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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DELORIS WARD, MARCUS JOHNSON, LEW MUSSELMAN, NATALIE CORTEZ, and KEIRA WILLIAMS, as individuals and on behalf of all others similarly situated,

Plaintiffs,

vs.

HORRIGAN COLE ENTERPRISES, INC., a California corporation; UNLIMITED QUEST, INC., a California corporation; NATIONAL MENTOR HEALTHCARE, LLC, a Delaware limited liability company; NATIONAL MENTOR, LLC, a Delaware limited liability company; NATIONAL MENTOR HOLDINGS, LLC, a Delaware limited liability company; LOYD'S LIBERTY HOMES, INC., a California corporation; REM CALIFORNIA, LLC, a Delaware limited liability company; CORNERSTONE LIVING SKILLS, INC., a California corporation; FIRST STEP INDEPENDENT LIVING PROGRAM, INC., a California corporation;

Case No. 24STCV06626

[*Assigned for all purposes to Hon. William F. Highberger, Dept. SSC-10*]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: August 22, 2025
Time: 10:00 a.m.
Dept.: SSC-10

Complaint Filed: March 15, 2024
Trial Date: None set

CALIFORNIA MENTOR FAMILY HOME AGENCY, LLC, a Delaware limited liability company; INSTITUTE FOR FAMILY CENTERED SERVICES, INC., a Virginia corporation; MENTOR MANAGEMENT, INC., a Delaware corporation; MENTOR MANAGEMENT, INC., a Delaware Corporation; NATIONAL MENTOR HOLDINGS, Inc., a Delaware corporation; and DOES 1 through 100,

Defendants.

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TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on August 22, 2025, at 10:00 a.m. in Department SSC-10 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs Marcus Johnson, Lew Musselman, Keira Williams, Natalie Cortez, and Deloris Ward ("Plaintiffs") individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Classes defined as follows:

National Mentor Healthcare, LLC – Direct Support Professionals employed at specified Specialized Residential Facilities between December 19, 2015 and January 15, 2024 (the "Class/PAGA Period End Date");

National Mentor Healthcare, LLC – All nonexempt employees of National Mentor Healthcare, LLC not identified above, who were employed between April 18, 2018 and January 15, 2024 (the "Class/PAGA Period End Date");

Loyd's Liberty Homes, Inc. – All nonexempt employees of Loyd's Liberty Homes, Inc. employed between April 18, 2018 and January 15, 2024 (the "Class/PAGA Period End Date");

REM California, LLC – All nonexempt employees of REM California, LLC employed between April 18, 2018 and January 15, 2024 (the "Class/PAGA Period End Date");

Cornerstone Living Skills, Inc. – All nonexempt employees of Cornerstone Living Skills, Inc. employed between June 28, 2019 and January 15, 2024 (the "Class/PAGA Period End Date");

National Mentor Holdings, LLC – All nonexempt employees of National Mentor Holdings, LLC employed between June 28, 2019 and January 15, 2024 (the "Class/PAGA Period End Date");

Unlimited Quest, Inc. – All nonexempt employees of Unlimited Quest, Inc. employed between March 15, 2020 and January 15, 2024 (the "Class/PAGA Period End Date") (excluding time periods covered by the *Bradley Queen v. Unlimited Quest, Inc*. settlement);

Horrigan Cole Enterprises, Inc. – All nonexempt employees of Horrigan Cole Enterprises, Inc. employed between March 15, 2020 and January 15, 2024 (the "Class/PAGA Period End Date") (excluding time periods covered by the *Hussey/Welcome v. Horrigan Cole Enterprises, Inc*. settlement);

National Mentor, LLC – All nonexempt employees of National Mentor, LLC employed between March 15, 2020 and January 15, 2024 (the "Class/PAGA Period End Date");

First Step Independent Living Program, Inc. – All nonexempt employees of First Step Independent Living Program, Inc. employed between May 3, 2020 and January 15, 2024 (the "Class/PAGA Period End Date") (excluding time periods covered by the *Bentton v. First Step Independent Living Program, Inc*. settlement);

California Mentor Family Home Agency, LLC – All nonexempt employees of California Mentor Family Home Agency, LLC employed between May 3, 2020 and January 15, 2024 (the "Class/PAGA Period End Date") (excluding time periods covered by the *Rockwell v. California Mentor Family Home Agency, LLC* and *Ramirez v. California Mentor Family Home Agency, LLC* settlements);

Institute for Family Centered Services, Inc. – All nonexempt employees of Institute for Family Centered Services, Inc. employed between May 3, 2020 and January 15, 2024 (the "Class/PAGA Period End Date").

