

1 David Mara, Esq. (SBN 230498)
2 Jill Vecchi, Esq. (SBN 299333)
3 **MARA LAW FIRM, PC**
4 2650 Camino Del Rio North Suite 302
5 San Diego, California 92108
6 Telephone: (619) 234-2833
7 Facsimile: (619) 234-4048

8 Attorneys for Plaintiff JEANNE BECKMAN,
9 on behalf of herself, all others similarly
10 situated, and on behalf of the general public.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN BERNARDINO**

13 JEANNE BECKMAN on behalf of herself,
14 all others similarly situated, and on behalf
15 of the general public,

16 Plaintiff,

17 vs.

18 BRASWELL LEISURE MANOR LTD. A
19 CALIFORNIA LIMITED
20 PARTNERSHIP; and DOES 1-100,

21 Defendants.

Case No.: CIVSB2209750

*[Assigned for All Purposes to the
Honorable Jessica Morgan, Dept. S-26]*

**PLAINTIFF JEANNE BECKMAN'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL APPROVAL
HEARING DATE**

Date: July 30, 2024
Time: 8:30 a.m.

Complaint Filed: May 11, 2022
Trial Date: Not Set Yet

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1 **I. INTRODUCTION**

2 Plaintiff Jeanne Beckman (“Plaintiff”), on behalf of herself and the approximately 165-
3 member putative class, respectfully requests that this Court preliminarily approve the Joint
4 Stipulation and Settlement Agreement (hereinafter “Agreement”¹) entered into between Plaintiff and
5 Defendant Braswell Leisure Manor Ltd. A California Limited Partnership (“Defendant” or
6 “Braswell”) (collectively, Plaintiff and Defendant are referred to as the “Parties”). The Parties’
7 Agreement seeks to resolve claims raised against Defendant in this matter in exchange for a non-
8 reversionary \$325,000 Gross Settlement Amount. The proposed Class is comprised of all current
9 and former non-exempt employees of Defendant within the State of California who worked for
10 Defendant at any time commencing four (4) years preceding the filing of Plaintiff’s initial Complaint
11 (i.e., May 11, 2018) through the date the Court grants preliminary approval.² It is requested that the
12 Court grant preliminary approval as, when analyzing the strengths and vulnerabilities of the claims
13 and Defendant’s potential liability exposure, this proposed settlement of \$325,000 is within the range
14 of reasonableness. This settlement is estimated to pay Class Members an average payment of
15 approximately \$919.26.³ The proposed Agreement satisfies all the criteria for preliminary approval
16 under Rule 3.769 of the California Rules of Court.

17 As the following sections show, Class Counsel are convinced that the proposed settlement is
18 in the best interests of the Class based on the negotiations and a detailed knowledge of the issues
19 presented in this action. The length and risks of trial and perils of litigation that affect the value of
20 the claims were all carefully weighed. In addition, the defenses asserted by Defendant, the
21 uncertainty of class certification, the difficulties of complex litigation, the lengthy process of
22 establishing specific damages and various possible delays and appeals, were also carefully
23 considered by Class Counsel in arriving at the proposed settlement. The Agreement was the product
24

25 ¹ The Parties’ Agreement is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as Exhibit
26 1. “Exhibit 1” herein refers to the Parties’ Agreement.

27 ² Exhibit 1 at Section I, Paragraph 5, Page 1.

28 ³ The Net Settlement Amount is approximately \$151,678. \$151,678 divided by 165 class members =
\$919.26.

1 of an all-day mediation with mediator Lynn Frank and was the product of non-collusive, arm's-
2 length negotiations by informed counsel and parties. The settlement is fair, reasonable, and adequate.
3 Accordingly, Plaintiff seeks: (1) preliminary approval of the terms contained in the Agreement; (2)
4 provisional certification of the Class; (3) appointment of Plaintiff as Class Representative; (4)
5 appointment of Mara Law Firm, PC, as Class Counsel; (5) approval of the Parties' proposed notice
6 of class action settlement⁴ (referred to herein as the "Class Notice" or "Notice") and method of
7 notifying the Class about the settlement; and (6) a hearing date for final approval of November 7,
8 2024.

9 **II. BACKGROUND**

10 Defendant operates senior living facilities. On May 11, 2022, Plaintiff filed a class action
11 complaint against Defendant. The Complaint alleges the following claims: (1) Failure to Pay All
12 Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3) Failure to Provide Meal Periods
13 (Labor Code §§ 226.7, 512, IWC Wage Order No. 5-2001(11), Cal. Code Regs., tit. 8 § 11050), (4)
14 Failure to Authorize and Permit Rest Periods (Labor Code §§ 226.7, 512, IWC Wage Order No. 5-
15 2001(12), Cal. Code Regs., tit. 8 § 11050), (5) Knowing and Intentional Failure to Comply with
16 Itemized Employee Wage Statement Provisions (Labor Code §§ 226, 1174, 1175), (6) Failure to Pay
17 All Wages Due at the Time of Termination of Employment (Labor Code §§ 201-203), and (7)
18 Violation of Unfair Competition Law (Business & Professions Code § 17200, *et seq.*). On November
19 4, 2022, Defendant filed an Answer to the Complaint denying all allegations and asserting
20 affirmative defenses. (Mara Dec. ¶ 10).

21 Plaintiff submitted a Notice of Labor Code Violations to the Labor and Workforce
22 Development Agency ("LWDA") in accordance with the Private Attorneys General Act of 2004
23 ("PAGA") on April 11, 2022. On June 27, 2024, Plaintiff filed a First Amended Complaint.
24 Plaintiff's First Amended Complaint adds a cause of action for Defendant's violations of the PAGA.
25 (Mara Dec. ¶ 11).

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27 ⁴ The Class Notice is attached to the Agreement as Exhibit A.

