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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JULIA GARCIA, JUAN MANUEL
CONTRERAS, individually and on behalf
of other persons similarly situated and
similarly aggrieved employees,

Plaintiffs,

v.

NEW VISTA NURSING OPERATOR,
LLC, an active California Limited
Liability Company; and DOES 1 through
10,

Defendants.

Case No.: 22STCV08228

CLASS AND REPRESENTATIVE
ACTION

*[Assigned to Hon. Kenneth R. Freeman
in Dept. SS-14]*

**NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

[FILED CONCURRENTLY WITH
THE DECLARATION OF HAIK
HACOPIAN WITH EXHIBITS;
DECLARATION OF ZORIK
MOORADIAN; DECLARATION OF
SHOHAM J. SOLOUKI;
DECLARATION OF JULIA GARCIA;
DECLARATION OF JUAN MANUEL
CONTRERAS; AND [PROPOSED]
ORDER]

Date: June 6, 2024

Time: 10:00 a.m.

Dept.: SS-14

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9 of other persons similarly situated and similarly aggrieved employees
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1 **PLEASE TAKE NOTICE** that, pursuant to Cal. Rules of Court, rule 3.769, on June
2 6, 2024 at 10:00 a.m. or as soon thereafter as the matter may be heard in Department SS-14
3 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California
4 90012, Plaintiff Julia Garcia and Plaintiff Juan Manuel Contreras ("Plaintiffs"), individually
5 and on behalf of a similarly-situated class of individuals, will and hereby do move this Court
6 for an order:

7 1. Preliminarily approving the proposed class settlement of this lawsuit;

8 2. Provisionally certifying the Class, defined as follows:

9 All current and former non-exempt, hourly paid employees who
10 worked for Defendant New Vista Nursing Operator, LLC in
11 California at any time during the period from March 7, 2018 to
12 June 11, 2023 ("Class Period").

13 3. Preliminarily appointing Plaintiff Julia Garcia and Plaintiff Juan Manuel
14 Contreras as Class Representatives;

15 4. Preliminarily appointing Zorik Mooradian and Haik Hacopian of Mooradian
16 Law, APC and Shoham J. Solouki of Solouki & Savoy, LLP as Class Counsel;

17 5. Preliminarily approving the proposed settlement of Plaintiffs' Private
18 Attorneys General Act ("PAGA") claims;

19 6. Appointing Phoenix Settlement Administrators as the third-party settlement
20 administrator;

21 7. Scheduling a hearing to consider whether the class settlement should be finally
22 approved, and whether to award an amounts for Service Awards to the Class Representatives,
23 attorneys' fees and costs to Class Counsel, and settlement administration costs; and

24 8. Approving the proposed Class Notice, and ordering that it shall be
25 disseminated to the proposed Settlement Class as provided in the Class Action and PAGA
26 Settlement Agreement.

27 This Motion is based on this Notice of Motion, the accompanying Memorandum of
28 Points and Authorities, the Declaration of Haik Hacopian with Exhibits, the Declaration of
Zorik Mooradian, the Declaration of Shoham J. Solouki, the Declaration of Julia Garcia, the

1 Declaration of Juan Manuel Contreras, the pleadings and other papers filed in this action, and
2 on any further oral or documentary evidence or argument presented at the time of hearing.

3 The Class Action and PAGA Settlement Agreement is attached as **Exhibit “A”** to the
4 Declaration of Haik Hacopian. The proposed Class Notice is attached to the Class Action and
5 PAGA Settlement Agreement. See HH Decl. ¶9, Ex. A.

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Dated: May 7, 2024

MOORADIAN LAW, APC
SOLOUKI SAVOY, LLP

By: /s/Haik Hacopian
Zorik Mooradian, Esq.,
Haik Hacopian, Esq.,
Shoham J. Solouki, Esq.
Attorneys for Plaintiffs, individually and on
behalf of other persons similarly situated and
similarly aggrieved employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs, Julia Garcia and Juan Manuel Contreras (“Class Representatives” or
4 “Plaintiffs”) and Defendant New Vista Nursing Operator, LLC (“New Vista” or “Defendant”)
5 have reached a proposed class settlement with a non-reversionary Gross Settlement Amount
6 of \$500,000 for a Class consisting of approximately 450 non-exempt employees who worked
7 for New Vista at their sole skilled nursing facility in Sunland, California from March 7, 2018
8 through June 11, 2023 (“Class Period”). Class Members will release claims through that date
9 and receive settlement payments based on the proportionate workweeks they worked for New
10 Vista through that date. The Settlement anticipates coverage for a minimum of 38,113
11 workweeks and a maximum of 41,924 through the end of the Class Period, before a negotiated
12 escalator provision may be invoked. This settlement results in a fair, reasonable, and adequate
13 recovery consisting of a gross workweek value of \$12.50 (assuming 40,000 workweeks), and
14 an average settlement payment in excess of \$555.00.

15 This Settlement resolves this class action lawsuit and settles the wage and hour claims
16 for all Settlement Class Members who do not request exclusion. Payments will be made on an
17 opt-out non-reversionary basis.

18 The proposed settlement is memorialized in the “Class Action and PAGA Settlement
19 Agreement” hereinafter referred to as “Settlement Agreement” or “S.A.,” which is based on
20 the LASC model agreement for class and PAGA settlements. A true and correct copy of which
21 is attached to the accompanying Declaration of Haik Hacopian (hereinafter “HH Decl.”) as
22 **Exhibit “A”**.

23 The Parties have conducted an investigation concerning the facts and law during the
24 pendency of this action and which included production of class records and data and expert
25 analysis of same, conferences, and a mediation session before an experienced mediator, Mr.
26 Jeffrey Krivis.

This proposed settlement is well within the range of what constitutes a fair, reasonable,
and adequate settlement to all concerned especially in light of the legal and factual obstacles

1 that Plaintiffs faced, the sharply contested issues involved, the risks and costs of further
2 litigation, and the tangible monetary benefits to be received by Plaintiffs and the Class. The
3 proposed notice procedure comports with Cal. Rules of Court, rule 3.769, and due process
4 requirements. The notice program should be approved and a final fairness hearing set.