3. Preliminary appointment of Plaintiffs Class Representatives;
4. Preliminary appointment of Paul K. Haines and Sean M. Blakely of Haines Law Group, APC; David P. Myers and Jason Hatcher of The Myers Law Group, A.P.C.; Lauren Teukolsky of Teukolsky Law, APC; and Jonathan M. Lebe of Lebe Law, APLC, as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit Class Representative Service Awards to Plaintiffs, civil penalties payable to the Labor & Workforce Development Agency ("LWDA"), settlement administration costs, and attorneys' fees and costs to Class Counsel;
6. Appointment of ILYM Group, Inc. as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

This Motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the declarations of Paul K. Haines, Sean M. Blakely, David P. Myers, Jason Hatcher, Lauren Teukolsky, Jonathan Lebe, Plaintiffs, and Anthony Rogers of ILYM Group, Inc, and the exhibits attached thereto; the pleadings and other papers filed in this action; and on any further oral or documentary evidence or argument presented at the time of hearing. Defendants do not intend to oppose this Motion and given the multiplicity of issues addressed in this Motion, have indicated their approval of Plaintiffs' expressed need to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2). Therefore, the parties jointly request the Court's consideration of Plaintiffs' memorandum of points and authorities, which is 30 pages in length.

Respectfully submitted,

Dated: July 28, 2025

HAINES LAW GROUP, APC
THE MYERS LAW GROUP, A.P.C.
TEUKOLSKY LAW, APC
LEBE LAW, APLC

By: ______________________________

Paul K. Haines
Sean M. Blakely
David P. Myers
Jason Hatcher
Lauren Teukolsky
Jonathan Lebe
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Marcus Johnson, Lew Musselman, Keira Williams, Natalie Cortez, and Deloris Ward (hereinafter "Plaintiffs") respectfully request that this Court preliminarily approve the Stipulation of Settlement, entered into by Plaintiffs and Defendants National Mentor Healthcare, LLC, Loyd's Liberty Homes, Inc., REM California, LLC, Cornerstone Living Skills, Inc., Unlimited Quest, Inc., Horrigan Cole Enterprises, Inc., First Step Independent Living Program, Inc., California Mentor Family Home Agency, LLC, Institute for Family Centered Services, Inc., National Mentor, LLC, Mentor Management, Inc., National Mentor Holdings, Inc., and National Mentor Holdings, LLC (collectively referred to as "Defendants"). This is a significant non-reversionary settlement reached after years of litigation, the completion of significant formal discovery, and only after three full-day mediation sessions.

Plaintiffs now respectfully request that this Court preliminarily approve this <u>non-reversionary</u>, common-fund class action settlement,[1] in which Defendants have agreed to pay Seven Million Nine Hundred Fourteen Thousand Six Hundred Ninety-Six Dollars ($7,914,696.00) to the following Settlement Classes:

> <u>National Mentor Healthcare, LLC</u> – Direct Support Professionals employed at specified Specialized Residential Facilities between December 19, 2015 and January 15, 2024 (the "Class/PAGA Period End Date");
>
> <u>National Mentor Healthcare, LLC</u> – All nonexempt employees of National Mentor Healthcare, LLC not identified above, who were employed between April 18, 2018 and January 15, 2024 (the "Class/PAGA Period End Date");
>
> <u>Loyd's Liberty Homes, Inc.</u> – All nonexempt employees of Loyd's Liberty Homes, Inc. employed between April 18, 2018 and January 15, 2024 (the "Class/PAGA Period End Date");
>
> <u>REM California, LLC</u> – All nonexempt employees of REM California, LLC employed between April 18, 2018 and January 15, 2024 (the "Class/PAGA Period End Date");

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[1] The Stipulation of Settlement ("Settlement") is attached to the Declaration of Paul K. Haines as **Exhibit 1**. The proposed Class Notice and Notice of Individual Settlement Payment are attached to the Settlement as **Exhibits B** and **C**, respectively. All defined terms in this motion have the same definition as that in the Settlement.