1 **III. INVESTIGATION/LITIGATION HISTORY**

2 **a. Discovery and Investigation**

3 After filing, the Parties engaged in informal discovery. These discovery efforts led to
4 Defendant producing policy documents that covered employees' employment with Defendant, such
5 as employee handbooks, and time and wage records. Included within these documents were
6 Defendant's wage and hour policies, including its meal and rest period policies. Defendant also
7 produced time and wage records for a 20% sampling of Class Members. Plaintiff also requested, and
8 Defendant produced, data surrounding the number of current and former employees, as well as the
9 number of workweeks worked by Class Members during the relevant time period, to establish a
10 potential exposure model in preparation for mediation. From this discovery, Plaintiffs and their
11 Counsel were able to analyze Defendant's liability in this action and prepare a realistic damage
12 model. (Mara Dec. ¶ 12).

13 **b. The Parties Agreed to Attend Mediation**

14 The Parties attended an all-day mediation presided over by wage and hour mediator Lynn
15 Frank on March 12, 2024. This mediation was successful. The Parties then met and conferred over
16 all the terms of the settlement and finalized their settlement in the Parties' Agreement. The Parties
17 seek preliminary approval of the Agreement in the instant motion. (*See* Mara Dec. ¶ 13; *see also*
18 Exhibit 1 attached thereto).

19 **c. The Parties' Staunchly Conflicting Positions**

20 **i. Meal Periods**

21 Plaintiff contends that Defendant does not provide employees with meal periods that conform
22 with California law. Employers have an obligation under California law to provide employees with
23 thirty (30) minute meal periods. Under California Labor Code § 512(a), "[a]n employer may not
24 employ an employee for a work period of more than five hours per day without providing the
25 employee with a meal period of not less than 30 minutes" Cal. Lab. Code § 512(a). An employer
26 "satisfies this obligation [to provide meal periods] if it relieves its employees of all duty, relinquishes
27 control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-

1 minute break, and does not impede or discourage them from doing so.” *Brinker Restaurant Corp. v.*
2 *Superior Court* (2012) 53 Cal.4th 1004, 1040. Here, Plaintiff contends that Defendant does not
3 provide employees with off-duty meal periods. (Mara Dec. ¶ 14).

4 Plaintiff asserts that Defendant requires employees to sign on-duty meal period agreements.
5 Plaintiff contends that an employer is only permitted to provide on-duty meal periods if it satisfies
6 the nature of work exception as set forth in the Wage Order. Plaintiff asserts that Defendant cannot
7 establish that the “nature of the work” justifies on-duty meal periods. Courts must consider the
8 following factors when deciding if the “nature of the work” exception set forth in the Wage Order
9 applies: “(1) [T]he type of work, (2) the availability of other employees to provide relief to an
10 employee during a meal period, (3) the potential consequences to the employer if the employee is
11 relieved of all duty, (4) the ability of the employer to anticipate and mitigate these consequences
12 such as by scheduling the work in a manner that would allow the employee to take an off-duty meal
13 period, and (5) whether the work product or process will be destroyed or damaged by relieving the
14 employee of all duty.” June 9, 2009 DLSE Opinion Letter at 7. The Division of Labor Standards
15 Enforcement (“DLSE”) has found the nature of the work requires provision of on-duty meal periods
16 in two types of instances: “(1) where the work has some particular, external force that requires the
17 employee to be on duty at all times, and (2) where the employee is the sole employee of a particular
18 employer.” *Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 945; *see also Abdullah v. U.S.*
19 *Sec. Assocs.* (2013) 731 F.3d 952, 959. (Mara Dec. ¶ 15).

20 Here, Defendant argues that it meets the nature of the work exception as employees are caring
21 for elderly individuals who need constant care. Defendant argues that in determining whether the
22 “nature of the work” prevents off-duty meal periods, the Court would have to ask each employee the
23 type of work they did, the availability of other employees to relieve them of work, and whether their
24 work product or process would be destroyed if they took a meal break. Defendant contends that
25 doing so would defeat certification as individual issues would predominate. (Mara Dec. ¶ 16).

26 Alternatively, Defendant argues that, under Wage Order 5, “employees in the health care
27 industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their
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1 right to one of their two meal periods.” IWC Wage Order 5-2001, Section 11(D). Defendant contends
2 that it has written agreements from employees waiving one of their meal periods. Defendant asserts
3 that because employees do not work shifts that qualify for two meal periods and because employees
4 waive their first meal periods under the Wage Order, Defendant does not need to provide employees
5 with any meal periods under California law. Defendant asserts that despite this, it still provides
6 employees with meal periods. Defendant contends that employees sign documents stating that they
7 received lawful meal periods. Should litigation continue, Defendant will rely on these documents,
8 as well as its waivers and on-duty meal period agreements, to show that it complied with California
9 law. (Mara Dec. ¶ 17).

10 **ii. Rest Periods**

11 Plaintiff alleges that employees are not provided with lawful rest periods. Employers have
12 an obligation to provide employees with ten (10) minute rest periods. An employer’s obligation to
13 provide its employees with rest periods arises under the Industrial Welfare Commission Wage
14 Orders. Wage Order 5-2001, Section 12(A) states, “[e]very employer shall authorize and permit all
15 employees to take rest periods, which insofar as practicable shall be in the middle of each work
16 period. The authorized rest period time shall be based on the total hours worked daily at the rate of
17 ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Here, Plaintiff alleges
18 that Defendant requires employees to remain on the premises during rest periods. (Mara Dec. ¶ 19).

19 In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme
20 Court ruled that the standards applicable to providing meal periods the Court articulated a few years
21 earlier in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, were equally
22 applicable to the rest period context. Citing *Brinker*, the *Augustus* Court ruled that, like meal periods,
23 “[d]uring required rest periods, employers must relieve their employees of all duties and relinquish
24 any control over how employees spend their break time.” *Augustus*, 2 Cal.5th at 260. At a minimum,
25 to relinquish employer control over how employees spend their break time, the employee must be
26 “free to leave the premises.” *Brinker*, 53 Cal.4th at 1036. As the *Augustus* Court reasoned, the
27 employee must be free to travel five minutes away from the work site so that they can get back

1 within the allotted ten-minute time frame of the break. *Augustus*, 2 Cal.5th at 270. Plaintiff contends
2 that, here, Defendant does not permit employees to leave the premises during rest periods. (Mara
3 Dec. ¶ 20).

