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individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SAN BERNARDINO**

MARA SANTAMARIA, and on behalf of  
all others similarly situated,

Plaintiffs,

v.

BRIGHT HORIZONS CHILDREN'S  
CENTER, a Delaware Corporation;  
BRIGHT HORIZONS FAMILY  
SOLUTIONS INC., a Delaware  
Corporation, and DOES 1-10, inclusive,

Defendants.

Case No.: CIVSB2210140

**CLASS ACTION AND PAGA**  
**REPRESENTATIVE ACTION**

Assigned For All Purposes To:  
Judge: Michael A. Sachs  
Dept.: S28

**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**

Hearing re Prelim Approval: December 8, 2022  
Time: 8:30 a.m.

Action Filed: May 17, 2022

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff MARA  
3 SANTAMARIA, (“Plaintiff”) respectfully requests that the Court grant preliminary approval of the  
4 proposed Stipulation of Settlement and Release (“Settlement Agreement” or “Settlement”) with  
5 defendants BRIGHT HORIZONS CHILDREN’S CENTERS LLC (“BHCC”) and BRIGHT  
6 HORIZONS FAMILY SOLUTIONS INC., (“BHFS”) (collectively with BHCC, “Defendants” or  
7 “Bright Horizons”).

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

- 9 1. The Gross Settlement Amount (“Gross Settlement Amount”) of \$2,500,000;
- 10 2. A Net Settlement Amount (Gross Settlement Amount less Class Counsel Fees, Class  
11 Counsel Costs, Class Representative Enhancement Award, Settlement Administrator’s  
12 Costs and Fees, the portion of PAGA Allocation payable to the LWDA)) allocated pro  
13 rata to approximately 5,500 Class Members based on Class Members’ Workweeks  
14 worked during the Class Period of April 2, 2017, through September 1, 2022;
- 15 3. An award of one-third of the Gross Settlement Amount (up to \$833,333.33) in attorneys’  
16 fees and reimbursement of reasonable costs incurred by Class Counsel of up to \$20,000;
- 17 4. Class Representative’s Enhancement Award of up to \$10,000 to Plaintiff Mara  
18 Santamaria;
- 19 5. Settlement Administrator Costs estimated to be \$52,000 paid to ILYM Group, Inc.; and
- 20 6. The PAGA allocation of \$100,000, with 75% or \$75,000 to be paid to the LWDA and  
21 25% or \$25,000 allocated to the Net Settlement Amount.

22 As discussed below, the proposed Settlement satisfies all criteria for preliminary approval  
23 under California law and falls well within the range of reasonableness. The Settlement was reached  
24 through informed, arms-length bargaining between experienced attorneys after extensive informal  
25 discovery and a full-day mediation. The Settlement was the product of multiple rounds of hard-  
26 fought negotiations with the assistance of an experienced and well-known mediator, Gig Kyriacou.  
27 Accordingly, Plaintiff respectfully requests that the Court grant preliminary approval of the  
28

1 Settlement, approve the Notice Packet, conditionally certify the proposed Settlement Class<sup>1</sup> for  
2 settlement purposes only, appoint Plaintiff as the Settlement Class Representative and Plaintiff's  
3 Counsel as Settlement Class Counsel, authorize the Administrator to send the Notice Packet to the  
4 Settlement Class Members, and set a final approval hearing date.

## 5 **II. SUMMARY OF THE LITIGATION**

6 On September 22, 2021, Plaintiff submitted a letter to the Labor and Workforce  
7 Development Agency ("LWDA") for the purpose of complying with Labor Code § 2699.3's notice  
8 requirement, giving notice of Plaintiff's allegations based upon the legal claims set forth in the SF  
9 Action (defined below). (Hawkins Decl., ¶ 3).

10 On September 23, 2021, Plaintiff filed a Class Action Complaint in San Francisco Superior  
11 Court against BHCC ("SF Action"). The SF Action alleged that BHCC: (1) failed to pay wages; (2)  
12 failed to provide meal periods as required; (3) failed to provide rest periods as required; (4) failed  
13 to reimburse business expenses; (5) failed to pay timely wages (6) failed to provide accurate  
14 itemized wage statements; and (7) violated Business & Professions Code § 17200, *et seq.* The SF  
15 Action has since been dismissed without prejudice. (Hawkins Decl., ¶ 4).

16 On May 17, 2022, after conducting significant informal discovery and exchange of  
17 information, the Parties prepared for and participated in a full-day mediation presided over by  
18 experienced wage and hour mediator Gig Kyriacou. (Hawkins Decl. ¶ 5). Following mediation, the  
19 Parties agreed, subject to approval by the Court, to the Settlement of this case, with Plaintiff  
20 agreeing to amend the Complaint and PAGA notice to conform to the allegations made and forming  
21 the basis of the Settlement agreed upon. (Hawkins Decl., ¶ 6).

22 On May 17, 2022, Plaintiff commenced the "Action," filing a Class Action Complaint in  
23 San Bernardino Superior Court against BHCC ("Complaint"). The Complaint alleged that BHCC:  
24 (1) failed to pay wages; (2) failed to provide meal periods as required; (3) failed to provide rest  
25 periods as required; (4) failed to reimburse business expenses; (5) failed to pay timely wages (6)  
26 failed to provide accurate itemized wage statements; and (7) violated Business & Professions Code

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27 <sup>1</sup> The Settlement Agreement defines the Settlement Class as "[a]ll current and former nonexempt, hourly-paid  
28 employees employed by Defendants, or either of them, in California at any time during April 2, 2017, through and  
including September 1, 2022. (the "Settlement Class Period.")"

1 § 17200, *et seq.* (Hawkins Decl., ¶ 7).

