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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DIANDREA CORREA, JEMILA HASSAN, AND FARAH DOULKIDAH, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; Plaintiffs, vs. CAREMERIDIAN, LLC, a Delaware limited liability company; NEURORESTORATIVE, an unknown business entity; NEURORESTORATIVE CALIFORNIA, an unknown business entity; THE MENTOR NETWORK, an unknown business entity; MENTOR MANAGEMENT INC., an unknown business entity; SEVITA, an unknown business entity; and DOES 1 through 100, inclusive, Defendants.	Case No.: 23STCV10707 **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** <u>PRELIMINARY APPROVAL HEARING</u> Date: May 23, 2025 Time: 9:00 a.m. Dept: 17

TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on May 23, 2025 at 9:00 a.m., in Department 17 of the Los Angeles Superior Court, Spring Street Courthouse located at 312 North Spring Street, Los Angeles, CA 90012, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq*., Plaintiffs Jamila Hassan, Farah Doulkidah, and Diandrea Correa ("Plaintiffs") will move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiffs and Defendant CareMeridian, LLC dba Sevita ("CareMeridian," "Sevita" or "Defendant"). Plaintiffs further moves the Court for an Order:

1. Granting preliminary approval of the First Amended Class Action and PAGA Settlement Agreement and Class Notice;
2. Certifying the Class for settlement purposes;
3. Approving the Class Notice and the plan for distribution of the Class Notice;
4. Appointing Plaintiffs Jamila Hassan, Farah Doulkidah, and Diandrea Correa as Class Representatives for settlement purposes;
5. Appointing Plaintiffs' Counsel, John G. Yslas, Jeffrey C. Bils, Aram Boyadjian, and Andrew Sandoval of Wilshire Law Firm, PLC and Edwin Aiwazian, Joanna Ghosh, and Vartan Madoyan of Lawyers *for* Justice, PC as Class Counsel for settlement purposes;
6. Appointing ILYM Group, Inc. as the Settlement Administrator; and
7. Scheduling a final approval hearing.

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The motion will be based upon this notice, the attached memorandum of points and authorities, the Declarations of John G. Yslas, Vartan Madoyan, Plaintiffs Jemila Hassan, Farah Doulkidah, and Diandrea Correa filed concurrently herewith, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: April 3, 2025

WILSHIRE LAW FIRM

By: Samantha Smith

John G. Yslas

Attorneys for Plaintiffs Jamila Hassan and Farah Doulkidah

Dated: April 3, 2025

Lawyers *for* Justice, PC

By: /s/ Vartan Madoyan

Edwin Aiwazian
Vartan Madoyan

Attorneys for Plaintiff Diandrea Correa

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Jamila Hassan ("Plaintiff Hassan"), Farah Doulkidah ("Plaintiff Doulkidah"), and Diandrea Correa ("Plaintiff Correa") (collectively, the "Plaintiffs") seek preliminary approval of a proposed $3,000,000.00 non-reversionary, wage and hour class action settlement ("Settlement") with Defendant CareMeridian, LLC dba Sevita ("Defendant"). The Settlement will provide substantial monetary payments to approximately 1,843 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. This motion is supported by declarations from John Yslas of Wilshire Law Firm, Vartan Madoyan of Lawyers *for* Justice, PC, and Plaintiffs Jamila Hassan, Farah Doulkidah, and Diandrea Correa.

The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arms-length and were facilitated by an experienced class action mediator, Tripper Ortman, over the course of a private mediation on November 8, 2023. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties reached a settlement on November 8, 2023. Accordingly, Plaintiffs request that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

This is a wage and hour class action and Labor Code Private Attorneys Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA") representative action. Plaintiffs and putative Class Members worked in California as hourly-paid or non-exempt employees for Defendant during the Class Period. Defendant is based in Orange County, California and is a provider of subacute and post-acute rehabilitation services for people of all ages with brain, spinal cord and medically complex injuries, illnesses and other challenges. [Declaration of John G. Yslas in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Yslas

Decl.”), ¶ 2.]

Plaintiffs allege that Defendant’s payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiffs allege that Defendant failed to pay for all hours worked. Plaintiffs further allege that Defendant failed to provide employees with legally compliant meal and rest periods. Based on these allegations, Plaintiffs assert related claims for failure to provide accurate wage statements, failure to pay all final wages at termination, unfair business practices, and civil penalties under PAGA. Defendant denies Plaintiffs’ allegations and denies liability for Plaintiffs’ claims.