5 **II. SUMMARY OF THE LITIGATION**

6 **A. Defendant, Class Members, and Plaintiffs**

7 Defendant New Vista Nursing Operator, LLC (New Vista) operates a skilled nursing
8 and assisted living facility in Sunland, California where Plaintiffs and Class Members were
9 employed. Class members worked nursing/caregiving, housekeeping, kitchen, and
10 administrative positions. The class count, as of April 11, 2023 (mediation date), is 428
11 employees who worked 38,113 workweeks, 203 of whom are former employees. There are at
12 least 312 employees covered by PAGA and 9,291 PAGA Pay Periods. Plaintiffs tally 179,519
13 total shifts. The average shift length based on the time data is 8.3 hours and average rate of
pay is \$24.56/hour. Declaration of Haik Hacopian (hereinafter “HH Decl.”) ¶7.

14 **B. Plaintiffs’ Lawsuits**

15 On March 7, 2022, Plaintiff Julia Garcia commenced this Action by filing a complaint
16 alleging causes of action against Defendant for (1) Failure to Provide Meal Periods; (2) Failure
17 to Provide Paid Rest Periods; (3) Failure to Pay Wages; (4) Failure to Timely Pay Wages at
18 Termination/Separation; (5) Failure to Provide Compliant Itemized Wage Statements; (6)
19 Violation of Unfair Business Practices Act – Bus. & Prof. Code §§17200, et seq. On October
20 7, 2022, Plaintiff Julia Garcia filed a First Amended Complaint alleging a cause of action
21 against Defendant for Penalties Pursuant to California’s Private Attorney General Act (Cal.
Lab. Code §§ 2698 et. seq.). S.A. ¶2.1.

22 On May 17, 2022, Plaintiff Juan Manuel Contreras filed a class action complaint
23 against Defendant entitled Juan Manuel Contreras v. New Vista Nursing Operator, LLC, in
24 Los Angeles County Superior Court, filed as Case No. 22STCV16298, asserting causes of
25 action that overlapped those asserted in the Garcia Action (the “Contreras Action”). On
26 August 23, 2022, the Garcia Action and the Contreras Action were deemed related within the

1 meaning of California Rules of Court, rule 3.3000(a), the Garcia Action was designated the
2 lead case. Subsequent to the mediation, it was agreed that the Contreras Action would be part
3 of the settlement reached between Plaintiff Julia Garcia and Defendant; that Plaintiff Juan
4 Manuel Contreras would be added as a named plaintiff in the Garcia Action and that the
5 Contreras Action would thereafter be dismissed without prejudice. S.A. ¶2.6.

6 On August 16, 2023, Plaintiff Julia Garcia filed a Second Amended Complaint adding
7 Plaintiff Juan Manuel Contreras as an additional named plaintiff, amending the class period
8 to be consistent with the settlement period, and alleging a cause of action against Defendant
9 for Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of
10 Duties (Cal. Lab. Code §§ 2800 and 2802), as asserted in the Contreras Action. The Second
11 Amended Complaint is the operative complaint in the Action. (the “Operative Complaint.”)
12 S.A. ¶2.1.

13 **C. Discovery and Mediation**

14 The Parties have conducted investigation of the operative facts and applicable law
15 during the pendency of the case through informal discovery requests. Prior to mediation,
16 Plaintiff Garcia obtained copies of employee handbooks and employee agreements, a class
17 list with hire dates, termination dates, and job titles, timekeeping forms and policies, and work
18 schedules. Plaintiff Garcia also received a 15% sample of electronic time and payroll data
19 which was analyzed by an expert. HH Decl. ¶8.

20 On April 11, 2023, Plaintiff Garcia and Defendant participated in a full-day mediation
21 before Mr. Jeffrey Krivis. The Parties were able to reach a resolution at the mediation and
22 entered into a Memorandum of Understanding (“MOU”). The Parties ultimately entered into
23 their Class Action and PAGA Settlement Agreement incorporating the MOU’s terms and
24 which was based on the LASC model agreement for class and PAGA settlements, a true and
25 correct copy of the final executed version of which is attached as **Exhibit “A”** to the
26 Declaration of Haik Hacopian. HH Decl. ¶9, Ex. A.

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1 **III. THE PROPOSED SETTLEMENT**

2 **A. The Essential Terms of the Settlement**

3 If the Court approves this settlement, Defendant will pay the gross sum of \$500,000
4 ("Gross Settlement Amount" or "GSA") which will be used to fund this Settlement and make
5 payments to Class Members, who will be paid on an all-in non-reversionary opt-out basis. The
6 Gross Settlement Amount excludes the employer share of taxes on the wage component of the
7 Settlement which will be separately funded by Defendant. HH Decl. ¶10.

8 The principal terms of the class action settlement are summarized below:

- 9 • Gross Settlement Amount. S.A. ¶¶1.22 and 3.1: \$500,000
10 • Minus Court-approved Attorneys’ Fees (35%). S.A. ¶3.2.2: (\$175,000)
11 • Minus Court-approved Cost Award. S.A. ¶3.2.2: (\$25,000)
12 • Minus Court-approved Service Awards of \$10,000
13 to each Plaintiff. S.A. ¶3.2.1: (\$20,000)
14 • Minus estimated settlement administration costs. S.A. ¶3.2.3: (\$9,000)
15 • Minus 75% PAGA Payment to LWDA. S.A. ¶3.2.5: (\$15,000)
16 • Minus 25% PAGA Share to Aggrieved Employees. S.A. ¶3.2.5: (\$5,000)

17 Total Deductions from Gross Settlement Amount: (\$249,000)
18 Net Settlement Amount (“NSA”). S.A. ¶1.28: \$251,000

19 The approximate estimated simple average class settlement payment, assuming
20 maximum awards and participation by 450 individuals, calculates to \$557.77. HH Decl. ¶11.
21 There are presently no other claims or lawsuits that would be impacted by this settlement. HH
22 Decl. ¶12.

23 **B. Class Members**

24 Class Members are defined as follows:
25 All current and former non-exempt, hourly paid employees who worked for
26 Defendant New Vista Nursing Operator, LLC in California at any time
during the period from March 7, 2018 to June 11, 2023 (“Class Period”).
S.A. ¶¶1.5, 1.12.

Aggrieved Employees are defined as follows:

1 All current and former non-exempt, hourly paid employees who worked for
2 Defendant New Vista Nursing Operator, LLC in California at any time
3 during the period from May 5, 2021 to June 11, 2023 (“PAGA Period”).
4 S.A. ¶¶1.4, 1.31.