Cornerstone Living Skills, Inc. – All nonexempt employees of Cornerstone Living Skills, Inc. employed between June 28, 2019 and January 15, 2024 (the "Class/PAGA Period End Date");

National Mentor Holdings, LLC – All nonexempt employees of National Mentor Holdings, LLC employed between June 28, 2019 and January 15, 2024 (the "Class/PAGA Period End Date");

Unlimited Quest, Inc. – All nonexempt employees of Unlimited Quest, Inc. employed between March 15, 2020 and January 15, 2024 (the "Class/PAGA Period End Date") (excluding time periods covered by the *Bradley Queen v. Unlimited Quest, Inc*. settlement);

Horrigan Cole Enterprises, Inc. – All nonexempt employees of Horrigan Cole Enterprises, Inc. employed between March 15, 2020 and January 15, 2024 (the "Class/PAGA Period End Date") (excluding time periods covered by the *Hussey/Welcome v. Horrigan Cole Enterprises, Inc*. settlement);

National Mentor, LLC – All nonexempt employees of National Mentor, LLC employed between March 15, 2020 and January 15, 2024 (the "Class/PAGA Period End Date");

First Step Independent Living Program, Inc. – All nonexempt employees of First Step Independent Living Program, Inc. employed between May 3, 2020 and January 15, 2024 (the "Class/PAGA Period End Date") (excluding time periods covered by the *Bentton v. First Step Independent Living Program, Inc*. settlement);

California Mentor Family Home Agency, LLC – All nonexempt employees of California Mentor Family Home Agency, LLC employed between May 3, 2020 and January 15, 2024 (the "Class/PAGA Period End Date") (excluding time periods covered by the *Rockwell v. California Mentor Family Home Agency, LLC* and *Ramirez v. California Mentor Family Home Agency, LLC* settlements);

Institute for Family Centered Services, Inc. – All nonexempt employees of Institute for Family Centered Services, Inc. employed between May 3, 2020 and January 15, 2024 (the "Class/PAGA Period End Date").

If the Settlement is approved, Defendants will pay a non-reversionary Maximum Settlement Amount of $7,914,696.00. After deducting administration costs, Plaintiffs' requested Class Representative Service Awards, the amount designated as civil penalties under the Private Attorneys General Act ("PAGA"), and requested attorneys' fees and costs, the Net Settlement Fund of approximately $4,716,464.00 will be distributed to all Class Members who do not opt-out of the Settlement based on the proportionate number of workweeks worked by each Class Member during the Class Periods.

Significantly, Class Members do not need to file a claim to reap the financial benefits of the Settlement, as all Class Members will automatically receive a payment unless they affirmatively opt-out. There are approximately 6,235 Class Members, and the average payment to Class Members is projected to be approximately $756.45. This is a favorable result for Class Members, especially in light of the significant risks associated with continued litigation.

The proposed Settlement is within the range of possible approval in light of the significant legal and factual obstacles that Plaintiffs faced, the risks and costs of further litigation, and the tangible monetary benefits to be received by Plaintiffs and the Settlement Class. For the reasons discussed herein, Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

Defendants are health and human service providers serving individuals with intellectual and developmental disabilities and provide various services including 24-hour residential care, day programming and community-based supervision. *See* Declaration of Paul K. Haines ("Haines Decl."), ¶ 12. Plaintiff Marcus Johnson was employed by Defendant National Mentor Healthcare, LLC as a non-exempt Direct Support Professional from approximately 2011 through February 2019. *See* Declaration of Marcus Johnson In Support of Approval of Class Action Settlement ("Johnson Decl."), ¶ 2. Plaintiff Lew Musselman was employed by Defendant National Mentor Healthcare, LLC as a non-exempt Direct Support Professional from approximately April 2016 through approximately 2018. *See* Declaration of Lew Musselman In Support of Approval of Class Action Settlement ("Musselman Decl."), ¶ 2. Plaintiff Keira Williams contends she was employed by Defendants National Mentor Healthcare, LLC, Loyd's Liberty Homes, Inc., REM California, LLC, and National Mentor Holdings, LLC as a non-exempt employee providing in-home care services from approximately May 2018 through approximately February 2022. *See* Declaration of Keira Williams In Support of Approval of Class Action Settlement ("Williams Decl."), ¶ 3.