Plaintiffs sent three PAGA notices to Defendant and the California Labor & Workforce Development Agency (“LWDA”) alleging wage and hour violations pursuant to the PAGA (Labor Code §§ 2698 *et seq.*) on or about March 6, 2023 (Lawyers *for* Justice, PC submitted a PAGA letter on behalf of Plaintiff Correa, LWDA-CM-940316-23), March 23, 2023 (Wilshire Law Firm submitted a PAGA letter on behalf of Plaintiff Hassan, LWDA-CM-944068-23), and September 20, 2023 (Wilshire Law Firm submitted a PAGA letter on behalf of Plaintiffs Hassan and Doulkidah). [Yslas Decl., ¶ 4; Declaration of Vartan Madoyan in Support of Plaintffs’ Motion for Preliminary Approval of Class Action Settlement (“Madoyan Decl.”) ¶ 4.]

On January 30, 2023, Plaintiff Hassan filed a proposed class action against Defendant CareMeridian, LLC, dba Sevita, in Orange County Superior Court, Case No. 30-2023-01304672-CU-OE-CXC, alleging causes of failure to pay minimum and straight time wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to provide accurate wage itemized wage statements, failure to indemnify employees for expenditures, and unfair business practices. (the “Hassan Class Action”). On September 18, 2023, Plaintiff Hassan filed a PAGA representative action in Orange County Superior Court, Case No. 30-2023-01352171-CU-OE-CXC alleging claims against CareMeridian for civil penalties for failure to pay for all hours worked, including minimum, straight time, and overtime wages; failure to provide meal periods; failure to authorize and permit rest periods; failure to pay all earned wages twice per month; failure to maintain accurate records of all hours worked and meal periods; failure to timely pay final wages at termination; failure to furnish accurate itemized wage statements; failure to indemnify for necessary expenditures; and failure to produce requested employment records. On April 8, 2024, Plaintiffs Jamila Hassan and Farah Doulkidah, filed a First Amended PAGA Representative Action in Orange County Superior Court, Case No.: 30-2023-01352171-CU-OE-CXC, adding Plaintiff Doulkidah as a named plaintiff. (the "Hassan Actions"). [*Id.* at ¶ 3.]

On May 11, 2023, Plaintiff Correa filed two actions against Defendants CareMeridian, LLC, Neurorestorative, Neurorestorative California, The Mentor Network, Mentor Management Inc., and Sevita, in Los Angeles County Superior Court, including (a) a proposed Class Action, Case No. 23STCV10707, alleging causes of action for unpaid overtime, unpaid meal and rest periods, unpaid minimum wages, failure to timely pay final wages and wages during employment, wage statement violations, payroll recordkeeping violations, failure to reimburse business expenses, and violation of Business & Professions Code sections 17200, et seq. ("Correa Class Action"), and (ii) a PAGA action, case No. 23PSCV01439, seeking civil penalties stemming from these Defendants' alleged violative wage-and-hour practices ("Correa PAGA Action"). [*Id.*]

On September 11, 2023, Defendant filed a Motion for Order Granting Permission to Submit a Petition for Case Coordination in Orange County Superior Court, requesting permission to petition for coordination of the Correa Actions and the Hassan Actions. Proceedings are currently under way in Orange County Superior Court to determine, *inter alia*, whether coordination of the included actions is appropriate. The coordination proceedings have been designated as Judicial Council Coordination Proceeding No. 5308 ("JCCP 5308"). [*Id.* at ¶ 4.]

On March 12, 2025, Plaintiffs filed the First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labord Code § 2698 Et Seq., to the Correa Clas Action, which added Plaintiff Hassan and Plaintiff Doulkidah as named plaintiffs along with their claims and allegations, and adding a cause of action under PAGA ("Operative Complaint").

B. Discovery and Investigation

Following the filing of the Complaints, the parties exchanged documents and information before mediating this action. Prior to mediation, Plaintiffs obtained, through informal discovery, complete data sets of time and payroll records for hourly paid, non-exempt employees from January 30, 2019 to August 25, 2023, a list of estimated number of employees during the Class Period and PAGA Period, Class workweeks, average rate of pay, wage and hour policy documents, and all documents concerning Plaintiffs available to Defendant. [*Id.* at ¶ 8.] Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*"). [Yslas Decl., ¶ 9, 19-32.]