5 **C. Settlement Payments to Class Members**

6 The Individual Class Payment, which is a Participating Class Member’s pro rata share
7 of the Net Settlement Amount, is calculated according to the number of Workweeks they
8 worked during the Class Period (“the period from March 7, 2018 through June 11, 2023”).
9 S.A. ¶1.23. An Individual Class Payment calculated by (a) dividing the Net Settlement
10 Amount by the total number of Workweeks worked by all Participating Class Members during
11 the Class Period and (b) multiplying the result by each Participating Class Member’s
12 Workweeks. S.A. ¶3.2.4.

13 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25%
14 of the PAGA Penalties calculated according to the number of Workweeks worked during the
15 PAGA Period (“the period from May 5, 2021 through June 11, 2023”). S.A. ¶¶1.24 and 1.31.
16 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount
17 of the Aggrieved Employees’ 25% share of PAGA Penalties (\$5,000) by the total number of
18 PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and
19 (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods. S.A.
20 ¶3.2.5.1.

21 **D. Settlement Allocation to Class Members**

22 Twenty Percent (20%) of each Participating Class Member’s Individual Class
23 Payment will be allocated to settlement of wage claims (the “Wage Portion”), subject to tax
24 withholding and will be reported on an IRS W-2 Form. Eighty Percent (80%) of each
25 Participating Class Member’s Individual Class Payment will be allocated to settlement of
26 claims for interest and penalties (the “Non-Wage Portion”), not subject to wage withholdings
and will be reported on IRS 1099 Forms. S.A. ¶3.2.4.1. Individual PAGA Payments will be
reported on IRS 1099 Forms. S.A. ¶3.2.5.2.

E. Opt-Outs and Objections

Each Class Member shall have sixty (60) days after the Administrator mails the Class

1 Notice (plus an additional seven (7) days for Class Members whose Class Notice is re-mailed)
2 to exclude themselves or challenge the number of Class workweeks or PAGA Pay Periods
3 attributed to them. Participating Class Members (those Class Members who have not opted-
4 out) may send written objections to the Administrator during that timeframe.

5 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
6 send the Administrator a signed written Request for Exclusion which is a letter from a Class
7 Member or his/her representative that reasonably communicates the Class Member's election
8 to be excluded from the Settlement and includes the Class Member's name, address and email
9 address or telephone number. To be valid, a Request for Exclusion must be timely faxed,
10 emailed, or postmarked by the Response Deadline. S.A. ¶7.5.1.

11 Participating Class Members (those Class Members who do not opt-out) may send
12 written objections to the Administrator. In the alternative, Participating Class Members may
13 appear in Court (or hire an attorney to appear in Court) to present verbal objections at the
14 Final Approval Hearing. S.A. ¶7.7.2.

15 Each Class Member may challenge the number of Class Workweeks and PAGA Pay
16 Periods (if any) allocated to the Class Member in the Class Notice with the Administrator.
17 The Administrator must encourage the challenging Class Member to submit supporting
18 documentation. In the absence of any contrary documentation, the Administrator is entitled to
19 presume that the Workweeks contained in the Class Notice are correct so long as they are
20 consistent with the Class Data. The Administrator's determination of each Class Member's
21 allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise
22 susceptible to challenge. S.A. ¶7.6.

23 **F. Release**

24 Effective on the date when Defendant fully funds the entire Gross Settlement Amount
25 and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
26 Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all
Released Parties. S.A. ¶5.

Release by Participating Class Members:

1 All Participating Class Members, on behalf of themselves and their respective former
2 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
3 release Released Parties from any and all claims that were or could have been alleged based
4 on the facts set forth in the operative complaint in the Action that arose during the Class Period
5 including without limitation with respect to the following claims: (a) failure to pay all
6 overtime wages owed; (b) failure to pay minimum wages owed; (c) failure to provide meal
7 periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit
8 rest periods, or provide premium pay for non-compliant rest periods; (e) failure to issue
9 accurate, itemized wage statements and maintain payroll records; (f) failure to timely pay all
10 wages due upon separation of employment; (g) failure to timely pay all wages due during
11 employment; (h) failure to reimburse for necessary business expenses; (i) all claims under
12 California Business & Professions Code § 17200 for unfair business practices that could have
13 been premised on the facts, claims, causes of action or legal theories described above; (j)
14 violation of or claims under the following sections of the California Labor Code, sections 201,
15 202, 203, 204, 210, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802;
16 and (j) violation of the California Industrial Wage Orders that could have been premised on
17 the facts, claims, causes of action or legal theories described above, as well as any potential
18 penalties, interest or attorneys' fees associated with all of such causes of action under
19 California law. ("Released Class Claims"). Except for Plaintiffs' Release by Plaintiffs and as
20 set forth in Section 5.3 of this Agreement, Participating Class Members do not release any
21 other claims, including claims for vested benefits, wrongful termination, violation of the Fair
22 Employment and Housing Act, unemployment insurance, disability, social security, workers'
23 compensation, or claims based on facts occurring outside the Class Period. S.A. ¶5.2.

Release by Non-Participating Class Members Who Are Aggrieved Employees:

23 All Aggrieved Employees, regardless of whether they are Participating Class Members
24 or Non-Participating Class Members, on behalf of themselves and their respective former and
25 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
26 release the Released Parties from all claims, demands, rights, liabilities and causes of action

1 under the California Labor Code Private Attorneys General Act that were alleged, or
2 reasonably could have been alleged, based on the claims asserted in the operative complaint
3 in the Action, the PAGA Notice (and any amendments or supplements thereto) and ascertained
4 in the course of the Action, arising during or with respect to the PAGA Period. ("Released
5 PAGA Claims"). The foregoing release shall be binding on Plaintiffs, the Aggrieved
6 Employees, and the State of California, and shall entitle Defendant bar by res judicata any
7 claim under the PAGA brought by any person, including the Aggrieved Employees, on behalf
8 of the State of California, as to any claims predicated on the Released PAGA Claims. S.A.
9 ¶5.3.

10 "Released Parties" means: Defendant, and each of its former and present directors,
11 officers, principals, trustees, shareholders, owners, managers, managing agents, attorneys,
12 insurers, predecessors, successors, assigns, DBAs, parents, subsidiaries, and affiliates. S.A.
13 ¶1.41.