Plaintiff Natalie Cortez contends she was employed by Defendants Cornerstone Living Skills, Inc. and National Mentor Holdings, Inc. as a non-exempt Direct Support Professional from approximately January 2023 until approximately February 2023. *See* Declaration of Natalie Cortez In Support of Approval of Class Action Settlement ("Cortez Decl."), ¶ 2. Plaintiff Deloris Ward contends she was employed by Defendants Horrigan Cole Enterprises, Inc., Unlimited Quest, Inc., National Mentor Healthcare, LLC, National Mentor, LLC and National Mentor Holdings, LLC as a non-exempt Direct Support Professional from approximately January 2023 through approximately January 2024. *See* Declaration of Deloris Ward In Support of Approval of Class Action Settlement ("Ward Decl."), ¶ 2.

On December 19, 2019, Plaintiffs Marcus Johnson and Lew Musselman filed a wage and hour class and representative Private Attorneys General Act ("PAGA") action against Defendant National Mentor Healthcare, in the matter entitled *Marucs Johnson, et al. v. National Mentor Healthcare*, San Bernardino Superior Court Case No. CIVDS1938303. Haines Decl., ¶ 13. On April 18, 2022, Plaintiff Keira Williams filed a wage and hour class action in matter entitled *Keira Williams v. National Mentor Healthcare, et al.,* San Bernardino Superior Court Case No. CIVSB2207868, and alleged claims against Defendants National Mentor Healthcare, LLC, Loyd's Liberty Homes, Inc., REM California, LLC, and National Mentor Holdings, LLC. *Id*. On June 28, 2023, Plaintiff Natalie Cortez filed a wage and hour class and representative action against Defendants Cornerstone Living Skills, Inc. and National Mentor Holdings, Inc. in the matter entitled *Natalie Cortez v. Cornerstone Living Skills, Inc*., *et al*., Sonoma County Superior Court Case No. SCV-273597. *Id*. On March 15, 2024, Plaintiff Deloris Ward filed this wage and hour class and representative PAGA action against Defendants Horrigan Cole Enterprises, Inc., Unlimited Quest, Inc., National Mentor Healthcare, LLC, National Mentor, LLC and National Mentor Holdings, LLC. *Id*.

As part of the Settlement, the Parties stipulated, for purposes of settlement only, to the filing of a Second Amended Class and Representative Action Complaint ("SAC") in this action which adds all parties, causes of action, and factual allegations alleged in the above-referenced actions, to effectively consolidate these actions for settlement purposes. Haines Decl., ¶ 14. The

SAC was filed in this action on March 4, 2025. *Id*.

B. PLAINTIFFS' CLAIMS AND DEFENDANTS' DEFENSES

1. Rest Period Claims

Plaintiffs allege that due to the nature of caring for individuals with intellectual and developmental disabilities, Plaintiffs and non-exempt employees were not provided with off-duty rest periods as required by law. Haines Decl., ¶ 22; *see Augustus v. ABM Security Services, Inc*., 2 Cal.5th 257, 273 (2016) (holding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."). Plaintiffs allege that because Class Members are required to maintain constant supervision of Defendants' clients, employees cannot be relieved of all work duties during off-duty rest periods. Haines Decl., ¶ 22. Plaintiffs further allege that Defendants' own policies and procedures confirm that it is not possible for its employees to be relieved from work duties for ten (10) minutes as employees were required to supervise their clients at all times. *Id*. Due to Defendants' failure to provide its non-exempt employees with compliant off-duty rest periods, Plaintiffs contend that Defendants are liable for rest period premiums pursuant to Labor Code § 226.7. *Id*.

Defendants contend that their rest period policies/practices complied with California law throughout the Class Periods and that practices and legal requirements regarding rest periods varied by entity, program, job type, location, and shift. Haines Decl., ¶ 22. Defendants contend non-direct care employees were always provided the opportunity to take off-duty rest periods and were paid rest period premiums if there were extenuating circumstances that prevented them from taking advantage of that opportunity. *Id*. For direct care employees, Defendants maintain, among other things, that employees were able to take an off-duty rest period where coverage was available or a person served was engaged in an activity or appointment elsewhere and, with respect to programs which provide 24-hour residential care, Defendants argue those programs were covered by provisions of the Wage Orders that permit employers to require employees to remain on premises and maintain general supervision of residents. *Id*.; *see* Wage Order 5, § 12(c) (employees of 24 hour residential care facilities can be required to "remain on the premises and maintain general supervision of residents during rest periods if the employee is in sole charge of residents").