After reviewing documents regarding Defendant's wage and hour policies and practices, and analyzing Defendant's timekeeping and payroll records, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. [*Id.*] Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. [*Id.*] Class Counsel reviewed these records and prepared a damage analysis prior to mediation. [*Id.*]

C. Settlement Negotiations

On November 8, 2023, the parties participated in private mediation with experienced class action mediator Tripper Ortman. [*Id.* at ¶ 10.] The settlement negotiations were at arm's length and conducted with courtesy and professionalism but were adversarial. The parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. [*Id.*] After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties reached a settlement, the material terms of which are encompassed within the Settlement. [*Id.* at ¶ 11, Ex. 1 (First Amended Class Action and PAGA Settlement Agreement and Class Notice).]

Class Counsel has conducted a thorough investigation into the facts of this case. Based on the foregoing discovery and their own independent investigation and evaluation, Class

Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. [*Id.* at ¶ 19.]

1. Settlement Consideration

Plaintiffs and Defendant have agreed to settle the Lawsuit in exchange for the Gross Settlement Amount of $3,000,000.00. The Gross Settlement Amount includes: (1) attorneys' fees in the amount of $1,050,000.00 and reimbursement of reasonable litigation costs and expenses in the amount of up to $33,000.00 to Class Counsel; (2) Class Representative Service Payment to Plaintiffs in the amount of up to $15,000.00 for each plaintiff; (3) fees and expenses of administration of the Settlement to the Settlement Administrator in an amount not to exceed $19,950.00; (4) $100,000.00 to PAGA with twenty-five percent (25%) share of the PAGA Penalties to be a part of the Net Settlement Sum that will be distributed to Class Members in the PAGA Group in the amount of $25,000.00; and (5) the seventy-five percent (75%) share of PAGA penalties ("LWDA Payment") in the amount of $75,000.00 to the California Labor and Workforce Development Agency ("LWDA"). (See First Amended Settlement Agreement generally).

Indeed, the $3,000,000.00 Settlement represents **70.5% of the realistic maximum recovery of $4,256,523.80**. [*Id.* at ¶ 28.] Although Class Counsel estimated that Defendant's maximum potential liability for all claims was approximately $26,752,223.00, when the risk of prevailing at certification and trial are factored into the equation, Class Counsel believes that Defendant's realistic exposure was $4,256,523.80, meaning the Settlement achieves a significant recovery. [*Id.* at ¶¶ 19-32.] Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. [*Id.* at ¶ 28.] Indeed, because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. [*Id.*]

D. Key Terms of the Proposed Settlement

The Parties used the Los Angeles Superior Court's Form Class Action and PAGA Settlement Agreement and Class Notice. A document showing edits the parties made to the template in redline is attached to the Declaration of John G. Yslas as **Exhibit 2**. The Settlement's key terms include:

1. Class: For settlement purposes only, the Parties agree to the certification of a class pursuant to California Code of Civil Procedure § 382 defined as: "all persons currently or formerly employed by Defendant, either directly or through any subsidiary, staffing agency, or professional employer organization, as hourly-paid, non-exempt employees in the State of California during the Class Period. (Settlement, § 1.5.)

2. Class Period: This is defined as "the period from January 30, 2019 through November 8, 2023." (Settlement, § 1.12.)

3. Participating Class Members: This is defined as "a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement." (Settlement, § 1.36.)

4. PAGA Group Member or Aggrieved Employee: This is defined as "all persons currently or formerly employed by Defendant, either directly or through any subsidiary, staffing agency, or professional employer organization, as hourly-paid, non-exempt employees in the State of California during the PAGA Period," "from March 23, 2022 through November 8, 2023." (Settlement, §§ 1.4, 1.32.)

5. Gross Settlement Amount: This means "$3,000,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 [of the First Amended Settlement Agreement]. This Gross Settlement Amount will cover payment of all class claims and PAGA penalties released herein, civil penalties, attorneys' fees, costs, enhancement payment to the Class Representative, and third-party administration costs." (Settlement, § 1.23.)

6. Uncashed Checks: This is defined as any check for any Participating Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to a Court approved nonprofit organization or foundation consistent with Code of Civil

Procedure section 384, subdivision (b) ("Cy Pres Recipient"). The intended *Cy Pres* is California CASA (Court Appointed Special Advocates). (Settlement, § 4.4.3.) The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. [*Id.*] Through this Motion, the Parties propose as the Cy Pres Recipient California CASA (Court Appointed Special Advocates), a nonprofit organization that provides civil legal services to the indigent children and youth in foster care.