4 Defendant contends that it does not require employees to remain on the premises during rest
5 periods. Defendant argues that to resolve this claim, the factfinder would have to ask whether
6 employees thought they could leave the premises during rest breaks. In addition, Defendant contends
7 that employees did, in fact, leave the premises during rest periods. Defendant asserts that should
8 litigation continue, it would present declarations from employees stating that they were free to leave
9 the premises, and did leave the premises, during rest periods. (Mara Dec. ¶ 21).

10 Defendant also counters that even if it did tell employees they are to remain on the premises,
11 a point that Defendant does not concede, the practical limitations the ten (10) minutes allotted for rest
12 periods imposes on an employee's movement are what prevent employees from leaving the premises.
13 In other words, the time limitation of only having ten (10) minutes for rest periods prevents off-
14 premises movement during rest periods, not expressly or impliedly telling employees that rest periods
15 are to be taken on the premises. Based on the practical limitations associated with ten (10) minute
16 rest periods, and not Defendant's policies, Defendant contends its policies are aligned with, and not
17 antagonistic to *Augustus*. Defendant finds support for this in the following language from *Augustus*:

18 Because rest periods are 10-minutes in length (Wage Order 4, subd. 12(A)), they
19 impose practical limitations on an employee's movement. That is, during a rest period
20 an employee generally can travel at most five minutes from a particular work post
21 before returning to make it back on time. Thus, one would expect that employees will
ordinarily have to remain on site or nearby.

22 *Augustus, supra*, 2 Cal.5th at 270. (Mara Dec. ¶ 22).

23 Defendant further asserts that employees are relieved of all work and employer control during
24 rest periods. And, to the extent there is any limitation placed on rest periods, it is something that
25 arises simply out of the fact that ten (10) minutes is a short amount of time. Therefore, Defendant
26 asserts that the limitations placed on employees, if any, are merely inherent to rest periods and not
27 an exertion of employer control. (Mara Dec. ¶ 23).

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Here, Plaintiff contends that Defendant pays employees non-discretionary bonuses but fails to include these payments in employees' regular rate of pay for purposes of overtime. Defendant argues that the bonuses paid are entirely discretionary and, therefore, do not need to be included in the regular rate of pay. Thus, the Parties have a dispute about whether Defendant was required to adjust the regular rate of pay due to bonuses paid to employees. (Mara Dec. ¶ 25).

Plaintiff also pursued claims for failure to provide accurate itemized wage statements and waiting time penalty claims. These claims are derivative of Plaintiff's overtime, meal period, and rest period claims. Should Plaintiff's overtime, meal period, and rest period claims fail, these claims would also fail. (Mara Dec. ¶ 27).

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1 Regs. Tit. 8 § 13520. “A ‘good faith dispute’ that any wages are due occurs when an employer
2 presents a defense, based in law or fact, which would preclude any recovery on the part of the
3 employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good
4 faith dispute did exist.” *Id.* Defendant contends that any failure to pay wages due at the separate of
5 employment was not willful. Defendant argues that it would not be liable for waiting time penalties
6 because a “good faith dispute” exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8 §
7 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Defendant also argues
8 that Plaintiff’s overtime, meal period, and rest period claims cannot form the basis of her wage
9 statement claim. Defendant relies on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22
10 Cal.App.5th 1308, for the position that employees do not suffer injury under California Labor Code
11 § 226(a) so long as the wage statements correctly reflected the hours worked and the pay received
12 even if the pay is later determined to be inaccurate. (Mara Dec. ¶ 28).

13 **IV. TERMS OF THE PROPOSED SETTLEMENT**

14 Under the terms of the settlement, Defendant will create a settlement fund of \$325,000.

15 **a. Deductions from the Settlement**

16 The Parties have agreed (subject to and contingent upon the Court’s approval) that this action
17 be settled and compromised for the non-reversionary total sum of \$325,000 (“Gross Settlement
18 Amount” or “GSA”), which includes, subject to Court approval: (a) attorneys’ fees of up to \$108,322
19 (33.33% of the GSA)⁵ to compensate Class Counsel for work already performed and all work
20 remaining to be performed in documenting the settlement, administrating the settlement, and
21 securing Court approval; (b) litigation costs estimated at approximately, and not to exceed, \$20,000;⁶
22 (c) a Class Representative Service Payment to the named class representative in a sum not to exceed
23 \$10,000 in consideration for prosecuting this class action, serving as Class Representative, work

24 _____
25 ⁵ Although Plaintiffs’ Counsel seeks attorneys’ fees under the percentage method, Plaintiff’s Counsel
will also provide the Court with their lodestar information at final approval.

26 ⁶ These will be tabulated and presented to the Court at final approval. Plaintiffs will only seek the
27 amount of actual costs incurred during the litigation of this case. Should the actual costs exceed
\$20,000, Plaintiffs will only seek reimbursement of costs up to \$20,000. Should the actual costs be
28 lower than \$20,000, the difference will be added to the Net Settlement Amount for disbursement to
Participating Class Members.