2 On August 5, 2022, Plaintiff submitted a second letter to the LWDA for the purpose of  
3 complying with Labor Code § 2699.3's notice requirement, giving amended and supplemental  
4 notice of Plaintiff's allegations based upon the legal claims set forth in the Operative Complaint  
5 ("PAGA Notice"). On August 5, 2022, Plaintiff filed a First Amended Complaint against  
6 Defendants in the San Bernardino action for: (1) failure to pay wages, including minimum wages  
7 and overtime at the correct rates and for all hours worked; (2) failure to provide meal periods as  
8 required, or premiums at the correct rate in lieu; (3) failure to provide rest periods as required, or  
9 premiums at the correct rate in lieu; (4) failure to reimburse business expenses; (5) failure to pay  
10 timely wages during employment (6) failure to timely pay wages upon separation or termination  
11 from employment; (7) failure to provide accurate and itemized wage statements; (8) violation  
12 of Business & Professions Code § 17200, *et seq.*; and (9) civil penalties under Private Attorneys  
13 General Act, Labor Code section 2698, *et seq.* ("Operative Complaint"). The Operative Complaint  
14 and PAGA Notice conform to the claims made by Plaintiff during the litigation and at mediation  
15 and the basis for the agreed Settlement. (Hawkins Decl., ¶ 9).

16 During the mediation with Mediator Kyriacou, each side, represented by its respective  
17 counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action  
18 pursuant to the terms and conditions of the Settlement Agreement.

19 Throughout the Action, the Parties extensively investigated the relevant facts and applicable  
20 law, potential defenses, and damages claims by Plaintiff on behalf of herself and the Settlement  
21 Class. (Hawkins Decl. ¶ 11.). Plaintiff's counsel's investigation included research and interviews,  
22 the exchange of information and documents, conferences with defense counsel, and informal  
23 written discovery. (Hawkins Decl. ¶¶ 14-15.). It also included preparing for and attending a full-  
24 day mediation with wage-and-hour class action mediator, Gig Kyriacou, and assessing the evidence  
25 with an eye towards class certification and trial. (*Id.*) The Parties engaged in a significant amount  
26 of research, investigation, and information exchange prior to the mediation. (*Id.*) Discovery and  
27 information exchanged included the production of class size information, time and wage records  
28 for the putative class period, a breakdown of the class by position and term of employment,

1 Plaintiff's employment files (including employment agreements and wage statements), Defendant's  
2 handbook, policy and procedure documentation, employee reports, documents reflecting relevant  
3 policies and procedures, and other relevant documentation. (*Id.*) Defendants produced substantial  
4 class information, time and pay records for the putative class. (*Id.*) The Parties conducted their  
5 own evaluations of the potential recoveries based on the claims alleged in the Action. (*Id.*)

6 In connection with this Settlement, Plaintiff seeks to represent the Aggrieved Employees  
7 and the Settlement Class Members. The "Settlement Class Members" are defined as all current and  
8 former nonexempt, hourly-paid employees employed by Defendants, or either of them, in  
9 California at any time during April 2, 2017, through September 1, 2022. (Hawkins Decl. ¶ 18.).

### 10 **III. SUMMARY OF THE SETTLEMENT**

#### 11 **A. Gross Settlement Amount**

12 Defendant shall pay a settlement payment in the total amount of \$2,500,000 (two million  
13 five hundred thousand dollars) (the "Gross Settlement Amount" or "GSA"). The Gross Settlement  
14 Amount shall not exceed \$2,500,000 with the exception of the employer's share of payroll taxes  
15 and shall include all payments made to Settlement Class Members for wages, penalties, interest,  
16 and liquidated damages; attorneys' fees and costs to Settlement Class Counsel; costs of settlement  
17 administration; the Class Representative Enhancement Payment; and the PAGA Allocation. This is  
18 a non-reversionary settlement. No portion of the Gross Settlement Amount will revert to  
19 Defendants. (Settlement, ¶ 9; Hawkins Decl. ¶¶ 21 and 24.)

#### 20 **B. PAGA Payment**

21 Class Counsel requests that the Court approve a PAGA Allocation of an amount equal to,  
22 and not to exceed, \$100,000 to cover any and all claims for civil penalties based on the alleged  
23 violations in the Action and the alleged violations included in the letters to the LWDA dated  
24 September 22, 2021. The PAGA Allocation will be deducted from the Gross Settlement Amount.  
25 (Settlement, ¶ 5). Seventy-five percent (75%) (\$75,000) of the PAGA Payment shall be payable  
26 to the LWDA as the LWDA's share of the settlement of civil penalties paid under this Settlement  
27 pursuant to PAGA, and twenty-five percent (25%) of the PAGA Payment (\$25,000) will be  
28 allocated to the Net Settlement Amount (as defined below) for distribution to the Settlement Class

1 Members. Defendants will not oppose this request.

2 **C. Class Counsel Payment of Attorneys' Fees and Costs**

3 Settlement Class Counsel requests that the Court approve an award of attorneys' fees in an  
4 amount not to exceed 1/3 of the Gross Settlement Amount (\$833,333.33) and reimbursement of  
5 litigation costs in an amount not to exceed \$20,000 subject to Court approval. Defendants will not  
6 oppose this request. Attorneys' fees and costs shall be paid out of the Gross Settlement Amount.  
7 (Settlement, ¶ 4).

8 **D. Service Payment Award To Class Representative**

9 Subject to Court approval, Defendants will not oppose the Class Representative's request  
10 for an enhancement award in an amount not to exceed \$10,000 to be paid from the Gross Settlement  
11 Amount, for her service as Class Representative, in addition to any payment she may otherwise be  
12 entitled to receive as a Settlement Class Member ("Enhancement Award"). The Enhancement  
13 Award shall be allocated as 1099 income, which shall not be subject to payroll taxes and  
14 withholdings and will be reported on an IRS 1099 Form. (Settlement, ¶9(b)(iv)).