7. Release:

(a) Plaintiffs' Release. "Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all representative and non-representative PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiffs' PAGA Notices or ascertained during the Action and released under [the Release of Participating Class Members pursuant to section] 5.2 of the Agreement, below. ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believes to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them." (Settlement, § 5.1.)

(b) Plaintiffs' Waiver of Rights Under Civil Code Section 1542. "For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY." (Settlement, § 5.1.1.)

(c) Release by Participating Class Members: "All Participating Class Members release any and all claims contained in the Operative Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the Operative Complaint, during employment in an hourly, non-exempt position in California during the Class Period. Except as set forth in [the Release by Aggrieved Employees pursuant to] Section 5.3 of [the] Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period." (Settlement, § 5.2.)

(d) Release by Aggrieved Employees: "All Aggrieved Employees are deemed to release any and all representative and non-representative claims for civil penalties that were brought under the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, contained in Plaintiffs' Operative Complaint and any additional wage and hour claims under

PAGA that could have been brought based on the facts alleged in the Operative Complaint during the PAGA Claim Period." (Settlement, § 5.3.)

8. No Reversion: "None of the Gross Settlement Amount will revert to Defendant." (Settlement, § 3.1.)

9. PAGA Penalties Allocation: The settlement includes $100,000.00 allocated to Plaintiffs' claims under PAGA, with 75% ($75,000.00) being paid to the LWDA and 25% ($25,000.00) being paid to the Aggrieved Employees. (Settlement, § 3.2.5.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval. [Yslas Decl., ¶ 4.]

10. Net Settlement Amount: The "Net Settlement Amount" "means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, PAGA Penalties, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments." (Settlement, § 1.29.)

11. Distribution Formula: For the class action, "Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount." (Settlement, § 3.2.4.) As to PAGA: "Each Aggrieved Employee's share of the 25% portion of the PAGA Penalties will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. These payments to Aggrieved Employees shall be allocated as 100% penalties; Aggrieved Employees will be responsible for paying any personal income taxes owed on the amounts they receive." (Settlement, § 3.2.5.1.)

12. Tax Allocation: Any settlement money paid to Settlement Class Members will be allocated as 20% wages, 80% to non-wage penalties and interest. (Settlement, § 3.2.4.1.)

13. Class Representative Service Payment: "Class Representative Service Payments to the Class Representatives of not more than $15,000.00 each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as Participating Class Members). Defendant will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments." (Settlement, § 3.2.1.) This amount is for Plaintiffs' time and effort in bringing and presenting the Action, and in exchange for a general release of all claims. (Settlement, § 5.1.) If the Court approves a lesser enhancement, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the Participating Class Members on a pro-rata basis. (Settlement, § 3.2.1.)

14. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to 35% of the Gross Settlement Amount (i.e., $1,050,000), plus Litigation Expenses Payment not to exceed $33,000.00. (Settlement, § 3.2.2.)

15. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a statement of the case, the terms of the First Amended Settlement Agreement, the approximate amount of attorneys' fees, costs, and service awards being sought, and an explanation of how the settlement allocations are calculated. (Settlement, Ex. A, Class Notice.) Class Members will be notified by first-class mail of the Settlement. (Settlement, § 7.4.2.) ILYM Group, Inc., the proposed Settlement Administrator, will undertake its best efforts to ensure that the Notice is provided to the current addresses of Class Members, including conducting a national change of address search and re-mailing the notice to updated addresses. (*Id.*; Yslas Decl., ¶ 14, Ex. 3 [Settlement Administrator Bid].)

III. DISCUSSION

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include the strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc*., (2008) 168 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require "an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims", but instead, only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."].)

As discussed below, Class Counsel has provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed settlement is fair, adequate, and reasonable.

A. <u>The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation</u>

1. The Settlement Is the Product of Discovery, Investigation, and Informed and Non-Collusive Arm's-Length Negotiations

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption here that the negotiations were conducted in good faith. (Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 11.51.) Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 ["The fact that a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement."].)

The Settlement was reached following extensive negotiations following a of mediation with experienced employment mediator, Tripper Ortman. [Yslas Decl. ¶ 10.] The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. [*Id.*] The parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position through trial and appeal if a settlement had not been reached. [*Id.*] After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties reached an agreement. [Yslas Decl. ¶ 8.]