1 performed, and risks undertaken for the payment of attorneys' fees and costs in the event she had
2 been unsuccessful in the matter; (d) settlement administration fees and expenses to Simpluris,
3 estimated not to exceed approximately \$10,000; and (e) \$25,000 allocated to Plaintiff's claims under
4 the PAGA. Of this payment, 75%, or \$18,750 will be provided to the LWDA, and 25%, or \$6,250,
5 will be available for distribution to Aggrieved Employees.⁷

6 **b. Calculation of the Settlement Payment to Class Members**

7 After all Court-approved deductions from the GSA, it is estimated that \$151,678 ("Net
8 Settlement Amount" or "NSA"), less employee taxes on the "wage portion" of the settlement
9 payment, will be distributed to Participating Class Members.⁸ Subject to the terms and conditions of
10 the settlement, each Participating Class Member will receive a proportionate share of the Net
11 Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant, based
12 on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all
13 Participating Class Members based on the same Class Data, which is then multiplied by the Net
14 Settlement Amount. One day worked in a given week will be credited as a work week for purposes
15 of this calculation. Therefore, the value of each Class Member's Individual Settlement Share ties
16 directly to the amount of weeks that he or she worked. (Exhibit 1 at Section III, Paragraph 61(A)(i),
17 Page 10). This payment will be divided into a "wage portion" to compensate Participating Class
18 Members for alleged unpaid wages and a "non-wage portion" to compensate Participating Class
19 Members for alleged interest and penalties. The wage portion will make up 20% of each Participating
20 Class Members' individual settlement payment, and the non-wage portion will make up 80% of each
21 Participating Class Members' individual settlement payment. (Exhibit 1 at Section III, Paragraph
22 61(B), Page 10).

23 In addition, each Aggrieved Employee will receive a proportionate share of the Net PAGA
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25 ⁷ Aggrieved Employees are all current and former non-exempt employees of Defendant within the
26 State of California who worked for Defendant at any time commencing one (1) year preceding the
27 filing of Plaintiff's First Amended Complaint through the date the Court grants preliminary approval.
(Exhibit 1 at Section I, Paragraph 2, Page 1).

28 ⁸ Participating Class Members are all Class Members who do not submit a valid and timely request
to exclude themselves from this Settlement. (Exhibit 1 at Section I, Paragraph 35, Page 5).

1 Settlement Amount that is equal to (i) the number of pay periods he or she worked for Defendant,
2 based on the PAGA Data provided by Defendant, divided by (ii) the total number of pay periods
3 worked by all Aggrieved Employees based on the same PAGA data, which is then multiplied by the
4 Net PAGA Settlement Amount. One day worked in a given pay period will be credited as a pay
5 period for purposes of this calculation. Therefore, the value of each Aggrieved Employee's
6 Individual PAGA Settlement Share ties directly to the amount of pay periods that he or she worked
7 during the PAGA Period. (Exhibit 1 at Section III, Paragraph 62(A)(i), Pages 10-11). This payment
8 will be treated as 100% penalties. (Exhibit 1 at Section III, Paragraph 62(B), Page 11).

9 Under no circumstances will any portion of the \$325,000 settlement revert to Defendant and
10 100% of the NSA will be paid out to Participating Class Members. In addition, the employer's share
11 of taxes will be paid in addition to and outside of the GSA. (See Exhibit 1 at Section I, Paragraph
12 19, Page 3).

13 **c. Notice to the Class**

14 Within ten (10) business days after entry of the Preliminary Approval Order, Defendant shall
15 deliver to the Settlement Administrator an electronic database, which will list the Class and PAGA
16 Data. (Exhibit 1 at Section III, Paragraph 65(D)(i), Page 14). The Class Data is an electronic database
17 Defendant shall deliver to the Settlement Administrator which will list the following information for
18 each Class Member: (1) first and last name; (2) last known mailing address; (3) social security
19 number; (4) telephone number; and (5) the total number of weeks during which the Class Member
20 performed work during the Class Period. The Class Data shall be based on Defendant's payroll,
21 personnel, and other business records. (Exhibit 1 at Section I, Paragraph 7, Page 2). The PAGA Data
22 is an electronic database Defendant shall deliver to the Settlement Administrator which will list the
23 following information for each Aggrieved Employee: (1) first and last name; (2) last known mailing
24 address; (3) social security number; (4) telephone number; and (5) the total number of weeks the
25 total number of weeks during which the Aggrieved Employee performed work during the PAGA
26 Period as an Aggrieved Employee. The PAGA Data shall be based on Defendant's payroll,
27 personnel, and other business records. (Exhibit 1 at Section I, Paragraph 30, Page 5).

1 Within ten (10) business days after receipt of the Class and PAGA Data, the Settlement
2 Administrator will mail via first-class regular U.S. Mail the Class Notice to all identified Class
3 Members and Aggrieved Employees using the mailing address information provided by Defendant
4 and the results of the search of the National Change of Address Database on all Class Members and
5 Aggrieved Employees. (Exhibit 1 at Section III, Paragraph 65(D)(iii), Page 15).

6 After notices are mailed, Class Members will have forty-five (45) days to respond to the
7 settlement. (Exhibit 1 at Section I, Paragraph 42, Page 6). Class Members may respond to the
8 settlement by requesting to be excluded from it or objecting to it. Class Members can also file a
9 dispute as to the number of workweeks attributed to them.

10 **i. Requests for Exclusion**

11 The Class Notice will provide that Class Members who wish to exclude themselves from the
12 Settlement must mail to the Settlement Administrator a written request for exclusion. The written
13 request for exclusion must: (a) state the Class Member's name, address, telephone number, and the
14 last four digits of the Class Member's social security number or employee identification number; (b)
15 state the Class Member's intention to exclude themselves from or opt-out of the Settlement; (c) be
16 addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful
17 representative; and (e) be postmarked no later than the Response Deadline. (Exhibit 1 at Section III,
18 Paragraph 63(F), Pages 16-17).

19 **ii. Objections to the Settlement**

20 The Class Notice will provide that the Class Members who wish to object to the Settlement
21 must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later
22 than the Response Deadline. The timeframe to submit an objection will not be increased for returned
23 mailings. Any Objections shall state: (a) the objecting person's full name, address, and telephone
24 number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and
25 concise terms, the legal and factual arguments supporting the objection; (d) list identifying
26 witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and
27 correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing. Objecting
28

1 Class Members may (though are not required to) appear at the Final Approval Hearing, either in
2 person or through the objector's own counsel. Objecting Class Members are permitted to appear
3 regardless of whether they submitted a written objection. (Exhibit 1 at Section III, Paragraph 65(E),
4 Page 16).