14 Only Named Plaintiffs will be providing a general release and waiver of Civil Code
15 §1542. S.A. ¶5.1.

16 **G. Service Award to Named Class Representatives**

17 As part of the settlement, at the time of seeking final approval of the proposed class
18 action settlement, Plaintiffs will separately apply for a Service Award in the amount of Ten
19 Thousand Dollars (\$10,000) each for their services to the Settlement Class and for a general
20 release of all claims. S.A. ¶¶3.2.1 & 5.1. "[I]ncentive awards are fairly typical in class action
21 cases ... and are intended to compensate class representatives for work done on behalf of the
22 class [and] to make up for financial or reputational risk undertaken in bringing the action." *In*
23 *re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiffs'
24 requested incentive payments are intended to recognize Plaintiffs' contributions on behalf of
25 the Class and are fair in relation to the total settlement, their efforts, and standing alone. HH
26 Decl. ¶13. Plaintiffs have put a significant amount and time and effort participating in this
case and understand their role and obligations as class representatives. Declaration of Julia
Garcia, ¶¶3-8. Declaration of Juan Manuel Contreras, ¶¶3-8.

1 **H. Attorneys' Fees & Costs**

2 Defendant agrees not to oppose Plaintiffs' counsel's application for an attorneys' fees
3 award of \$175,000.00, which is thirty-five percent (35%) of the Gross Settlement Amount of
4 \$500,000, and payment of documented litigation costs and expenses up to \$25,000. S.A.
5 ¶3.2.2. Plaintiffs will submit detailed support for their request for a fee award along with their
6 motion for final approval of the settlement. For now, counsel submits that the requested fee is
7 fair compensation for undertaking a complex, risky, expensive, and potentially time-
8 consuming litigation involving two cases on a purely contingent fee basis. Here, counsel has
9 incurred substantial attorneys' fees independently conducting pre-filing investigations,
10 analyzing the claims, litigating the case, conducting legal research and analysis, reviewing
11 significant documentary and electronic records produced by Defendant, performing data
12 analysis of employee timekeeping data and payroll records, preparing for and attending a full-
13 day mediation, negotiating the settlement, preparing and amending the long-form Class
14 Action and PAGA Settlement Agreement, Class Notice, and preparing this Motion for
15 Preliminary Approval, and otherwise aggressively pursuing the interests of the putative class.
16 HH Decl. ¶14.

17 Both California and federal courts have recognized that an appropriate method for
18 awarding attorneys' fees in class actions is to award a percentage of the "common fund"
19 created as a result of the settlement. *See Wershba v. Apple Computer, Inc.* (2001) 91
20 Cal.App.4th 224, 254 (recognizing both the "percentage of recovery" and "lodestar/
21 multiplier" methods). Plaintiffs' counsel's request for fees of thirty-five percent (35%) of the
22 Gross Settlement Amount is within the range of reasonableness. Historically, courts have
23 awarded percentage fees in the one-third range. *See, e.g., Laffitte v. Robert Half Int'l, Inc.*
24 (2014) 231 Cal.App.4th 860, 878 ("[S]tudies show that . . . fee awards in class actions average
25 around one-third of the recovery."); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 n.11
26 (2008) (accord); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical*
Study, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent
studies of class action litigation nationwide conclude that a one-third fee is consistent with

1 market rates).

2 In conclusion, counsel submits that its request for attorneys' fees is reasonable when
3 viewed as an overall percentage of the settlement as well as with reference to counsel's
4 loadstar. In light of the risks and significant work undertaken by counsel, the results obtained
5 for the class, and the efficiency with which the Parties collaborated to conduct the litigation,
6 the fee and cost request is fair and reasonable. HH Decl. ¶15.

7 8 **IV. PRELIMINARY APPROVAL IS WARRANTED**

9 Rules of Court, rule 3.769 conditions the settlement of a class action on court approval,
10 which is generally evaluated under the federal standards applicable under Rule 23 of the Fed.
11 R. Civ. P. 23. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337
12 (2012) (stating that Rule 3.769 requires the trial court to determine "that the settlement is fair,
13 reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150
14 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine "whether a
15 proposed settlement is fundamentally fair, adequate, and reasonable"). To be approved, a
16 settlement must be "fair, reasonable and adequate to all concerned." *Reed*, 208 Cal.App.4th at
17 337. Settlement is the preferred means of dispute resolution, particularly in complex class
18 action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The
19 Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken
20 as a whole is fair, and is not the product of fraud or collusion between the negotiating parties.
21 *See, e.g., Hanlon*, 150 F.3d at 1027. There is an initial presumption of fairness when the
22 settlement agreement was negotiated at arms' length by experienced counsel. *See, e.g., Kullar*
23 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. A trial court's decision to approve
24 a class action settlement is within the sound discretion for the trial judge and may be reversed
25
26

1 only if the trial court acted outside of its broad discretion. *See Munoz v. BCI Coca-Cola*
2 *Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399, 407.

3 **A. Standard for Preliminary Approval**

4 To make a fairness determination, the Court should consider several factors, including:
5 "The strength of Plaintiff's case, the risk, expense, complexity and likely duration of further
6 litigation, the risk of maintaining class action status through trial, the amount offered in
7 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
8 experience and views of counsel." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.
9 "The list of factors is not exclusive and the Court is free to engage in a balancing and weighing
10 of the factors depending on the circumstances of each case." *Wershba v. Apple Computer,*
11 *Inc., supra*, 91 Cal.App.4th at 245. It should be noted that the reasonableness of a settlement
12 is not dependent upon its actual value approaching the potential recovery plaintiff might have
13 received if he had succeeded at trial, *Sutter Health Unins. Pricing Cases* (2009) 171
14 Cal.App.4th 495, 511 (emphasizing that the court must be mindful that "[t]he ... class case
15 could have gone to an incredibly lengthy and expensive jury trial, and the class could have
16 lost the case" and must account for that likelihood in discounting the value of the claims for
17 settlement purposes [emphasis in original]). As discussed below, the proposed settlement is
18 fair, adequate and reasonable in light of the overall balance of factors in this case.