15 **E. Settlement Administration Fees And Costs**

16 The Parties have selected ILYM Group, Inc. to be the third-party Settlement Administrator  
17 to disseminate the Notice of Class Action Settlement and Notice of Settlement Payment, and to do,  
18 among others things set forth in this Settlement Agreement, the formatting and printing of the Class  
19 Notice and other documents to be mailed to the Settlement Class, handling the Class Data, updating  
20 Settlement Class Members' mailing addresses before the initial mailing of the Class Notice,  
21 calculating estimated Individual Settlement Payments, declarations regarding mailing, and as may  
22 be required by the Court, providing weekly status reports, resolving disputed claims, issuing  
23 Individual Settlement Payment checks, tax calculations and reporting, voiding uncashed checks,  
24 handling uncashed checks, etc. The administration of the Settlement is estimated to not exceed  
25 \$52,000.00 and will be paid from the Gross Settlement Amount. (Settlement, ¶ 4.)

26 **F. Net Settlement Amount**

27 After deducting the portion of the PAGA Allocation paid to the LWDA, the Court-approved  
28 sums for the Class Representative Enhancement Award, Settlement Class Counsel's attorneys' fees

1 and costs, and the Settlement Administrator's fees and expenses from the Gross Settlement Amount,  
2 the remaining balance ("Net Settlement Amount") will be distributed to Settlement Class Members  
3 on a pro-rata basis. (*Id.* at 9(b)(i)). The Net Settlement Amount is estimated to be \$1,509,666.67.  
4 The employer-side payroll taxes will be paid in excess of the Gross Settlement Amount.

#### 5 **IV. PROPOSED NOTICE PROCESS**

6 Within forty-five (45) calendar days from the Order granting preliminary approval,  
7 Defendant shall provide a database containing the following information for each Settlement Class  
8 Member ("Settlement Class database"): (1) the full name, last known address, and full social  
9 security number of all Settlement Class Members; and (2) the information necessary to determine  
10 the estimated settlement allocation to each Settlement Class Member, including without limitation,  
11 the total number of work weeks in which each Settlement Class Member worked any regular hours  
12 in the Settlement Class Period and the total number of pay periods in which each PAGA Employee  
13 worked any regular hours during the PAGA Period. (Settlement, ¶ 7(A); Hawkins Decl. ¶ 41.). This  
14 database shall be based on Defendants' payroll and other business records and shall be provided in  
15 a format acceptable to the Settlement Administrator. Within five (5) calendar days from receipt of  
16 this information, the Settlement Administrator shall calculate the total number of work weeks  
17 worked by all Settlement Class Members and report that number to Settlement Class Counsel and  
18 Defense Counsel for purposes of determining whether the Escalator Provision has been triggered  
19 (see § \_\_ below).

20 Within fourteen (14) calendar days upon receipt of the Class database, the Settlement  
21 Administrator will run a check of the Class Members' addresses against those on file with the U.S.  
22 Postal Service's National Change of Address List; this check will be performed only once per  
23 Settlement Class Member by the Settlement Administrator. (Settlement, ¶ 7(B); Hawkins Decl., ¶  
24 42.).

25 Within twenty-one (21) calendar days after the Class Database is provided to the Settlement  
26 Administrator, the Settlement Administrator will mail the Class Notices and Notices of Settlement  
27 Award to Settlement Class Members by first class United States mail. There will be a forty-five  
28 (45) day period from the date the Class Notices are mailed during which Class Members can dispute

1 the information contained in the Class Notice, file an objection, or “opt-out” by submitting a  
2 Request for Exclusion Form. In the case of a second mailing to the Settlement Class Member, for  
3 example because of an undeliverable mailing, the forty-five (45) day period shall be computed from  
4 the date of the second mailing. (Settlement, ¶ 7(C); Hawkins Decl. ¶ 43.).

5 The “Notice Packet” will consist of the Class Notice at Exhibit “1”, the Request for  
6 Exclusion at Exhibit “2,” and the Objection Form at Exhibit “3.”(Settlement, ¶ 7(B); Hawkins Decl.  
7 ¶ 2.).

8 To provide the best notice practicable, any Class Notice returned to the Settlement  
9 Administrator as non-deliverable with an updated mailing address affixed shall be sent by First  
10 Class U.S. Mail to the forwarding address affixed thereto. If a Class Notice is returned as  
11 undeliverable without a forwarding address affixed thereto, the Settlement Administrator shall  
12 attempt to locate a current mailing address for the Settlement Class Member by skip tracing and  
13 will mail the Class Notice to the updated address identified. If no current address can be located,  
14 the Class Notice for that individual will be deemed undeliverable. (Settlement, ¶ 7(C); Hawkins  
15 Decl. ¶ 44.). No later than 21 court days prior to the Final Approval Hearing, the Settlement  
16 Administrator shall provide Settlement Class Counsel and Defense Counsel with a declaration of  
17 due diligence attesting to completion of the notice process.

18 The Parties agree to fully cooperate with each other to accomplish the terms of the  
19 Settlement including, but not limited to, execution of such documents and taking such other action  
20 as reasonably may be necessary to implement the terms of the Settlement. The Parties to the  
21 Settlement shall use their best efforts, including all efforts contemplated by the Settlement and any  
22 other efforts that may become necessary by order of the Court, or otherwise, to effectuate the  
23 Settlement and the terms set forth herein. (Settlement, ¶ 18; Hawkins Decl. ¶ 48.)