5 **iii. Disputes**

6 If a Class Member or Aggrieved Employee who receives a Class Notice wishes to dispute
7 the number of work weeks listed on the Class Notice, the Class Member or Aggrieved Employee
8 may notify the Settlement Administrator by mail or telephone no later than the Response Deadline
9 and should produce any available supporting evidence, such as wage statements, offers of
10 employment, termination letters, and/or other employment records, to the Settlement Administrator.
11 The documentation should provide evidence of the dates the Class Member or Aggrieved Employee
12 contends he or she worked for Defendant during the Class or PAGA Period. The Settlement
13 Administrator shall then provide the documentation provided by the Class Member or Aggrieved
14 Employee to Defendant. Defendant shall review its records, the documentation provided by the Class
15 Member or Aggrieved Employee, and shall provide information to the Settlement Administrator in
16 response to any such disputed claim. Defendant's records shall be presumed to be determinative, but
17 the Settlement Administrator shall evaluate the evidence submitted by the Class Member or
18 Aggrieved Employee and make the decision as to which dates should be applied. The determination
19 by the Settlement Administrator shall be final and binding. (Exhibit 1 at Section III, Paragraph
20 65(G), Pages 17-18).

21 **iv. Returned Notices**

22 If a Class Notice is returned because of an incorrect address, within five (5) business days
23 from receipt of the returned notice, the Settlement Administrator will conduct a search for a more
24 current address for the Class Member and re-mail the Class Notice to the Class Member. The
25 Settlement Administrator will use the National Change of Address Database and skip traces to
26 attempt to find the current address. The Settlement Administrator will be responsible for taking
27 reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is

1 returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum,
2 the tracking of all undelivered mail, performing address searches for all mail returned without a
3 forwarding address, and promptly re-mailing to Class Members for whom new addresses are found.
4 (Exhibit 1 at Section III, Paragraph 65(D)(iv), Page 15).

5 **d. Distribution of Funds**

6 Defendant shall wire or otherwise provide to the Settlement Administrator the Gross
7 Settlement Amount no later than thirty (30) days of the Effective Final Settlement Date. (Exhibit 1
8 at Section I, Paragraph 21, Page 3). The Effective Final Settlement Date is the last to occur of the
9 following: (a) if there are no objections to the settlement, then the date of final approval by the Court;
10 (b) if there are objections to the settlement, and if an appeal, review or writ is not sought from the
11 order granting final approval of the settlement, the 31st day after service of notice of entry of the
12 order; or (c) if an appeal, review or writ is sought from the order, the day after the order is affirmed
13 or the appeal, review or writ is dismissed or denied, and the order is no longer subject to further
14 judicial review. (Exhibit 1 at Section I, Paragraph 18, Page 3).

15 Participating Class Members and Aggrieved Employees must cash or deposit their Individual
16 Settlement Share checks within one hundred and eighty (180) calendar days after the checks are
17 mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after
18 mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check
19 is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and
20 offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited
21 by the expiration of the ninety (90) day period after mailing the reminder notice, the Settlement
22 Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the
23 checks. All funds associated with the Individual Settlement Share checks returned as undeliverable
24 and funds associated with those checks remaining un-cashed shall be tendered to the Legal Aid
25 Society of San Bernardino. (Exhibit 1 at Section III, Paragraph 65(N), Pages 20-21).

26 **e. Release of Claims**

27 In exchange for an Individual Class Payment, Participating Class Members will agree to the
28

1 following release:

2 The Released Class Claims include, for the entire Class Period, any and all claims,
3 debts, liabilities, demands, actions, or causes of action that were either alleged, or
4 that reasonably could have been alleged based on the factual allegations contained in
5 the Lawsuit, including, but not limited to, claims pursuant to Labor Code sections,
6 201, 201.5, 202, 203, 205.5, 218, 218.5, 222, 223, 224, 226(a), 226.3, 226.7, 510,
7 512, 1174, *et seq.*, 1194, 1194.2, 1197, 2699, *et seq.*, and the Industrial Welfare
8 Commission Wage Orders, and also any claim for unpaid wages, including under any
9 theory of rounding, unpaid minimum wage, off-the-clock work, meal and rest period
10 violations, waiting time penalties, itemized wage statement penalties, wages for
11 unpaid time, other related wages, restitution, disgorgement, civil or statutory
12 penalties, attorneys' fees, and/or costs and all claims under the Unfair Competition
13 Law, Business & Professions Code section 17200, *et seq.*, and/or which are alleged
14 in the Lawsuit within the Class Period.

15 (Exhibit 1 at Section I, Paragraph 38, Page 5-6).

16 In addition, all Aggrieved Employees will agree to the following release in exchange for an

17 Individual PAGA Payment:

18 The Released PAGA Claims include, for the entire PAGA Period, any and all claims
19 belonging to the State of California, the LWDA, and Plaintiff (as representative of
20 the State of California, the LWDA, and the general public) under the California
21 Private Attorney General Act ("PAGA"), Cal. Lab. Code § 2698, *et seq.* to the extent
22 such claims are predicated on claims that were or reasonably could have been alleged
23 based on the claims, facts and/or allegations that were contained in Plaintiff's PAGA
24 Letter.

25 (Exhibit 1 at Section I, Paragraph 39, Page 6).

26 Further, Plaintiff has agreed to a general release of her claims. (*See* Exhibit 1 at Section III,
27 Paragraph 68, Pages 21-22).

28 **V. ARGUMENT**

a. Class Action Settlements Are Subject to Court Review and Approval Under the California Rules of Court

Rule 3.769 requires court approval for class action settlements.⁹ "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (California Rules of Court, Rule 3.769(g)). Rule 3.769 further requires a noticed motion for preliminary approval of class settlements:

⁹ The California Supreme Court also has authorized California's trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 (a) A settlement or compromise of an entire class action, or a cause of action in a
2 class action, or as to a party, requires the approval of the court after hearing.