18 **B. The Strength of Plaintiff's Case**

19 1. Unpaid Wage Claims

20 Plaintiffs contended that off-the-clock work ensued from the requirement that
21 employees report before the start of a scheduled shift to ensure timely clock ins as well as
22 policies geared toward strict avoidance of overtime. Defendant countered that it paid for all
23 hours worked, including overtime, and that employees were not expected to start working
24 before a scheduled shift. Plaintiffs' review of the electronic time data did not reveal rounding
25 and the handbook articulated a compliant timekeeping and wage payment policy. New Vista
26 also represented that employees certified the accuracy of their timesheets every pay period
and were instructed to raise any concerns with management. In light of the foregoing, it will

1 be extremely difficult to advance an unpaid wage claim on behalf of the class. A determination
2 of whether any compensable work was performed off-the-clock will depend on a specific shift,
3 position, department, management, and other circumstances that will not translate to
4 certification. Any assessment will rely on morass of individual inquiries that will require a
5 determination as to whether New Vista caused any instance of work off-the-clock or whether
6 such was due to employee choice and without New Vista's awareness. At five (5) additional
7 minutes owed per shift, unpaid wages calculate to \$553,481 with interest. Based on the
8 challenges in certifying and prevailing on an unpaid wage claim, Plaintiffs do not value this
9 claim at more than 10% of the assess exposure, or \$55,348.10. HH Decl., ¶16.

10 Plaintiffs' analysis reveals overtime underpayment due to a miscalculation of
11 employees' regular rate which results in \$34,416 owed and additional value for this claim.
12 HH Decl., ¶17.

13 2. Meal Breaks and Rest Breaks

14 New Vista's handbook articulated compliant meal break policies for both first and
15 second meal breaks that permitted waivers. Review of the electronic time data revealed an
16 extremely high degree of compliance with recorded first meal breaks for 99.3% of shifts
17 exceeding five hours. Of those recorded breaks, 99.9% were thirty (30) minutes or more in
18 length. Plaintiffs contended that this uncharacteristically high degree of compliance was
19 potentially the byproduct of manipulation. Moreover, that even to the extent a meal break was
20 exactly 30 minutes in duration, the net meal break available to the employee would not be that
21 long because of time clock use including the need to end a meal break before the 30th minute
22 to ensure a clock in at the 30th minute. Defendant countered that employees were all trained
23 as to proper break relief and timing, that meal breaks were properly scheduled, and that it
24 maintained a system to flag and pay premiums when warranted (which Plaintiffs extrapolated
25 2,370 such payments during the class period). HH Decl., ¶18.

26 It will be very difficult for Plaintiffs to prevail on a meal break claim in the face of
overwhelmingly compliant objective findings. Plaintiffs would have to craft some
certification theory that would enable them to establish that what appear to be compliant

1 recorded meal breaks were in fact manipulated to show compliance. Significant individualized
2 inquiries would entail in efforts to discern whether specific entries trigger a meal period
3 violation or not. As such, at a potential exposure value as derived from Plaintiffs potentially
4 being able to certify a claim around a tenth of the 176,527 shifts with recorded meals, the
5 amount would come to \$433,550.31. In light of the challenges in crafting a certifiable theory
6 and prevailing on the merits, Plaintiffs do not value a meal break claim in excess of 15% of
7 the assessed exposure, or \$65,032.55. HH Decl. ¶19.

8 As to rest breaks, Plaintiff Garcia complained that the workload did not allow
9 employees an opportunity to take their rest breaks. Defendant countered that, as with meal
10 breaks, employees were trained as to rest break requirements, it maintained compliant
11 policies, and scheduled timely rest breaks. Ultimately, that any instances of missed rest breaks
12 (likely to be isolated to the housekeeping department) were entirely a result of employee
13 volition. Moreover, that certification of such a claim is highly improbable due to the absence
14 of written records (as rest breaks are not required to be recorded) and a morass of factual
15 inquiry necessary to assess the reasons why any individual employee missed a rest break in
16 specific instances. Plaintiffs assess potential maximum exposure at not more than 10% of the
17 179,075 shifts in excess of 3.5 hours entitling employees to rest breaks, or \$439,808.20. In
18 light of the challenges inherent in the claim, both on certification and merits, Plaintiffs do not
19 assess the value of a rest break claim in excess of 10% of exposure, of \$43,980.82. HH Decl.
20 ¶20.

21 3. Waiting Time Penalties

22 Defendant represented that it is their practice to pay terminated employees their final
23 paychecks on their termination date, as consistent with Ms. Garcia's experience. The claim
24 for waiting time penalties would be derivative of the claims for unpaid wages and meal and
25 rest premiums and the weaknesses described there would directly impact the viability of this
26 claim. *See Naranjo v. Spectrum Sec. Svcs.* (2022) 13 Cal.5th 93. At 203 terminated
employees from March 7, 2019 to April 11, 2023, the maximum waiting time penalties would
calculate to \$1,196,563.20. (203 employees x \$24.56 x 8 hours x 30 days). A more realistic

1 exposure would be based around wages owed to 18 of the terminated employees subjected to
2 regular rate violations, or \$106,099.20, which would be value of the claim for settlement
3 purposes. HH Decl. ¶21.

4 4. Wage Statement Penalties

5 New Vista provided paper wage statements to all employees, including those receiving
6 their pay through direct deposit. The wage statements were facially compliant with the
7 requirements of Labor Code Section 226. As with waiting time penalties, this claim would be
8 derivative of unpaid wage, meal, and rest break violations. *See Naranjo, supra*. Although
9 maximum exposure calculates to \$802,900 for the 317 employees during the wage statement
10 penalty period for 9,291 pay periods from March 7, 2021 to April 11, 2023, value is more
11 appropriately assessed on behalf of 77 of these employees subjected to regular rate
12 underpayment, which results in \$23,750, the value of this claim for settlement purposes. HH
Decl. ¶22.

13 5. Unreimbursed Business Expenses

14 There is the potential issue of housekeeping employees purchasing cleaning supplies
15 but New Vista maintained that it stocked all necessary supplies. To the extent that any supplies
16 were purchased, they were not at the behest of New Vista and likely entailed an employee
17 purchasing a preferred brand of product. Plaintiffs do not attribute any value to this claim. HH
18 Decl. ¶23.