Moreover, at various times during the Class Periods, Defendants applied for, and in some instances obtained, rest period exemptions with the Division of Labor Standards Enforcement ("DLSE"). Haines Decl., ¶ 22; *see* Wage Order 5, § 17 ("If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section…12, Rest Periods…would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division."). As to the entities for which Defendants applied for a rest period exemption but Plaintiffs contend they did not obtain a formal exemption from the DLSE, Defendants point to correspondence from the DLSE indicating that Defendants would not be liable for rest period violations while the exemption applications were under review. Haines Decl., ¶ 22.

With respect to Defendants' arguments that they applied for rest period exemptions with the DLSE and received confirmation that they would not be liable for violations while the applications were under review, Plaintiffs point to correspondence obtained from the DLSE in December 2021 informing one of the Defendants that any previous statements regarding Defendants' potential liability were made without the Labor Commissioner's approval. Haines Decl., ¶ 22. Plaintiffs also point to correspondence from the DLSE in April 2022 informing some of the Defendants that previous assertions regarding Defendants' potential rest period liability were incorrect, and that Defendants needed to submit new applications with the DLSE for rest period exemptions. *Id*.

Lastly, Defendants argue that Plaintiffs' rest period claims are not amenable to class treatment, since individual inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift. Haines Decl., ¶ 22. These manageability concerns are especially pertinent with respect to rest period claims, Defendants argue, given that rest periods are not recorded. *Id*.

2. <u>Meal Period Claims</u>

Due to the nature of caring for intellectually and developmentally disabled adults, which prevents certain non-exempt employees from being fully relieved of their duties during their meal periods, Plaintiffs contend Defendants require the vast majority of its non-exempt employees to enter into on-duty meal period agreements. Haines Decl., ¶ 23. Plaintiffs allege that Defendants' on-duty meal period agreements until approximately May 1, 2017 were unlawful because the agreements lacked the requisite revocation language and instead stated that the agreement can only be revoked "by submitting a request in writing to my manager at least ***one week*** in advance of a schedule change." *Id*. Plaintiffs allege that Defendants' on-duty meal period agreement violates the requirements of the applicable wage order in that an on-duty meal period agreement must be revocable at any time. *See* Wage Order 5, § 11 (A) ("An 'on duty' meal period…written agreement shall state that the employee, may, in writing, revoke the agreement at any time."); *see also Lubin v. Wackenhut Corp*., 5 Cal.App.5th 926, 951 (2016) (reversing trial court and certifying meal period class based in part on theory that the on-duty meal period agreement language was invalid; court held that "[b]ecause California Code of Regulations, title 8, section 11040, subdivision (11)(A) provides that '[t]he written agreement shall state that the employee may, in writing, revoke the agreement at any time,' determining whether an agreement is invalid would require nothing more than checking whether the agreement had a revocation clause.").

Defendants contend that throughout the Class Period they utilized lawful on-duty meal period agreements. Haines Decl., ¶ 23. Defendants argue, and Plaintiffs do not dispute, that the nature of certain non-exempt employees' work prevents them from being relieved of all duties during their work shift. *Id*. Defendants vigorously dispute that the revocation language requiring one-week notice renders Defendants' on-duty meal period agreement unlawful. *Id.* Defendants also contend that even if Plaintiffs were able to establish that the revocation language was unlawful, individualized issues would arise as to which employees actually attempted to revoke their on-duty meal period agreements, and for those who did, whether Defendants actually required one week's written notice in such instances (i.e., whether it actually followed its written agreement, or alternatively, allowed for immediate revocation). *Id.* Defendants argue that such individualized inquiry would destroy commonality, thereby precluding certification. *Id.*

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3. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices

Plaintiffs contend that for at least a portion of the Class Periods, Defendants utilized a timekeeping system that systematically underpaid wages to Class Members. Haines Decl., ¶ 24. Specifically, Plaintiffs contend that although Defendants timekeeping system recorded hours worked to the minute, Defendants rounded employee timekeeping entries, resulting in an underpayment of wages to Class Members. *Id.* Plaintiffs further allege that Defendants required Plaintiffs to work split-shifts, however, Defendants failed to pay at least one (1) hour's pay at the minimum wage in addition to the minimum wage for that workday, resulting in further unpaid minimum wages. *Id*. Plaintiffs also allege that Defendants required Plaintiffs to call into work as "on-call" employees but were not always furnished with all reporting time pay (i.e., at least two hours of work and/or half of their usually scheduled hours). *Id*.

