motion
5 for Preliminary Approval. In addition, the settlement negotiations between the Parties were
6 extensive and occurred at arm's length. The Parties attended a successful mediation session with
7 Steve Serratore, an experienced wage and hour mediator. Thus, the Parties' investigation and
8 discovery are sufficient to allow Class Counsel and the Court to act intelligently. (Hawkins Decl.
9 ¶¶ 16, 30).

10 **E. The Endorsement of the Parties' Counsel Favors Final Approval**

11 The endorsement of experienced and well-informed counsel of a settlement as fair, reasonable,
12 and adequate is entitled to significant weight. *Dunk*, 48 Cal. App. 4th at 1801-02; *see also Larsen*
13 *v. Trader Joe's Company* (N.D. Cal. July 11, 2014) No. 11cv05188-WHO, 2014 WL 3404531
14 ("A [trial] court is entitled to give consideration to the opinion of competent counsel that the
15 settlement is fair, reasonable, and adequate."). Here, counsel for both Parties have significant
16 experience litigating wage and hour class actions and endorse the Settlement as being fair,
17 adequate and reasonable. Class Counsel believes that the Settlement is the best interest of the
18 Class, and an excellent result for the Class. (Hawkins Decl. ¶ 89). This endorsement of counsel is
19 entitled to significant weight in favor of final approval. *Boyd v. Bechtel Corp.* (N.D. Cal. Aug. 22,
20 1979) 485 F. Supp. 610, 622 ("The recommendations of plaintiffs' counsel should be given a
21 presumption of reasonableness.").

22 **V. THE SETTLEMENT ADMINISTRATOR'S REQUESTED EXPENSES ARE**
23 **REASONABLE AND APPROPRIATE.**

24 In accordance with the Court's Preliminary Approval Order, the parties retained a neutral
25 third-party administrator, ILYM Group, Inc., to administer the notice process. ILYM Group'
26 duties include: : (a) printing and mailing the *Notice of Class Action Settlement* (referred to as
27 "Notice Packet"); (b) receiving and processing requests for exclusion; (c) resolving Settlement
28 Class Members' disputes over the number of workweeks Defendants have record of them

1 working during the Class Period, which was pre-printed on their individualized Class Notice; (d)
2 calculating individual settlement award amounts; (e) processing and mailing settlement award
3 checks; (f) handling tax withholdings as required by the Settlement and the law; (g) preparing,
4 issuing and filing tax returns and other applicable tax forms; (h) handling the distribution of any
5 unclaimed funds pursuant to the terms of the Settlement; and (i) performing other tasks as the
6 Parties mutually agree to and/or the Court orders ILYM Group to perform. (Polites Decl. ¶ 3).
7 The Court preliminarily approved up to \$16,400.00 for settlement administration costs based on
8 the Parties' original estimate of 750 Class Members. ILYM Group's actual fees and expenses for
9 present and future work towards administering the Settlement is \$15,889.68, which Plaintiffs
10 believe is appropriate and respectfully requests the Court award this amount to ILYM Group. (Id.
11 ¶ 15, Ex)(Class Representative Declarations).

12 **VI. THE PLAINTIFFS' REQUESTED CLASS REPRESENTATIVE SERVICE**
13 **AWARDS ARE REASONABLE AND APPROPRIATE.**

14 The requested service awards for Class Representatives Julio Rovira, Lorena Renteria, and
15 Virgilio Santos are reasonable and appropriate given their considerable time and effort expended
16 in assisting to Class Counsel with the investigation and prosecution of this case, and the risks they
17 have undertaken in acting as Class Representatives. The Class Representatives maintained
18 actively assisted with the case, searched for and produced numerous documents, followed case
19 developments, participated in extensive communications with Class Counsel, identified witnesses,
20 provided numerous sworn declarations, assisted with verifying the accuracy and completeness of
21 discovery, assisted with mediation, and reviewed documents in preparation for submission to this
22 court. (Class Representative Declarations). Because their names will be attached to this suit
23 against their former employer, the Class Representatives have put their future employment at risk.
24 (Id.). The Class Representatives also exposed themselves to the risk of paying Court-awarded
25 litigation costs and attorney's fees. (Id.). For these reasons, service awards of \$7,500 for Plaintiff
26 Rovira, and \$2,500 each for Plaintiffs Renteria and Santos, are reasonable and appropriate.

1 **VII. CONCLUSION**

2 The preliminarily-approved Settlement is the product of arm's length negotiations after
3 significant investigation and discovery, mediation, and negotiation. It provides meaningful
4 benefits to the Class Members that are discernibly fair when weighed against the significant
5 potential risks, delays, and costs of further litigation. The Class Members have overwhelmingly
6 accepted the Settlement as fair, reasonable, and adequate. Accordingly, Plaintiffs, as Class
7 Representatives, respectfully requests that the Court grant final approval to the Settlement.

8
9 Dated: February 1, 2023

Respectfully Submitted:

10 James Hawkins, APLC

11
12 By: /Christina M. Lucio/

13 James R. Hawkins

14 Christina M. Lucio

15 Attorneys for Plaintiffs
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