19 6. PAGA Claims

20 There are 9,291 PAGA Pay Periods. Assuming Plaintiffs are to identify a predicate
21 violation for every pay period across the unpaid wage, meal break, and rest break claims and
22 assessing a \$100 penalty for each and every pay period, results in \$2,787,300 in maximum
23 penalties. Applying an 80% reduction to maximum penalties results in a potential exposure of
24 \$557,460. HH Decl. ¶8. See e.g., *Fleming v. Covidien* (C.D. Cal. Aug. 12, 2011) 2011 WL
25 7563047 at *4 (reduction of PAGA civil penalties for wage statement violations from
26 \$2,800,000 to \$500,000, because employees suffered no injury, defendants were not aware
that their wage statements violated the law, and that they took prompt steps to correct

1 violations.) The intention of PAGA penalties is not to serve a punitive or compensatory
2 purpose but to sufficiently act as a deterrent to future Labor Code violations. Moreover, a
3 court may readily conclude that a lower penalty assessment, or a nominal one, will suffice as
4 this Defendant is a smaller employer. Plaintiffs do not believe that any six figure PAGA
5 penalty recovery is very realistic in this case. In light of the foregoing, and also because of
6 potential defenses to the substantive claims that would bear on PAGA liability, the Parties’
7 \$20,000 allocation for release of the PAGA claims reflects a very fair compromise and is
8 extremely reasonable. HH Decl. ¶24.

9 **C. Risks and Uncertainty**

10 Although Plaintiffs steadfastly maintain that their claims are meritorious, they
11 acknowledge that their position includes real risks and uncertainty. In deciding whether to
12 approve the settlement, the Court must balance the risk factors against an “understanding of
13 the amount in controversy and the realistic range of outcomes of the litigation.” *Kullar*, 168
14 Cal.App.4th at 130, 133; *Munoz*, 186 Cal.App.4th at 408-09. In this case, the settlement is fair
15 and adequate when compared to the total potential exposure and the risks inherent in
16 Plaintiffs’ claims. HH Decl. ¶25.

17 As courts have observed, “simply because a settlement may amount to only a fraction
18 of the potential recovery does not in itself render it unfair or inadequate. Compromise is the
19 very nature of settlement.” *Boyd v. Bechtel Corp.* (C.D. Cal. 1979) 485 F. Supp. 610, 618. In
20 this case, Plaintiffs consider the settlement to be significantly more than a “fraction,”
21 particularly considering the various potential complications, dangers and pitfalls that
22 proceeding would entail. HH Decl. ¶25.

23 In addition to considering the value of immediate payment for Settlement Class
24 Members, Plaintiffs’ counsel discounted the value of the class claims based on a variety of
25 factors, including the California Supreme Court’s decision in *Brinker Restaurant Corp. v.*
26 *Superior Court* (2012) 53 Cal.4th 1004. Defendant could have argued that it sufficiently
provided breaks without “policing” them. Moreover, Plaintiffs’ theory of liability for rest
break violations was weaker since employers have no obligation to record rest breaks (as rest

breaks are paid breaks) and New Vista did not do so. The relative lack of written proof, except for potential testimony from Class Members, diminished the prospect of certifying the claim. Thus, a significant discount on those claims was warranted. HH Decl. ¶¶18-20.

The potential penalties were deemed to be substantial claims. Defendant would certainly raise the good-faith dispute defense to the waiting time penalty claims, potentially precluding their imposition¹. Success on the penalty claims would require proving that the Defendant's conduct was "willful." As to PAGA claims, there existed a high likelihood of a nominal award on account of New Vista being a smaller employer and minimal chance of being able to "stack" penalties. HH Decl. ¶¶21-22, 24.

In short, Plaintiffs' ability to prevail on certification and merits was far from certain. There is the risk that prolonged litigation would likely have produced a worse result for Settlement Class Members. Thus, this factor supports preliminary approval.

D. Risk, Expense, Complexity, and Duration of Further Litigation

This factor also weighs in favor of settlement approval. The parties had engaged in significant review and assessment of the asserted claims which included expert assistance. Defendant could have moved for summary adjudication on all or some of the claims. Moreover, preparation for class certification and trial remained for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiffs and/or summary judgment ruling. As a result, the parties would incur considerably more attorneys' fees and costs through trial. This settlement avoids those risks and the accompanying expense. HH Decl. ¶26. Hence, an additional support for a preliminary approval.

E. Risk of Maintaining Class Action Status

To the extent any claims were certified, Defendant would certainly seek to decertify them. Absent settlement, there was a risk that there would never be a certified class. HH Decl.

¹ See, e.g., Cal. Code Regs. § 13520 (a good-faith dispute exists to a claim for waiting time penalties "when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.").

¶27. Thus, this factor, too, supports preliminary approval of the settlement.

F. Amount Offered in Settlement Given Realistic Value of Claims

This proposed settlement provides a fair and reasonable monetary recovery for the Class in the face of disputed claims and significant hurdles. HH Decl. ¶25. Courts recognize that the reasonableness of a settlement is not dependent upon it approaching the potential recovery plaintiffs might receive if successful at trial. *See In re Omnivision Tech., Inc.* (N.D. Cal. Jan. 9, 2008) 2008 WL 123936; *see also Nat'l Rural Telecomm. Coop. v. Directv, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery"); *Officers for Justice v. Civil Serv. Comm* (9th Cir. 1982) 688 F. 2d 615, 628 (it is "the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness"). The \$500,000 Gross Settlement Amount fully captures the \$328,626.67 assessed case value on viable class claims, which is extremely favorable given the significant risk factors described above. HH Decl. ¶25.

G. Discovery Completed and the Status of Proceedings

The lawsuit involved informal discovery which included the production of significant payroll and timekeeping records, and information regarding the size and makeup of the putative class. It was only after the completion of this process and expert analysis that the parties participated in mediation and thereafter reached the proposed settlement. HH Decl. ¶¶8 & 9. Here is an additional factor germane to the preliminary approval.

H. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented by competent and experienced counsel who pressed Plaintiffs' claims forward against a reputable employment defense firm. Class Counsel possesses extensive experience litigating wage and hour class actions from the plaintiff side and has been appointed as class counsel in numerous cases alleging similar claims. HH Decl. ¶¶2-3, Declaration of Zorik

1 Mooradian (hereinafter “ZM Decl.”) ¶¶2-5, Declaration of Shoham J. Solouki (hereinafter
2 “SS Decl.”) ¶¶9-15. Class Counsel conducted review and analysis of Defendant’s practices
3 and timekeeping and payroll records and drew on its extensive experience in similar cases to
4 effectively assess the strengths and weaknesses of Plaintiffs’ claims. The settlement was also
5 reached with the input and assistance of an experienced and respected neutral mediator. HH
6 Decl. ¶¶8 & 9. This factor strongly supports preliminary approval. *See, Kullar, supra*, 168
7 Cal.App.4th at 130 (“The court undoubtedly should give considerable weight to the
8 competency and integrity of counsel and the involvement of a neutral mediator in assuring
9 itself that a settlement agreement represents an arm's length transaction entered without self-
10 dealing or other potential misconduct.”).