## 24 **V. PROPOSED CLASS RELEASE**

### 25 **A. Claims Released By the Class and the Class Representative**

26 Upon the final approval by the Court of this Settlement, and except as to such rights or  
27 claims as may be created by this Settlement, the Class Representative, the Settlement Class, and  
28 each Settlement Class Member who has not submitted a valid and timely Request for Exclusion,

1 each fully releases and discharges Defendant, its officers, directors, employees, and agents from  
2 any and all claims and/or causes of action stated in the Action or which could have been pled in the  
3 Action based on the facts alleged in the Action for the period of April 2, 2017 through September  
4 1, 2022 (“Released Claims”). This includes without limitation all claims and/or causes for (1)  
5 failure to pay and/or accurately calculate minimum, regular, overtime, and double time wages  
6 (Violation of Labor Code §§ 510, 1194, 1194.2, 1197, 1197.1, 1198, 1199); (2) failure to provide  
7 meal periods or properly pay premiums in lieu thereof (Violation of Labor Code §§ 512, 226.7, and  
8 the applicable Wage Order); (3) failure to provide rest periods or properly pay premiums in lieu  
9 thereof (Violation of Labor Code § 226.7 and the applicable Wage Order); (4) failure to reimburse  
10 and indemnify expenses (Violation of Labor Code §§ 2800, 2802); (5) failure to timely pay wages  
11 during and upon termination of employment (Violation of Labor Code §§ 201-204); (6) failure to  
12 furnish and/or keep timely and accurate wage statements and employment records (Violation of  
13 Labor Code §§ 226, 1174, 1174.5, 1175); (7) violation of California’s Unfair Competition Law  
14 (Violation of Business & Professions Code §§ 17200 et seq.) in connection with claims asserted in  
15 the Santamaria Case; and (8) Violation of the California Private Attorneys General Act of 2004  
16 (Labor Code § 2698, et seq.). This also includes any and all claims predicated on the same or similar  
17 facts and/or claims alleged in the Santamaria case and/or any PAGA letter or amended PAGA letter  
18 sent to the Labor and Workforce Development Agency by Plaintiff during the pendency or prior to  
19 the Santamaria Case and incorporated therein, as well as any claims that could have been pled which  
20 arise from the facts alleged in the Santamaria Case concerning the Plaintiff or the Settlement Class,  
21 including any claims for unpaid wages (including minimum, regular, vacation and overtime wages),  
22 untimely wage payments both during and at the end of employment, non-compliant meal periods,  
23 non-compliant rest periods, failure or properly pay meal period premiums in lieu of a meal period,  
24 failure to properly pay rest period premiums in lieu of a rest period, non-compliant wage statements,  
25 failure to reimburse and indemnify business expenses, failure to correctly calculate the regular rate  
26 of pay, and claims for interest, penalties (including but not limited to waiting time penalties), or  
27 premiums in connection therewith, as well as any claims under the California Labor Code and  
28 California Industrial Welfare Commission Wage Orders that were alleged or which could have been

1 alleged under the facts, allegations and/or claims pleaded in the Santamaria Case, as well as any  
2 claims for injunctive relief, declaratory relief, restitution, fraudulent business practices, or punitive  
3 damages alleged, or which could have been alleged, under the facts, allegations and/or claims  
4 pleaded in the Santamaria Case.. (Settlement, ¶ 2.)

5 Notwithstanding the submission of any timely Request for Exclusion, all Class Members  
6 will be bound by the settlement of the PAGA claims under the Final Approval Order and Judgment  
7 pursuant to *Arias v. Superior Court* (2009) 46 Cal.4th 969. Settlement Class Members may not  
8 opt out of the PAGA portion of the Settlement. (*Id.*)

9 **B. Additional Claims Released By Class Representative**

10 In addition to the Released Claims (the class claims), upon the Effective Date and upon  
11 payment of all sums owed herein by Defendants, the Class Representative will enter into a general  
12 release of any and all claims against the Released Parties with a waiver of California Civil Code  
13 §1542 (Settlement, ¶ 2.).

14 **VI. COMPUTATION AND DISTRIBUTION OF NET SETTLEMENT AMOUNT**  
15 **AND CLASS COUNSEL PAYMENT**

16 **A. Deposit of Gross Settlement Amount**

17 Within fifteen (15) calendar days after the Effective Date, Defendant shall deposit the Gross  
18 Settlement Amount with the Settlement Administrator. (Settlement, ¶ 9.)

19 **B. Formula For Calculating Settlement Payments**

20 The portion of the Net Settlement Amount available to pay Individual Settlement Payments  
21 to participating Settlement Class Member (“Qualified Class Members”) shall be determined as  
22 follows:

23 Each Qualified Class Member will be paid a pro-rata share of the Net Settlement Amount,  
24 as calculated by the Settlement Administrator. The pro-rata share will be determined by multiplying  
25 the Net Settlement Amount by the fraction that results from dividing the number of work weeks the  
26 Qualified Class Member worked any regular hours as a non-exempt, hourly paid employee in  
27 California during the Settlement Class Period divided by the total of all weeks in which the  
28 Qualified Class Members worked any regular hours during the Settlement Class Period. If a Class

1 Member disputes the number of Workweeks, any evidence to support that dispute may be presented  
2 to the Settlement Administrator in accordance with the procedures set forth in the Class Notice.  
3 (Settlement, ¶ 7; Hawkins Decl. ¶ 45.). Unless a disputing Qualified Class Member submits  
4 documentary evidence to support the disputes, Defendants' payroll records shall be determinative.