3 . . .
4 (c) Any party to a settlement agreement may serve and file a written notice of
5 motion for preliminary approval of the settlement. The settlement agreement
6 and proposed notice to class members must be filed with the motion, and the
7 proposed order must be lodged with the motion.

8 Courts act within their discretion in approving settlements that are fair, not collusive, and take
9 into account “all the normal perils of litigation as well as the additional uncertainties inherent in
10 complex class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167, 179,
11 cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S.
12 905.

13 **b. The Settlement is Fair, Reasonable, and Adequate**

14 In deciding whether to approve a proposed class action settlement under Code of Civil
15 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.”
16 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is
17 **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-
18 length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to
19 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
20 is small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As the following shows, all of these elements –
21 with the exception of the percentage of objectors, which cannot be anticipated at this stage of the
22 litigation – bearing on the fairness of the proposed settlement are present here and the Court’s grant
23 of preliminary approval is therefore requested.

24 **i. The Settlement was Reached as a Result of Arm’s-Length Negotiations**

25 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
26 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
27 nature. Prior to, at, and after the mediation, Counsel for the Parties conducted extensive arm’s length
28 settlement negotiations until the settlement was reached. The terms of the settlement are
memorialized in the Agreement which is attached to the Declaration of David Mara, Esq. as Exhibit
1. While Plaintiff believes in the merits of her case, she also recognizes the inherent risks of litigation

1 and understands the benefit of the class receiving significant settlement funds immediately as opposed
2 to risking continued litigation in achieving class certification, preparing for and conducting a trial,
3 and/or an appeal that may take several more years to litigate.

4 **ii. The Settlement is the Result of Thorough Investigation and Discovery**

5 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before
6 reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to
7 support the settlement. The settlement was only possible following investigation, discovery, and
8 evaluation of Defendant's policies and procedures, as well as the data produced for the putative class,
9 which permitted Class Counsel to engage in a comprehensive analysis of liability and potential
10 damages. This litigation has reached the stage where "the Parties certainly have a clear view of the
11 strengths and weaknesses of their cases" sufficient to support the settlement. *Boyd v. Bechtel Corp.*
12 (N.D. Cal. 1979) 485 F. Supp. 610, 617.

13 **iii. Counsel for Both Parties are Experienced in Similar Litigation**

14 Both Plaintiff's Counsel and Defendant's Counsel are particularly experienced in wage and
15 hour employment law and class actions. Plaintiff's Counsel has significant experience in litigating
16 unpaid wages, unprovided meal and rest periods, and wage statement claims. (Mara Dec. ¶¶ 2-9).
17 Indeed, Plaintiff's Counsel was class counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et al.*,
18 which is the subject case in the landmark decision of *Brinker Restaurant Corp. v. Superior Court*
19 (2012) 53 Cal.4th 1004. (Mara Dec. ¶ 4). Plaintiff's Counsel has prosecuted numerous wage and hour
20 class action cases on behalf of employees for California Labor Code violations and thus are
21 experienced and qualified to evaluate the class claims and to evaluate settlement versus trial on a
22 fully informed basis, and to evaluate the viability of the defenses. This experience instructed
23 Plaintiff's Counsel on the risks and uncertainties of further litigation and guided their determination
24 to endorse the proposed settlement.¹⁰ Defendant's Counsel practices labor and employment law and
25 have represented numerous employers in similar types of claims. Accordingly, both Parties' Counsel

26 _____
27 ¹⁰ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class
28 Notice has been provided to the class and they have had an opportunity to respond. This information
will be provided to the Court in conjunction with the final approval motion.

are experienced in wage and hour employment law and class actions.

iv. The Proposed Settlement is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor in determining whether the settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is “the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” *Id.*

In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys.” *Kullar, supra*, 168 Cal.App.4th at 133. *Kullar* does not require an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims, provided there is a record which allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 409. Put differently, “as the court does when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500. As the following subsections show, the Parties’ investigation and discovery revealed many reasons to discount claims and agree to this settlement.

1. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff’s Case and the Risks and Costs of Further Litigation

The proposed settlement was only possible following significant discovery and an evaluation of Defendant’s relevant policies and procedures, as well as the data that Defendant produced for the putative class as referenced above. This permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. The discovery conducted allowed Plaintiff to evaluate the strengths and weaknesses of her theories of liability, which are predicated on Plaintiff’s claims that Defendant failed to provide compliant meal and rest periods and pay all overtime wages owed. As

1 explained herein, Defendant maintains that the discovery produced demonstrates that it would
2 succeed at both in denying class certification and on the merits.

3 Although, Plaintiff believes this case is suitable for certification on the claimed bases that
4 there are company-wide policies that Plaintiff contends violate California law and uniformly affect
5 the Class Members, Defendant's counterarguments raise uncertainties with respect to both class
6 certification and success on the merits. As the California Supreme Court ruled in *Sav-On v. Superior*
7 *Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion.
8 Decisions following *Sav-On* have reached different conclusions, with respect to certification of wage
9 and hour claims.¹¹ While remaining confident in the strengths of her claims, all of these factors led
10 Plaintiff to discount the following maximum potential damage exposure.

11 **2. Maximum Potential Exposure**

12 The settlement encompasses approximately 8,921 workweeks.¹² This equates to
13 approximately 35,684 shifts. Employees were paid an average hourly rate of approximately \$15.18.

14 Plaintiff alleges that Defendant failed to provide employees with meal periods in accordance
15 with California law. Plaintiff contends that Defendant does not provide employees with off-duty meal
16 periods. If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and the Class
17 Members would be entitled to the following *maximum* potential damages: \$541,683 (35,684 shifts x
18 \$15.18 per hour = \$541,683.12). (Mara Dec. ¶ 18).