However, Defendants counter that its timekeeping policies/practices complied with California law and that it has always properly compensated Class Members for all hours worked throughout the Class Periods. Haines Decl., ¶ 24. Defendants also assert that this claim is not amenable to class certification due to the individualized inquiries that would be required into whether each Class Member was in fact underpaid, or potentially overpaid, for each workday in question, including whether they were performing compensable work while clocked in for their shift, thereby precluding class certification. *Id*.

4. Regular Rate Miscalculations

Plaintiffs allege that Defendants failed to pay all overtime wages owed by not including the value of all non-discretionary remuneration into the regular rate of pay. Haines Decl., ¶ 25. Specifically, Plaintiffs allege that they and other non-exempt employees were paid various bonuses, however, Defendants failed to include the value of these payments into the regular rate of pay for purposes of calculating overtime, and as a result, underpaid overtime wages. *Id*.

Defendants contend that they properly included all forms of remuneration when calculating the regular rate of pay, and therefore, paid all overtime wages to Class Members. Haines Decl., ¶ 25.

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5. Failure to Reimburse for Necessary Business Expenditures

Plaintiffs contend that Defendants required Class Members to use their personal cellphones for a variety of work activities, including but not limited to, communicating with supervisors and coworkers, but were not reimbursed for these business expenses. Haines Decl., ¶ 26; *see also* Labor Code § 2802; *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137, 1144 (2014) ("Thus to be in compliance with section 2802, the employer must pay some reasonable percentage of the employee's cell phone bill.").

Defendants maintain that they reimbursed Class Members for the reasonable expense of personal devices where those devices were required to be used for work purposes and that other Class Members who did not receive reimbursement were not required to use their personal cellular phones as part of their job. Haines Decl., ¶ 26. Defendants also argue this claim is not suitable for class treatment, as it would require individualized determinations as to whether each Class Member used a personal cellular phone for work-related purposes, and if so, how much of that use was a reasonable percentage of their individual monthly phone bill. *Id.*; *see also, e.g., Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) ("In calculating the reimbursement amount due under section 2802, the employer may consider not only the actual expenses that the employee incurred, but also whether each of those expenses was 'necessary,' which in turn depends on the reasonableness of the employee's choices").

6. Claims Under Labor Code §§ 203 and 226

As a result of Defendants' alleged failure to pay all wages and all meal and rest period premiums, Plaintiffs assert Defendants failed to comply with their final payment obligations set forth in Labor Code § 203 and failed to issue accurate and compliant wage statements in violation of Labor Code § 226. Haines Decl., ¶¶ 27-28.

Defendants assert they have strong, good-faith defenses to Plaintiffs' underlying claims, precluding the imposition of waiting time penalties, which are only available for "willful" violations. Haines Decl., ¶ 27; *see also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding "good faith dispute" precluded imposition of waiting time penalties). Moreover, because the waiting time and wage statement claims are derivative of Plaintiffs' underlying wage claims, Plaintiffs would need to overcome Defendants' defenses, both as to class certification and on the merits, as to their underlying claims. Haines Decl., ¶¶ 27-28. Defendants further assert Plaintiffs' waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. *Id*.

Defendants further contend any alleged wage statement violations could not be shown to be "knowing and intentional" given its good-faith defenses, and that Plaintiffs cannot show they or other employees "suffer[ed] injury," as required by Labor Code § 226(e) for the imposition of penalties. Haines Decl., ¶ 28. Defendants further argue that wage statements always accurately reflected hours worked and amounts paid to employees, thereby precluding any wage statement liability. *Id*.; *see Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer's "commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received).