5 **C. Distribution of Net Settlement Amount to Class Members**

6 The Settlement Administrator shall distribute the Qualified Class Member Payment checks  
7 within twenty-one (21) days after the Defendants deposit the Gross Settlement Amount with the  
8 Settlement Administrator. (Settlement, ¶ 9.)

9 Qualified Class Member Payment checks shall remain valid for one hundred eighty (180)  
10 days from the date of issuance. Funds from checks that remain uncashed after the 180-day void  
11 date will be paid to the cy pres, Next Door Solutions, San Jose, pursuant to Code of Civil Procedure  
12 § 384 (Settlement, ¶ 7(H)).

13 Thirty-three and one-third percent (33.33%) of each Qualified Class Member Payment shall  
14 be allocated to wages under the California Labor Code, and subject to applicable payroll taxes and  
15 withholdings required under federal or state law and will be reported on an IRS Form W-2. Sixty-  
16 six and two-thirds percent (66.67%) of each Qualified Class Member Payment shall be allocated to  
17 penalties. IRS Forms 1099 will be issued to each Qualified Class Member reflecting the payments  
18 for penalties and interest. (Settlement, ¶ 9(b)). For the portion of the Qualified Call Member  
19 Payment allocated to wages, the Settlement Administrator shall be responsible for calculating and  
20 submitting the appropriate amount of the employees' and employer's share of payroll taxes and  
21 withholdings to the appropriate state and federal tax authorities.

22 **D. Class Counsel Payment and Service Payment Award**

23 The Class Counsel Payment and Enhancement Award shall be issued by the Settlement  
24 Administrator within twenty-one (21) days after the Defendants fund the Gross Settlement Amount.  
25 (Settlement, ¶ 9.).

26 **VII. OBJECTIONS AND OPTING OUT OF THE SETTLEMENT**

27 **A. Objections to the Settlement**

28 Any Qualified Class Member may object to the Settlement. To object, the Qualified Class

1 Member must submit to the Settlement Administrator a written objection postmarked within forty-  
2 five (45) calendar days from the date of the mailing of the Notice Packet. Qualified Class Members  
3 who fail to timely submit and serve their written Notice of Objection shall be deemed to have  
4 waived any objections and shall be foreclosed from making any objection (whether by appeal or  
5 otherwise) to the Settlement, unless otherwise ordered by the Court. The Settlement Administrator  
6 shall send all written objections to Defense Counsel and Settlement Class Counsel not later than  
7 two (2) business days after receipt of said objections. (Settlement, ¶ 7(e).)

8 **B. Requests to be Excluded from the Settlement**

9 Settlement Class Members who wish to exclude themselves from the Settlement (“opt out”)  
10 may use the procedure set forth in the Class Notice. A request to opt out of the Settlement will be  
11 deemed to be timely if the Settlement Class Member’s signed Notice of Exclusion postmarked to  
12 the Settlement Administrator no later than 45 calendar days after the Notice Packet is first mailed.  
13 (Settlement, ¶ 7(d).). Any Settlement Class Member who timely and validly requests exclusion will  
14 not be entitled to any Individual Settlement Payment, will not be bound by the terms and conditions  
15 of the Agreement, and will not have any right to object, appeal, or comment thereon.

16 **VIII. DEFENDANTS’ ESCALATOR PROVISION**

17 Defendants represented there are approximately 450,000 weeks worked by the Settlement  
18 Class Members from April 2, 2017, through September 1, 2022. In the event that the difference  
19 between the total work weeks in Defendant’s final data through September 1, 2022 and 450,000 is  
20 more than 15% of 450,000, at the option of Defendants, the Defendants shall either increase the  
21 Gross Settlement Amount pro rata, with a 15% grace margin (e.g., if the numbers increase by 16%,  
22 the Gross Settlement Amount shall increase by 1%), or elect to move the end date for the Settlement  
23 Class Period to the latest date before September 1, 2022, with a total number of work weeks that is  
24 within the 15% buffer.

25 **IX. LEGAL ARGUMENT IN FAVOR OF PRELIMINARY APPROVAL**

26 When a proposed class-wide settlement is reached, the settlement must be submitted to the  
27 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions*, at § 11.41, p.11-87 (3d  
28 ed. 1992). Preliminary approval is the first of three steps that comprise the approval procedure for

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

16       **A.       Provisional Certification of the Class is Appropriate**

17       California law authorizes conditional class certification for settlement purposes when the  
18 moving party proves the class is ascertainable and sufficiently numerous, a well-defined community  
19 of interest exists among class members, and certification is a fair and efficient means of adjudicating  
20 the action, rendering proceeding as a class superior to alternative means. *Brinker Restaurant Corp.*  
21 *v. Superior Court* (2021) 53 Cal. 4<sup>th</sup> 1004, 2021. For settlement purposes only, Defendants have  
22 stipulated and agreed that the requisites for establishing class certification have been met.  
23 (Settlement, ¶ 1.)

24               **1.       The Proposed Class Is Numerous and Ascertainable**

25 \_\_\_\_\_  
26 <sup>2</sup> California courts look to federal authority on class actions. *Vasquez v. Superior Court* (1971) 4  
27 Cal.3d 800, 821. “It is well established that in the absence of relevant state precedents trial courts  
28 are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure  
for conducting class actions.” (*Frazier v. City of Richmond* (1986) 184 Cal.App.3d 1491, 1499,  
*citing Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.)

Whether the class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members.” *Reyes v. Bd. Of Supervisors* (1987) 196 Cal.App.3d 1263, 1271. In this case, the proposed class consists of any and all persons who are or were employed by Bright Horizons as non-exempt, hourly-paid employees, however titled, at any of Bright Horizon’s California locations during the period of April 2, 2017, through September 1, 2022. (Hawkins Decl., ¶ 18; Settlement, ¶ (q).) The proposed class includes approximately 5,500 Settlement Class Members, making joinder of all Settlement Class Members impracticable. Further, the class is readily ascertainable from Defendants’ business records because all Settlement Class Members are current or former employees of Defendants. (Hawkins Decl. ¶¶ 40 and 46.).