19 Defendant disagrees that it failed to provide employees with meal periods in accordance with
20 California law. Defendant contends that it meets the nature of the work exception as employees are
21 caring for elderly individuals who need constant care. Defendant also argues that under Wage Order
22 5, "employees in the health care industry who work shifts in excess of eight (8) total hours in a
23

24 ¹¹ See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of class
25 claiming misclassification and ordering summary adjudication in favor of employees), *review*
26 *granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh*
27 *v. IKON Solutions, Inc.* (2007) 148 Cal. App. 4th 1440 (affirming decertification of class claiming
misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal. App. 4th 121 (reversing denial of
certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal. App. 4th 1422 (affirming denial of
certification).

¹² See Exhibit 1 at Section II, Paragraph 51, Page 7 and Section III, Paragraph 56(A), Page 8.

1 workday may voluntarily waive their right to one of their two meal periods.” IWC Wage Order 5-
2 2001, Section 11(D). Defendant contends that it has written agreements from employees waiving one
3 of their meal periods. Defendant asserts that because employees do not work shifts that qualify for
4 two meal periods and because employees waive their first meal periods under the Wage Order,
5 Defendant does not need to provide employees with any meal periods under California law.
6 Defendant asserts that despite this, it still provides employees with meal periods. Defendant contends
7 that employees sign documents stating that they received lawful meal periods. Should the factfinder
8 side with Defendant, Plaintiff would take nothing on her meal period claim. Given this all or none
9 prospect, Plaintiff had to compromise to make settlement possible.

10 Plaintiff alleges that Defendant failed to provide employees with rest periods in accordance
11 with California law. Plaintiff contends that employees are required to remain on the premises during
12 rest periods. If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and the Class
13 Members would be entitled to the following *maximum* potential damages: \$541,683 (35,684 shifts x
14 \$15.18 per hour = \$541,683.12). (Mara Dec. ¶ 24).

15 Defendant contends that this amount should be zero because it has a lawful rest period policy
16 and practice. Defendant disagrees and contends that it does not require employees to remain on the
17 premises during rest periods and that employees do, in fact, leave the premises during rest periods.
18 Accordingly, Defendant claims Plaintiff should take nothing on this claim and, if the factfinder
19 agreed, Plaintiff would take nothing. Although remaining confident in her position, Plaintiff had no
20 way of knowing how the factfinder would rule on this issue and a substantial discount had to be given
21 to make settlement possible.

22 Further, Plaintiff alleges that Defendant failed to adjust the regular rate of pay to account for
23 bonuses paid to employees. If Plaintiff were to prevail on this claim for the entire class period,
24 Plaintiff and the Class Members would be entitled to *maximum* potential damages in the amount of
25 \$8,654 (\$1.40 owed per overtime hour x 1,338 pay periods in which bonuses were paid x 4.62
26 overtime hours worked in these pay periods = \$8,654.18). (Mara Dec. ¶ 26).

27 Defendant argues that the bonuses paid to employees are entirely discretionary and, therefore,
28

1 do not need to be included in the regular rate of pay. Thus, the Parties have a dispute about whether
2 Defendant was required to adjust the regular rate of pay due to bonuses paid to employees. If the fact
3 finder agrees with Defendant, Plaintiff and the Class Members would take nothing. As such, Plaintiff
4 had to take this into consideration in reaching a settlement.

5 If Plaintiff were to prevail on her overtime, meal period, and/or rest period claims, Plaintiff
6 may be entitled to penalties for inaccurate wage statements. The statute of limitations for Plaintiff's
7 wage statement claim is one year. Under California Labor Code § 226(e)(1), the damages for breach
8 of this section are fifty dollars (\$50) for the initial pay period in which a violation occurs and one
9 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an
10 aggregate penalty of four thousand dollars (\$4,000). If Plaintiff were to prevail on this claim, the
11 **maximum** damages would be \$182,000 (128 pay periods x \$50 initial violation = \$6,400 plus 1,756
12 pay periods x \$100 subsequent violation = \$175,600). (Mara Dec. ¶ 29).

13 If Plaintiff were to prevail on her overtime, meal period, and/or rest period claims, she and
14 the Class Members may also be entitled to waiting time penalties. Plaintiff calculates the potential
15 **maximum** exposure under her waiting time penalties cause of action as \$484,545 (133 former
16 employees within the three-year statute of limitations x 30 days x 8 hour shift x \$15.18 average hourly
17 rate = \$484,545.60). (Mara Dec. ¶ 30).

18 If Plaintiff's overtime, meal period, and rest period claims fail, these claims also fail. There is
19 also a possibility that the factfinder could find that these violations are not willful and knowing and
20 intentional. If this were to occur, Plaintiff and the Class would receive nothing under these claims. In
21 addition, a good faith dispute that any wages are due will preclude imposition of waiting time
22 penalties. Defendant argues that Plaintiff will not be able to show that any violations were knowing
23 and intentional and willful. Defendant also contends that there is a good faith dispute about whether
24 any wages are due. Defendant further argues that Plaintiff's overtime, meal period, and rest period
25 claims cannot form the basis of her wage statement claim. Defendant relies on the case *Maldonado*
26 *v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the position that employees do not suffer
27 injury under California Labor Code § 226(a) so long as the wage statements correctly reflected the

1 hours worked and the pay received even if the pay is later determined to be inaccurate. Plaintiff and
2 to take these arguments into consideration.

3 Plaintiff also seeks PAGA penalties. PAGA allows the private enforcement of certain
4 California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2) reads,
5 in part, as follows:

6 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay
7 period for the initial violation and two hundred dollars (\$200) for each aggrieved
employee per pay period for each subsequent violation.