Prior to reaching this settlement, Class Counsel conducted informal discovery concerning the claims set forth in the Operative Complaint, such as complete data sets of class member timekeeping and payroll records, Defendant's policies and procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well as information regarding the number of putative class members and the mix of current versus former employees, the wage rates in effect, and the amount of meal and rest period premium wages paid to class members. [*Id.* at ¶¶ 8-9.] In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the litigation. [*Id.*] Thus, Plaintiffs and their counsel were able to act intelligently and effectively in negotiating the proposed Settlement. [*Id.*]

Class Counsel also has considerable experience and has demonstrated competence with litigating wage and hour class actions. [*Id.* at ¶¶ 43-53.] Again, this supports the position that the terms of the Settlement are premised on objective evidence that has been considered and weighed in light of the risks, expenses, and time consumption to both sides of continued litigation of this action.

2. The Settlement Is Fair and Reasonable in Light of the Parties' Respective Legal Positions

A settlement is not judged against what plaintiff might recover had he prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 ["Compromise is inherent and necessary in the settlement process … even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation."].)

The PAGA portion of this Settlement also is "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws" (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77), in light of the discretionary nature of penalties, and the risks and uncertainty of prevailing at trial. [Yslas Decl. at ¶ 26.] Plaintiffs submit that this Settlement, in its entirety, serves to remediate labor law violations and deter future ones through its significant recovery for the proposed Class. [*Id.* at ¶ 32.]

Further, this Settlement avoids the risks and the accompanying expense of further litigation. [*Id.* at ¶ 30.] While Plaintiffs are confident in the merits of his claims, a legitimate controversy exists as to each cause of action. [*Id.* at ¶ 29.] Plaintiffs also recognize that proving the amount of wages due to each Class Member would be an expensive, time-consuming, and uncertain proposition. [*Id.*]

The proposed Settlement of $3,000,000.00 therefore represents a substantial recovery when compared to Plaintiffs' reasonably forecasted recovery. [*Id.* at ¶¶ 19-32.] Because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the Settlement amount of $3,000,000.00 is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. [*Id.*] ***Indeed, each Participating Class Member is eligible to receive an average net benefit of approximately $950.65, without factoring in payroll taxes.*** [*Id.* at ¶ 31.]

3. Class Counsel Has Extensive Experience in Class Action Litigation

The settlement negotiations were conducted by highly skilled and experienced counsel. Class Counsel have a strong record of vigorous and effective advocacy for their clients and have extensive experience in handling complex wage and hour class action litigation. [Yslas Decl. at ¶¶ 43-53 and Madoyan Decl. ¶¶ 17-21]. Although Plaintiffs and their counsel were prepared to litigate the claims alleged in the matter, counsel supports this proposed Settlement as being in the best interests of the class.

B. The Proposed Class Notice of Settlement Should Be Approved

The proposed Notice, in the form attached to the First Amended Settlement Agreement, should be approved for dissemination to the Class. The Notice informs the Class of the Settlement terms and of their rights to be excluded from the Settlement. Additionally, if there are Class Members who wish to object to this proposed class action Settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing. Accordingly, the proposed Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court.

C. The Proposed Attorneys' Fees and Costs Are Reasonable

Under the Settlement, subject to the Court's approval, Defendant agrees to pay Class Counsel reasonable attorneys' fees in amount of $1,050,000.00, which is 35% of the Gross Settlement Amount, and up to $33,000.00 in Litigation Expenses Payment. These amounts are disclosed to all class members in the proposed Notice and are reasonable. Class Counsel have a joint prosecution agreement and Wilshire Law Firm and Lawyers for Justice will be splitting any award of attorney's fees to Class Counsel. [Yslas Decl. at ¶17.]

1. Class Counsel Requests an Award of Fees Based on the "Common Fund" Method

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in creating a common fund. The California Supreme Court held that "when a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34, quoting *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

Class Counsel seek an award of attorneys' fees on the "percentage of recovery/ common fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent*, *supra,* 557 F.2d at p. 769.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*Id.* at p. 110.)

The California Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc*. (2016) 1 Cal.5th 480 that, "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Id*. at p. 503.) The court explained: "The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts." (*Id.* [internal citations omitted].)

2. The Requested Fee Award Is in Line with Typical Cases

According to a leading treatise on class actions, "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (*See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03.) Attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*Id*; see also *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F.Supp. 294 [stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million].)

Here, Plaintiffs request attorneys' fees equal to 35% of the Settlement Amount, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].