## **2. Common Questions Predominate**

To assess whether common questions predominate, courts focus on whether the theories of recovery advanced are likely to prove amenable to class treatment. *Sav-On Drug Stores, Inc. v. Super. Ct. (Rocher)* (2004) 34 Cal.4<sup>th</sup> 319, 327 . In other words, courts determine whether the elements necessary to establish liability are susceptible to common proof, even if the class members must individually prove their damages. *Brinker*, 53 Cal.4<sup>th</sup> at 1024. Plaintiff contends that as a matter of policy and practice, Defendants failed to provide timely and compliant meal periods, failed to authorize and permit rest periods, failed to pay all wages owed including overtime wages, failed to pay all wages owed at separation, failed to reimburse business expenses, failed to provide accurate itemized wage statements; violated the Unfair Competition Law, and various claims under the Private Attorneys General Act. These claims are susceptible to common proof. (Hawkins Decl. 37.). As such, common questions predominate this case.

## **3. Plaintiff’s Claims are Typical of the Class Claims**

Typical claims rely on legal theories and facts that are substantially similar to other Settlement Class Members. *See Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 (1983). Here, the proposed Class Representative and the Settlement Class Members contend Defendants violated California law by the above-specified conduct. The typicality requirement for class certification for settlement purposes is satisfied because the Class Representative and the proposed Settlement Class

Members all claim that Defendants committed similar violations based upon similar conduct, policies, and practice and they seek the same remedies. (Hawkins Decl., ¶ 37.). Plaintiff contends, and Defendants do not dispute for settlement purposes, that her claims are typical of the claims of the Settlement Class because they arise from the same factual basis and are based upon the same legal theories as those applicable to the Settlement Class Members—namely that non-exempt employees were subjected to various wage and hour violations under California law. (*Id.*).

**4. Plaintiff and Plaintiff’s Counsel Will Adequately Represent the Interests of the Proposed Class**

Certification requires adequacy of both the proposed class representative and proposed class counsel. With respect to the class representative, a plaintiff must adequately represent and protect the interests of other members of the class. *See Capitol People First v. Dept. of Developmental Services (2007) 155 Cal.App.4th 676, 696-697*. Here, Plaintiff’s interests are coextensive with the interests of the Settlement Class. Plaintiff initiated this litigation, kept in regular touch with Settlement Class Counsel, gathered and reviewed documents, participated in interviews and mediation, and obtained a fair settlement on behalf of herself and Settlement Class Members. (*See generally* Hawkins Declaration.) Plaintiff has evaluated the proposed settlement and agrees that the interests of the Settlement Class are protected, and that the Settlement is in the best interests of the Settlement Class. (Declaration of Mara Santamaria, ¶ 16.) Plaintiff’s Counsel has expended considerable time and effort on this case and will continue to do so through final approval. (Hawkins Decl., ¶¶ 38, 48 and 52.) Specifically, Plaintiff’s Counsel conducted extensive investigation of the factual and legal issues, researched the issues, engaged in significant discovery and motion practice, including an appeal, and negotiated with Defendants’ Counsel extensively and ushered the case into mediation. (*See generally* Hawkins Decl.) Additionally, Plaintiff’s Counsel’s extensive experience in class action litigation makes them adequate Class Counsel. (Hawkins Decl., ¶ 49.) Accordingly, Plaintiff should be appointed Class Representative and Plaintiff’s Counsel should be appointed class counsel.

**5. A Class Action is Superior to a Multitude of Individual Lawsuits**

Class treatment is superior to other methods of adjudication when the probability is small

1 that each class member will come forward to prove his or her claims and when the class approach  
2 would deter and redress the alleged wrongdoing. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4<sup>th</sup> 429,  
3 435, 446 ; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4<sup>th</sup> 1524, 1537-1538 (2008).  
4 Here, 5,500 Settlement Class Members have little incentive to litigate their claims that were worth  
5 a relatively small amount on an individual basis where the out-of-pocket expense and personal  
6 commitment necessary to litigate each claim potentially outweighs the recovery. (Hawkins Decl. ¶  
7 36.) The alternative method of resolution is individual claims for potential recovery of relatively  
8 small amounts of damages; however, individual cases would be uneconomical for potential  
9 plaintiffs because the cost of litigation dwarfs their potential recovery. (*Id.*) Further, more than  
10 5,500 separate lawsuits would be an unnecessary drain on judicial resources and could result in  
11 conflicting obligations being imposed upon Defendants. Therefore, class treatment is the preferred  
12 method of resolution. (*Id.*)

13 **B. The Proposed Settlement Meets the Standards for Preliminary Approval**

14 Preliminary approval is warranted if the settlement falls within a “reasonable range.” (*See*  
15 *North County Contractor’s Ass’n, Inc. v. Touchstone Ins. Serv.* (1994) 27 Cal. App. 4<sup>th</sup> 1085, 89-  
16 90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4<sup>th</sup> ed. 2002) (“Newberg”). In  
17 reviewing the fairness of a class action settlement, due regard should be given to what is “otherwise  
18 a private consensual agreement between the parties.” *Cellphone Termination Fee Cases* (2010) 186  
19 Cal.App.4<sup>th</sup> 1380, 1389 . The inquiry “must be limited to the extent necessary to reach a reasoned  
20 judgment that the agreement is not the product of fraud or overreaching by, or conclusion between,  
21 the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to  
22 all concerns.” (*Id.*). Reasonableness and fairness are presumed where (1) the settlement is reached  
23 through “arm’s-length bargaining”; (2) investigation and discovery are “sufficient to allow counsel  
24 and the court to act intelligently”; (3) counsel is “experienced in similar litigation”; and (4) the  
25 percentage of objectors “is small.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4<sup>th</sup> 1794, 1802  
26 (1996). The Settlement here already satisfies the first three factors. Plaintiff will analyze the fourth  
27 factor in her motion for final approval.  
28