8 The statute of limitations for PAGA violations go back one year. The maximum potential damages
9 under Plaintiff's PAGA claim is \$510,600.¹³ (Mara Dec. ¶ 31). As Plaintiff's PAGA claims are based
10 on the same alleged unlawful conduct as her class claims, Plaintiff's PAGA claims are subject to the
11 same risks on the merits as Plaintiff's class claims. In addition, the Court may reduce any PAGA
12 penalties awarded under Section 2699, subdivision (e)(2). The likelihood of the Court reducing the
13 PAGA penalties awarded to Plaintiff and the Aggrieved Employees – assuming liability is proven as
14 to each of Plaintiff's claims – is higher in this case where these same individuals may also be receiving
15 money for the same unlawful conduct under the class claims. *See Avila v. Cold Spring Granite Co.*
16 (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17
17 (“Because the PAGA penalties sought are at least partially duplicative of penalties granted by the
18 underlying Labor Code violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because
19 a Court has discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code
20 § 2699(e)(2), Plaintiff recognizes that the potential PAGA penalties are highly uncertain.”). As such,
21 the Court may reduce any PAGA penalty amount awarded to Plaintiff and the Aggrieved Employees.
22 (Mara Dec. ¶ 32).

23 Thus, not taking into account any of its defenses or arguments, Plaintiff estimated that if she
24 were successful in her core claims, Defendant's total exposure would be approximately \$1,092,020
25 [\$541,683 (rest period exposure) + \$541,683 (meal period exposure) + \$8,654 (overtime wage
26

27 ¹³ \$100 x 2 PAGA violations for meal periods and rest periods x 1,884 pay periods = \$376,800 plus
28 \$100 x 1 PAGA violation for unpaid overtime wages x 1,338 pay periods = \$133,800.

1 exposure) = \$1,092,020]. If Plaintiff is successful in her overtime, meal period, and rest period claims,
2 she may also be entitled to damages for wage statements and waiting time penalties in the amount of
3 \$666,545 [\$182,000 (wage statements) and \$484,545 (waiting time penalties) = \$294,720]. If
4 Plaintiff's claims are successful, she may also be entitled to PAGA penalties in the amount of
5 \$510,600. (Mara Dec. ¶ 33).

6 **3. The Settlement Amount of \$325,000 is Reasonable**

7 In light of the risks Plaintiff's claims faced, Plaintiff and her Counsel believe that the
8 settlement amount of \$325,000 – with an average settlement share amount estimated at \$919.26 – is
9 a reasonable and fair settlement amount. (Mara Dec. ¶ 34).

10 It should be noted that a settlement is not judged solely against what might have been
11 recovered, had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the
12 damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th
13 224, 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139; “Compromise is
14 inherent and necessary in the settlement process...even if the relief afforded by the proposed
15 settlement is substantially narrower than it would be if the suits were to be successfully litigated, this
16 is no bar to a class settlement because the public interest may indeed be served by a voluntary
17 settlement in which each side gives ground in the interest of avoiding litigation.” *Wershba, supra*, at
18 250; *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 628 (“It is well-settled
19 law that a cash settlement amounting to only a fraction of the potential recovery does not...render
20 the settlement inadequate or unfair”); *see also In re Omnivision Technologies, Inc.* (N.D. Cal. 2007)
21 2007 U.S. Dist. LEXIS 95616, *21 , (noting that certainty of recovery in settlement of 6% of
22 maximum potential recovery after reduction for attorneys’ fees was higher than median percentage
23 for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2002 through 2006).

24 **c. Provisional Certification Should be Granted**

25 Under California law, a class action is appropriate when the class is ascertainable and there is
26 “a well defined community of interest in the questions of law and fact involved affecting the parties
27 to be represented.” Cal. Civ. P. Code § 382. State law requirements under California Code of Civil

1 Procedure section 382 for class certification follow federal law according to Rule 23 of the Federal
2 Rule of Civil Procedure: numerosity, typicality of the class representatives' claims, adequacy of
3 representation, predominance of common issues, and superiority. Fed. R. Civ. P. 23(a); *see also*
4 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted that while a court
5 must certify a class for settlement purposes if a class has not already been certified, "it is well
6 established that trial courts should use different standards to determine the propriety of a settlement
7 class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used
8 for settlement cases." *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836,
9 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19.

10 Plaintiff contends, and Defendant does not dispute for settlement purposes only, each of these
11 elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38.
12 Plaintiff seeks approval of the following Class for settlement purposes only: All current and former
13 non-exempt employees of Defendant within the State of California who worked for Defendant at any
14 time commencing four (4) year preceding the filing of Plaintiff's initial Complaint (i.e., May 11,
15 2018) through the date the Court grants preliminary approval.

16 **d. Notice to the Class Complies with California Rule of Court 3.769(f)**

17 California Rule of Court 3.769(f), provides:

18 If the court has certified the action as a class action, notice of the final approval
19 hearing must be given to class members in the manner specified by the court. The
20 notice must contain an explanation of the proposed settlement and procedures for
21 class members to follow in filing written objections to it and in arranging to appear
22 at the settlement hearing and state any objections to the proposed settlement.

23 The proposed Class Notice meets all of these requirements. The proposed Class Notice advises the
24 class of their rights to participate in the settlement, how to and when to object to or request exclusion
25 from the settlement, and the date, time, and location of the final approval hearing. The proposed Class
26 Notice is attached as Exhibit A to the Agreement.

27 **VI. CONCLUSION**

28 Plaintiff respectfully submits that the proposed settlement is in the best interests of the Class
and Class Members, as it is fair, adequate, and reasonable, and one that should ultimately be granted

1 final approval. Under the applicable class action criteria and guidelines, the proposed settlement
2 should be preliminarily approved by the Court, the class should be conditionally certified for
3 purposes of settlement only, and the Class Notice should be approved. Plaintiff also respectfully
4 requests the Court set a final approval hearing date of November 7, 2024.

5
6 DATED: July 8, 2024

MARA LAW FIRM, PC

7
8 
9 David Mara, Esq.
Jill Vecchi, Esq.

10 Representing Plaintiff JEANNE BECKMAN on behalf
11 of herself, all others similarly situated, and on behalf
12 of the general public
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