11 **V. THE PRELIMINARY APPROVAL STANDARD HAS BEEN MET**

12 The Court should grant preliminary approval of the settlement and direct that notice
13 be given if the proposed settlement when it: (1) falls within the range of possible approval;
14 (2) appears to be the product of serious, informed and non-collusive negotiations; and (3) has
15 no obvious deficiencies. *See Manual for Complex Litigation* § 30.41 (3rd Ed. 1995); 4
Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

16 The proposed settlement reflects a substantial portion of the estimated recovery that
17 the Settlement Class could reasonably expect in light of the potential litigation risks. As well,
18 the proposed settlement is for a sizable sum in light of the strong defenses and provides for
19 significant individual recovery. In accordance, the proposed settlement is within the range of
20 possible approval for communication of a notice in conformity and consideration thereof by
21 the Settlement Class. The Court will have the opportunity to again assess the reasonableness
22 of the settlement after the Class has had the opportunity to opt-out or object. HH Decl. ¶28.

23 **A. The Settlement Resulted From Serious, Informed, and Non-Collusive** 24 **Negotiations**

25 This proposed class-wide settlement is the result of arm's-length negotiations by
26 counsel, punctuated by a full-day mediation session before an experienced mediator and is,
therefore, entitled to an initial presumption of fairness. *See Kullar*, 168 Cal.App.4th at 130.

1 Plaintiffs reviewed data for the class and conducted analysis of the data and records, with the
2 participation of an expert, to arrive at their estimated damage figures. HH Decl. ¶¶8-9, 16-25.

3 The parties reached an agreement to mediate before Mr. Jeffrey Krivis, a respected
4 neutral mediator and were able to agree to a resolution at mediation. They then finalized the
5 Class Action and PAGA Settlement Agreement, basing it on the LASC model. HH Decl. ¶9.
6 Therefore, this factor also supports preliminary approval.

7 **B. Provisional Class Certification is Appropriate Here**

8 “Litigation by class action has long been recognized as a superior method of resolving
9 wage and hour claims in California.” *Martinez v. Joe’s Crab Shack Holdings* (2014) 231
10 Cal.App.4th 362, 367. Class certification is appropriate when there exists “an ascertainable
11 and sufficiently numerous class, a well-defined community of interest, and substantial benefits
12 from certification that render proceeding as a class superior to alternatives.” *Brinker*, 53
13 Cal.4th 1004 at 1021. As the Supreme Court has noted, “[c]laims alleging a uniform policy
14 consistently applied to a group of employees in violation of the wage and hour laws are of the
15 sort routinely, and properly, found suitable for class treatment.” *Id.* at 1033. This is exactly
16 such a case.

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

18 A class is “ascertainable” where the members “may be readily identified without
19 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v.*
20 *Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed
21 Class is defined by reference to two objective characteristics: (1) individuals who worked as
22 non-exempt employees for Defendant New Vista in California, and (2) were employed by
23 Defendant New Vista at some time during the Class Period. Therefore, Class Members can be
24 identified from Defendant’s personnel and other employment records. As to numerosity, the
25 Class consists of around 450 individuals, making it highly impracticable to bring all class
26 members before the Court. HH Decl. ¶7.

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1 **2. The Community of Interest Requirements for Class Treatment are**
2 **Met**

3 “[T]he community of interest requirement embodies three factors: (1) predominant
4 common questions of law or fact; (2) class representatives with claims or defenses typical of
5 the class; and (3) class representatives who can adequately represent the class.” *Brinker*, 53
6 Cal.4th at 1021.

7 **a. Common Issues of Law and Fact Predominate**

8 The focus in a certification dispute is not on the merits of the case, but rather on what
9 types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug*
10 *Store, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. "Common questions of law and fact
11 are required in order to assure the interests of the litigants and the Court are furthered by
12 permitting the suit to proceed as a class action rather than in a multiplicity of separate suits."
13 *Cohen v. DIRECTV, Inc.* (2009) 178 Cal.App.4th 966, 975. Where the defendant
14 systematically engages in policies and practices that allegedly violate the Labor Code and
15 subject all of its employees to the same unlawful conduct, common questions of law and fact
16 will predominate over individualized issues. *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*
17 (2008) 169 Cal.App.4th 1524, 1538 (holding that a class of limousine drivers challenging their
18 compensation plan was proper for class treatment). Here, the predominance factor is met
19 because each claim challenges an alleged common policy or practice that Plaintiffs contend
20 are illegal. Plaintiffs' claims under the Labor Code are predicated on: a failure to pay for all
21 hours worked; meal, rest period policies and practices. These sorts of claims are commonly
22 held to be proper for class certification. *See, e.g., Williams v. Superior Court* (2013) 221
23 Cal.App.4th 1353, 1371 (certifying class based on uncompensated work time).

24 **b. The Claims of Named Plaintiff are Typical**

25 The typicality requirement is satisfied where class representatives have claims that are
26 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987)
191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the
same goods as the putative class in a consumer class action). Here, the claims of Plaintiffs are

1 typical of those held by the members of the proposed Class. First, Plaintiffs were employed
2 by New Vista during the proposed Class Period and was subject to its wage and hour practices.
3 Second, Plaintiffs claim they were injured by the same challenged practices they claims
4 injured the Class as a whole. Therefore, Plaintiffs have suffered the same alleged injuries as
5 the other members of the Class and satisfy the typicality requirement.