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

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

3                   Courts presume the absence of fraud and collusion in the negotiation of a settlement, unless  
4                   contrary evidence is offered; thus, there is a presumption that settlement negotiations are conducted  
5                   in good faith. *Newberg*, § 11.51. Here, the parties attended a full-day mediation with a well-  
6                   respected neutral wage and hour mediator, Gig Kyriacou (Hawkins Decl. ¶¶ 5 and 10.) The  
7                   Settlement negotiations were adversarial, conducted at arm’s length and tempered by the efforts of  
8                   both sides to serve the interests of their clients and, in the case of Plaintiff’s Counsel, the interests  
9                   of the Class Members. (*Id.*)

10                  b.   Class Counsel Conducted Significant Investigation

11                  Plaintiff’s Counsel thoroughly investigated the proposed Class Members’ claims, applicable  
12                  law, and potential defenses using extensive informal discovery, and close scrutiny of the fluctuating  
13                  state of California’s wage and hour laws. As described more extensively in the accompanying  
14                  Hawkins Declaration, Plaintiff’s Counsel conducted extensive investigation and information  
15                  exchange, investigation, research, met and conferred with defense counsel, conducted informal  
16                  discovery to prepare for mediation, obtained data points for damages calculations and to obtain  
17                  relevant documents, and reviewed information and voluminous pages of documents relating to the  
18                  wage and hour claims asserted in the Operative Complaint. Using the information obtained through  
19                  their research and investigation, Plaintiff’s Counsel assessed the reasonable value of the class  
20                  claims. (*Id.*)

21                  c.   Class Counsel is Experienced in Similar Litigation

22                  Plaintiff is represented by James Hawkins, APLC (“Settlement Class Counsel”). Settlement  
23                  Class Counsel has extensive experience prosecuting wage and hour cases on behalf of employees  
24                  and others who have had their rights violated. (Hawkins Decl. ¶ 49.) James Hawkins, APLC  
25                  currently serve as plaintiffs’ counsel of record in dozens of wage and hour class action cases  
26                  pending in both state and federal court. Settlement Class Counsel have litigated many wage and  
27                  hour class action cases and have successfully resolved cases involving the same issues presented in  
28                  this matter. (*Id.*)

1                               **2.       The Proposed Settlement is Reasonable Given the Strengths of**  
2                               **Plaintiff’s Claims and the Risks and Expense of Litigation**

3               Courts have discretion to approve a settlement by assessing several well-recognized factors,  
4 including the “strength of plaintiff’s case, risk, expense, complexity and likely duration of further  
5 litigation and risk of maintaining the class action through trial.” *Munoz v. BCI Coca-Cola Bottling*  
6 *Co.* (2010) 186 Cal.App.4<sup>th</sup> 399, 407; *see Kuller v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4<sup>th</sup>  
7 116, 129. A settlement does not have to provide 100% of the damages sought to be considered a  
8 fair and reasonable settlement. *Rebney v. Wells Fargo Bank* (1991) 220 Cal.App.3d 1117, 1139 ,  
9 overruled on other grounds. Rather, compromise is expected:

10               Compromise is inherent and necessary in the settlement process...even if “the relief  
11 afforded by the proposed settlement is substantially narrower than it would be if the suits  
12 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.”

13 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4<sup>th</sup> 224, 250.

14               Here, Plaintiff’s Counsel calculated Defendants’ total potential exposure assuming Plaintiff  
15 prevailed on all aspects of her claims at trial to be approximately \$67.56 million (exclusive of  
16 PAGA) but weighed that value against the chance of succeeding at class certification and trial, and  
17 in light of the financial issues raised by Defendants and determined that the realistic liability on the  
18 crux of the claims asserted was approximately \$15.33 million including PAGA. (Hawkins Decl. ¶  
19 33.). While Plaintiff believed and continues to believe this is a strong case for certification, the  
20 significant risks and expenses associated with class certification and liability proceedings must be  
21 taken into account. In determining whether the amount offered for settlement was reasonable,  
22 Plaintiff’s Counsel weighed that figure against many risk factors. Defendants have many strong  
23 arguments, which could render the Class Members’ claims worthless at either class certification or  
24 trial. (Hawkins Decl. ¶ 32.).

25               As set forth more extensively in the Hawkins Declaration, Defendants denied all allegations  
26 and contends that it complied with the applicable law at all times. Defendants contended that it paid  
27 all wages owed, including proper calculations of minimum, regular, overtime, and double time rates  
28 and wages, prohibited off the clock work, and that it properly provided all rest and meal periods as

1 a matter of policy and practice, and also paid break premiums at the correct rate and where  
2 applicable. (*Id.*) Defendants further argued that Settlement Class Members were not required to  
3 incur any expenses that were not reimbursed. (*Id.*). Defendant contended that to the extent any  
4 expense was incurred, it reimbursed employees for business expenses, and otherwise at all times  
5 complied with the California Labor Code. (*Id.*). Defendants argued that they timely furnished  
6 accurate itemized wage statements, that they complied with all wage statement requirements, and  
7 that all information on the wage statements was accurate and reflected the amount of money paid  
8 to employees. (*Id.*). Defendants contended that all non-exempt employees were paid for all time  
9 worked. (*Id.*).