3. This Matter Involves a "Fee-Shifting" Provision of the Labor Code

Labor Code § 1194(a) provides for the recovery of "minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Under this section, Plaintiffs would be permitted to recover their actual attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this case. This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Class Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Class Counsel. [Yslas Decl. at ¶¶ 41-42.] Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. [*Id.*] Once counsel undertook this litigation on behalf of the Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class ahead of all other concerns.

4. The Experience, Reputation and Ability of Class Counsel Support the Requested Fee Award

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possess considerable expertise in litigating class actions. [Yslas Decl. at ¶¶ 43-53 and Madoyan Decl. ¶¶ 43-53.] Class Counsel and the firm have been involved as lead counsel or co-counsel in several class actions that resulted in millions of dollars in recovery. [*Id.*] Because it is reasonable to compensate Class Counsel commensurate with their skill, reputation and experience, Class Counsel's requested fee award is supported here.

Class Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement. [*Id.*] Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. Based on these and other factors, Class Counsel's firm has frequently received fee awards of this percentage from the gross recovery for the class. Therefore, the requested fee award is reasonable and fair. [*Id.*]

D. <u>The Service Award to Named Plaintiffs Is Reasonable</u>

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz, supra,* 86 Cal.App.4th at p. 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958-59.)

Service awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in California Labor Code section 90.5, which provides, "it is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions…."). Nonetheless, the California Supreme Court has noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

Under the First Amended Settlement Agreement, subject to the Court's approval, Defendant agreed to pay a Service Award in the amount of $15,000 to each Plaintiff. This amount is also in exchange for Plaintiffs' general release of all claims against Defendant. Plaintiffs devoted a great deal of time and work assisting counsel in the case, communicated with counsel very frequently for litigation and to prepare for mediation, and was frequently in contact with Class Counsel during the mediation. [Yslas Decl., ¶¶ 33-37 and Madoyan Decl. ¶¶ 12.] This amount is reasonable particularly in light of the substantial benefits Plaintiffs generated for all class members. [*Id.*]

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive award given to class action plaintiffs from **1993 to 2002** found that the "average award per class representative was $15,992 and the median award per class representative was $4,357." (Theodore Eisenberg & Jeffrey P. Miller, "Incentive Awards to Class Action Plaintiffs: An Empirical Study", 53 UCLA L. Rev. 1303, 1308 (2006).) That same study found that named plaintiffs in employment discrimination class actions received an average award of $69,850 and a median award of $31,081, while named plaintiffs in other employment class actions received an average award of $12,121 and a median award of $13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in employment cases reflected the "courts' wish to make representative plaintiffs whole by compensating them for the high costs of their service to the class, including risks of stigmatization or retaliation on the job." (*Id.* at p. 1308.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

A. Legal Standard

The proposed Settlement Class is well suited for class certification. All of the claims derive from a core set of alleged violations of California's wage and hour laws and regulations. For the reasons set forth more fully below, for purposes of settlement only, the Class satisfies the prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." (Code Civ. Proc., § 382.) There are two requirements to section 382: "(1) There must be an ascertainable class; and (2) there must be a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." (*Daar v. Yellow Cab Co*. (1967) 67 Cal. 2d 695, 704 [citations omitted].) To clarify these requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-interest requirement itself embodies three factors: "(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Richmond v. Dart Indus., Inc*. (1981) 29 Cal. 3d 462, 470.)

California law and policy favor the fullest and most flexible use of the class action device. (*Id.* at pp. 469-73.) Indeed, "Courts long have acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system" particularly where the rights of consumers are at issue. (*Linder v. Thrifty Oil Co*. (2000) 23 Cal. 4th 429, 434.) Any doubt as to the appropriateness of class treatment should be resolved in favor of certification. (*Richmond*, *supra,* 29 Cal.3d at pp. 473-75.)

B. <u>Plaintiffs Maintain That the Criteria for Class Certification Are Satisfied for Settlement Purposes.</u>

1. The Class Is Ascertainable and Numerous

The proposed Class that Plaintiffs seek to represent is easily ascertainable and includes approximately 1,843 employees of Defendant.

Plaintiffs maintains that there is an easily ascertainable Class, defined by objective and precise criteria. Because Class Members are identified using specific criteria in the regular business records of Defendant, i.e., job position, the Class is ascertainable. (*Wilner v. Sunset Life Ins. Co*. (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the subject of the lawsuit is sufficient to make the class ascertainable].)