6 **c. Plaintiffs & Class Counsel Will Fairly & Adequately**
7 **Represent the Class**

8 The adequacy of representation requirement examines conflicts of interest between
9 named parties and the class they seek to represent. *See Capital People First v. State Dept. of*
10 *Developmental Services* (2007) 155 Cal.App.4th 676, 697. A party's claim of representative
11 status will only be defeated by a conflict that "goes to the very subject matter of the litigation."
12 *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Here, Plaintiffs and their counsel
13 will adequately represent the class as there are no conflicts between the named Plaintiffs and
14 the Class they seek to represent, and Plaintiffs have claims that are in line with those of the
15 class. Declaration of Julia Garcia, ¶¶3&4, Declaration of Juan Manuel Contreras, ¶¶3&4, HH
16 Decl. ¶5, ZM Decl. ¶7, SS Decl. ¶7. Plaintiffs' counsel also has extensive experience in wage
17 and hour class action litigation. HH Decl. ¶¶2-6, ZM Decl. ¶¶2-5, SS Decl. ¶9-15. For these
18 reasons, the Court should provisionally certify the proposed Class.

19 **3. Class-Wide Settlement is Superior to Other Available Methods of**
20 **Resolution**

21 Here, the alternative method of resolution would be multiple individual lawsuits,
22 challenging the same alleged wage and hour policies and practices of New Vista, and each
23 seeking a small amount of damages. Such duplicative litigation would be extremely inefficient
24 and costly for the courts and wasteful for judicial forums that would otherwise devote
25 resources to other matters. HH Decl. ¶29. In light of these concerns, a class action is the
26 superior method of resolving these wage and hour claims. *Martinez*, 231 Cal.App.4th at 367
("Litigation by class action has long been recognized as a superior method of resolving wage
and hour claims in California.")

1 **VI. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED**
2 **NOTICE**

3 This Court should order distribution to the Class Members of the proposed Class
4 Notice in both English and Spanish by first-class mail. S.A. ¶¶1.11 and 7.42. This manner of
5 giving notice is the "best notice practicable" under the circumstances because it provides
6 "individual notice to all members who can be identified through reasonable effort." *See Eisen*
7 *v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. As a general rule, class notice must strike
8 a balance between thoroughness and the need to avoid unduly complicating the content of the
9 notice and confusing class members. *Wershba*, 911 Cal.4th at 252. The proposed Notice of
10 Settlement is attached as Exhibit A to the Class Action and PAGA Settlement Agreement.
11 S.A. ¶5, Ex. A.

12 Here, the Parties propose that the settlement be administered by Phoenix Settlement
13 Administrators ("Phoenix" or "Settlement Administrator"), an experienced class action
14 settlement administrator. S.A. ¶1.2. The Settlement Administrator's duties are detailed in the
15 Class Action and PAGA Settlement Agreement. S.A. ¶¶4 & 7. Class Members' addresses are
16 ascertainable through Defendant's personnel and payroll records. To the extent that the
17 addresses of former employees have changed, Phoenix will run all the addresses provided
18 through the United States Postal Service Notice of Change Of Address database (which
19 provides updated addresses for any individual who has moved in the previous four years and
20 has notified the U.S. Postal Service of a forwarding address) and perform skip traces to obtain
21 current address information. *Id.* The Settlement Agreement allocates a maximum of \$9,000
22 for administration expenses, which is appropriate in light of the number of class members and
23 the size of the settlement and the extent of work to be performed in administering the
24 settlement of the class. S.A. ¶3.2.3. Plaintiffs have secured a bid from Phoenix to administer
25 the settlement for \$8,000. HH Decl., ¶30, Exh. C.

26 The content of the proposed Class Notice satisfies Cal. Rules of Court, rule 3.769(d)
because it advises class members of the nature of the claims, basic contentions and denials of
the parties and the key terms of the settlement, the deadline to opt-out, or object to the

1 settlement and the procedure by which to do so, explains the recovery formula and expected
2 recovery amount for each class member, and advises them that they will be bound by the terms
3 of the settlement if they do not request exclusion. S.A. ¶7.4.2, Ex. A. The proposed Class
4 Notice will also notify Settlement Class Members of the final approval hearing date and
5 provides the contact information for Class Counsel, and advises Settlement Class Members
6 that they may enter an appearance through counsel if they wish to. This manner of giving
7 notice satisfies Cal. Rules of Court, rule 3.769(e) as the most reliable and cost-effective
8 method of reaching Settlement Class Members.

9 **VII. THE PAGA ALLOCATION AND PAYMENTS SHOULD BE APPROVED**

10 The Settlement allocates \$20,000 for resolution of Plaintiff's PAGA claim with
11 \$15,000 (75%) payable to the LWDA and \$5,000 (25%) payable to Aggrieved Employees.
12 S.A. ¶3.2.5. PAGA Members are consist of persons who are employed or have been employed
13 by Defendant in the state of California as non-exempt employees during the period of time
14 from May 5, 2021 to June 11, 2023. S.A. ¶¶1.4 & 1.31. Plaintiff Garcia's PAGA notice was
15 communicated to the LWDA and Defendant on May 5, 2022 and was assigned case number
16 LWDA-CM- 882291-22. Plaintiff Conteras' notice is dated May 17, 2022 and was assigned
17 case number LWDA-CM-884228-22. HH. Decl., ¶12, Exh. "B". To the extent an Aggrieved
18 Employee is also a Settlement Class Member, they will receive their Individual PAGA
19 Settlement Payment even if they submit an exclusion request. As required, this Motion and
20 all supporting papers will be concurrently submitted to the LWDA.

21 **VIII. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

22 The Parties request that this Court set a hearing for final approval of the settlement on
23 a date appropriately scheduled to follow the deadline by which Settlement Class Members
24 must file objections to the settlement or opt-out. See Cal. Rule of Court, rule 3.769. The parties
25 propose that the final papers in support of the settlement be filed and served no later than 14
26 days prior to the hearing on final approval, and that the hearing on final approval of the

1 settlement be set 120 days after the date of the preliminary approval hearing, to allow a
2 reasonable period for notice and administration, and an opportunity to object to the settlement,
3 without excessive delay to the Class as to the receipt of their settlement shares.

4
5 **IX. CONCLUSION**

6 For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily
7 approve the proposed settlement, provisionally certify the Settlement Class, and enter the
8 Proposed Order submitted concurrently herewith.

9 Dated: May 7, 2024

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11 By: /s/Haik Hacopian

Zorik Mooradian, Esq.,

Haik Hacopian, Esq.,

Shoham J. Solouki, Esq.

13 Attorneys for Plaintiffs, individually and on
14 behalf of other persons similarly situated and
15 similarly aggrieved employees
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