10 Defendants also contended that Plaintiff could not demonstrate that any violation was  
11 intentional or willful and that penalties were not available for certain derivative violations. (*Id.*).  
12 Defendants also contended that no employee suffered injury because of any alleged violations. (*Id.*).

13 The Settlement compares favorably to other class settlements in terms of potential recovery.  
14 (*See Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) ["The fact that a  
15 proposed settlement may only amount to a fraction of the potential recovery does not, in and of  
16 itself, mean that the proposed settlement is grossly inadequate and should be disapproved," quoting  
17 *City of Detroit v. Grinnell Corp.*, 495 F.2d. 448, 455 & n.2 (2d Cir. 1974)]; *In re MyFord Touch*  
18 *Consumer Litig.*, 2019 WL 1411510, at \*10 (N.D. Cal. Mar. 28, 2019) [observing that "the very  
19 essence of settlement is compromise" and citing cases where settlements ranged from 5% to 10%  
20 of potential recovery]; *Glass v. UBS Fin. Servs.*, 2007 WL 221862, at \*9 (N.D. Cal. Jan. 26, 2007)  
21 [approving settlement that constituted approximately 25% of the estimated actual damages].) The  
22 Settlement here is consistent with these approved percentages. (Hawkins Decl. ¶ 33.)

23 Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon*  
24 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Even though Plaintiff disputes the merits  
25 of Defendants' defenses to class certification and liability, she cannot ignore the fact that if those  
26 defenses were successful, they would eliminate or substantially reduce any recovery on behalf of  
27 the Settlement Class. (Hawkins Decl. ¶ 33.). After arm's-length negotiations between experienced  
28 and informed counsel and with the assistance of the mediator, the Parties recognized the potential

1 risks and agreed on the Gross Settlement Amount of \$2,500,000, which is approximately 32.9% of  
2 the estimated liability for the class claims exclusive of PAGA, or 19.1% inclusive of PAGA. (Id.)

3 As the *Glass* court held:

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

12 (*Glass*, *supra*, 2007 WL 221862, at \*9). Here, the risk of further litigation is substantial, while the  
13 benefit of the Settlement is immediate and real. (Hawkins Decl. ¶ 34.). “Generally, unless the  
14 settlement is clearly inadequate, its acceptable and approval are preferable to lengthy and expensive  
15 litigation with uncertain results.” (*Ching v. Siemens Indus, Inc.*, 2014 WL 2926210, at \*4 (quotation  
16 omitted) (N.D. Cal. June 27, 2014). This factor weighs in favor of approval.

### 14 3. The Requested Enhancement Award Should be Provisionally Approved.

15 Plaintiff seeks an enhancement award for taking on the responsibilities of representing the  
16 interests of all Settlement Class Members and assuming risks and potential costs that were not  
17 agreed to by any other Settlement Class Members. A named plaintiff is eligible for payment that  
18 reasonably compensated them for undertaking and fulfilling a fiduciary duty to represent absent  
19 class members. *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4<sup>th</sup> 1380, 1393 ; *Bell v.*  
20 *Farmers, Ins. Exch.* (2004) 115 Cal.App.4<sup>th</sup> 715, 726. Here, Plaintiff provided additional data and  
21 information to counsel, relayed her experiences to counsel, and analyzed the Settlement and  
22 determined that it was in the best interests of the Settlement Class of which she was a part. Her  
23 consultation with counsel to assist in evaluating the Settlement was vital in bringing this matter to  
24 a resolution. (See, Hawkins Decl. ¶ 36.).

25 No action likely would have been taken by Settlement Class Members individually, and no  
26 compensation would have been recovered for them, but for Plaintiff’s service on behalf of the  
27 Settlement Class. By actively pursuing this action, Plaintiff furthered the California public policy  
28 goal of enforcing the State’s wage and hour laws. See *Sav-On Drug Stores, Inc. v. Superior Court*

1 (2004) 34 Cal.4<sup>th</sup> 319, 340. The proposed enhancement award of \$10,000 for Plaintiff's service as  
2 the class representative and for her general release of all claims is reasonable and should be  
3 approved.

4 **C. The Requested Attorneys' Fees and Costs Should be Preliminarily Approved**

5 The purpose of an attorneys' fee award in class action litigation is to reward counsel who  
6 took risk of non-payment and invested in a case that achieved a substantial positive result for the  
7 class. Attorneys' fees are awarded as a matter of equity. California courts routinely award attorneys'  
8 fees equaling one-third of the potential value of the common fund. *See Chavez v. Netflix, Inc.*  
9 (2008) 162 Cal.App.4<sup>th</sup> 43, 66, n.11 (2008) ("Empirical studies show that, regardless of whether  
10 the percentage method of the lodestar method is used, fee awards in class actions average around  
11 one-third of the recovery"). In the present case, Plaintiff's Counsel will seek approval of one-third  
12 of the Gross Settlement Amount or up to \$833,333.33 under the common fund theory, as well as  
13 actual litigation costs up to \$20,000. At final approval, Plaintiff's Counsel will fully brief the merits  
14 of their request for attorneys' fees and costs.

15 **X. CONCLUSION**

16 The parties have negotiated a fair and reasonable Settlement of the class claims. Plaintiff  
17 respectfully requests that the Court preliminarily approve the Settlement, direct notice to be sent to  
18 the Class Members, and schedule a date to conduct the final approval hearing.

19  
20 Respectfully submitted,

**JAMES HAWKINS, APLC**

21 Dated: November 14, 2022



James R. Hawkins, Esq.  
Christina M. Lucio, Esq.

24 Attorneys for Plaintiff, MARA SANTAMARIA on  
25 behalf of themselves and all others similarly situated