"The requirement of Code of Civil Procedure section 382 that there be 'many' parties to a class action suit is indefinite and has been construed liberally." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.) "Where a question is of common interest to 'many' persons, an action may be maintained as a class action even where the parties are numerous and it is in fact practicable to join them all." (*Id.*) "No set number is required as a matter of law for the maintenance of a class action." (*Id.*) "Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an action for removal of the trustees." (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574; see also, *Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35-member class.]) Therefore, Plaintiffs contend that numerosity is plainly satisfied.

2. Many Common Issues of Law and Fact Predominate

The Court should grant conditional class certification for settlement purposes here on the grounds that questions of law and fact common to all Class Members predominate over any individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp*. (1987) 191 Cal.App.3d 605.)

Here, the employment practices at issue are: whether Defendant had legally compliant policies and practices to provide employees with meal periods; whether Defendant had legally compliant policies and practices authorizing and permitting its employees to take rest periods;

whether Defendant had legally compliant policies and practices to pay for all hours worked, including overtime wages; whether Defendant reimbursed employees for business expenses; whether final payment of wages was untimely and excluded unpaid wages, including meal period premium wages, and rest period premium wages; and whether the wage statements were consequently non-compliant. Plaintiffs contend that the factual and legal issues are the same for all of the identified Class Members, including Plaintiffs. Further, all Class Members suffered from, and seek redress for, the same alleged injuries.

3. Plaintiffs' Claims Are Typical of the Claims of the Class

The typicality requirement does not focus on the individual characteristics or circumstances of the representative plaintiffs compared to those of the remainder of the class, but rather upon the typicality of the proposed representative's claims as they relate to the defendant's conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that common questions of law and fact predominate and that the class representative be similarly situated" vis-à-vis the class.].) A representative plaintiff's claims are typical of the class if they arise from the same event, practice or course of conduct, and if the claims rest on the same legal theories. (*Id.*) That is precisely the case here. Plaintiffs are former employees of Defendant; as such, they allege that they were subject to the same policies and practices as other similarly situated employees.

4. Plaintiffs and Their Counsel Meet the Adequacy Requirement

The adequacy of representation requirements is met by fulfilling two conditions: first, a named plaintiff must be represented by counsel qualified to conduct the pending litigation; second, a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451.)

All of these requirements are met here for settlement purposes. Plaintiffs retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. [Yslas Decl. at ¶¶ 43-53 and Madoyan Decl. ¶¶ 17-21.] Class Counsel unquestionably is "qualified, experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) In addition, Plaintiffs have no conflicts, and

Plaintiffs have, with counsel, litigated this case and diligently reviewed the settlement terms, showing their dedication. Plaintiffs' willingness to serve as representatives demonstrate their serious commitment to bringing about the best results possible for the Class. (*McGhee*, *supra,* 60 Cal.App.3d at p. 451.)

5. A Class Action Is Superior to a Multiplicity of Litigation

Finally, in making its class certification decision, the Court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation. By consolidating many potential individual actions into a single proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly situated employees with small but nevertheless meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort and expense required to prosecute individual actions. (*Gentry v. Super. Ct*. (2007) 42 Cal. 4th 443, 457-62; *Leyva v. Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are essentially non-existent.

V. <u>THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND</u>

A. <u>The Proposed Notice Plan Satisfies Due Process</u>

Notice requirements are set forth in the California Rules of Court. Cal. Rules of Court, Rule 3.766 (e) and (f). California law vests the Court with broad discretion in fashioning an appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the Class Members will receive direct mailed notice. As the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class Members…." (*Id.* at p. 974.) In this case, notice of the proposed Settlement will be provided by direct mailing, the best possible form of notice.

B. <u>The Notice Is Accurate and Informative</u>

The proposed Notice should be approved. It will be disseminated through direct U.S. first class mail to the last known address for each Class Member. It informs the Class Members of the terms of the Settlement and their right to be excluded from the Settlement. And if there are Class Members who wish to object to this proposed class action Settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing.

The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the terms and conditions of the First Amended Settlement Agreement, in an informative and coherent manner. It makes clear that the First Amended Settlement Agreement does not constitute an admission of liability by the Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits of the Action. It also states that the final settlement approval decision has yet to be made. The Notice thus complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

VI. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the proposed Settlement and set a Final Approval Hearing.

Respectfully submitted,

Dated: April 3, 2025

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