7. <u>PAGA Civil Penalties</u>

As a result of the foregoing Labor Code violations, Plaintiffs allege that Defendants are liable for civil penalties under the PAGA. Haines Decl., ¶ 29. Since Plaintiffs' PAGA claim is derivative of Plaintiffs' underlying wage claims, Defendants assert the PAGA claim would fail with those claims. *Id*.; *see Price v. Starbucks Corp*. 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendants further maintain that, given their good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendants liable for any of Plaintiffs' claims. Haines Decl., ¶ 29; *see* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc*. 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*., Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer "not aware" of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

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C. <u>DISCOVERY AND MEDIATION</u>

Prior to reaching the proposed Settlement, the parties engaged in significant formal and informal discovery. Haines Decl., ¶ 15. After the *Johnson* Action was filed, the Parties engaged in extensive written formal discovery. *Id*. In response to Plaintiffs' written discovery requests, Defendants produced a sampling of time and payroll records for the putative class as well as other information and documents. *Id*. Defendants took the deposition of Plaintiff Johnson over the course of two days on December 17, 2020, and January 5, 2021. *Id*. Defendants took the deposition of Lew Musselman on February 23, 2021. *Id*. On October 29, 2021, the Parties in the *Johnson* Action attended private mediation with Tripper Ortman, Esq., however, the Parties were not able to reach a settlement. *Id*.

Following the unsuccessful mediation in the *Johnson* Action, the Parties resumed litigation and Plaintiffs Johnson and Musselman continued their class certification discovery. Haines Decl., ¶ 16. While engaged in class certification discovery, the Parties agreed to attend a second mediation with Mr. Ortman on January 6, 2023, however, this second mediation did not result in a settlement. *Id*.

Following the second mediation, the Parties in the *Johnson* Action and *Williams* Action continued their formal discovery. Haines Decl., ¶ 16. Defendants propounded multiple sets of written discovery on Plaintiffs Johnson, Musselman, and Williams, including Interrogatories, Requests for Admission, and Requests for Production of Documents. *Id*. Similarly, Plaintiffs Johnson, Musselman, and Williams propounded multiple sets of written discovery on Defendants. *Id*. Defendants took the deposition of Plaintiff Williams on August 15, 2023. *Id*. Plaintiffs Johnson and Musselman took the deposition of a percipient witness on August 16, 2023 regarding Defendants' applications for rest period exemptions with the DLSE. *Id*.

As the Parties could not reach an agreement on various discovery issues, Plaintiffs filed discovery-related motions in the *Johnson* and *Williams* Actions in the fall of 2023. Haines Decl., ¶ 17. Ultimately, the Parties in the *Johnson* and *Williams* Actions participated in a *Belaire-West* opt-out notice process and Plaintiffs were provided with the contact information for Defendant National Mentor Healthcare's non-exempt employees. *Id*. Plaintiffs' counsel thereafter interviewed Class Members regarding their work experiences with Defendants. *Id.* On March 4, 2024, Plaintiffs Johnson and Musselman took the deposition of Defendant National Mentor Healthcare's Person Most Qualified on a wide array of wage and hour issues. *Id*.

After completing this formal discovery, the parties agreed to attend a third global mediation with Mr. Ortman in an attempt to resolve the *Johnson*, *Williams*, *Cortez* and *Ward* Actions. Haines Decl., ¶ 18. In preparation for this third mediation, Defendants provided Plaintiffs with the total number of putative class members, the total number of aggregate workweeks worked during the Class Periods, the total number of employees eligible for waiting time and wage statement penalties, the total number of aggregate pay periods worked during the PAGA Periods, the average hourly rate of pay for Class Members, the total number of meal and rest period premiums paid during the Class Periods, as well as other documents and information. *Id*.

On May 3, 2024, the Parties participated in a global mediation with Mr. Ortman. Haines Decl., ¶ 19. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs' claims, and the legal basis for the claims and defenses. *Id*. At the conclusion of mediation, Mr. Ortman issued a mediator's proposal for a global class and representative PAGA settlement, which was ultimately accepted in the days following mediation. *Id*. During the months that followed, the parties negotiated and finalized the long-form Settlement Agreement now before this Court. *Id*.

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Defendants will pay a Maximum Settlement Amount ("MSA") of $7,914,696.00. *See* Settlement, ¶ 8. Significantly, this Settlement is non-reversionary, and no Class Member will have to submit a claim form to receive an Individual Settlement Payment. *Id*., at ¶¶ 8-9. Each Class Member will automatically receive an Individual Settlement Payment unless he or she affirmatively opts out of the Settlement. *Id*. The monetary terms of the Settlement are summarized below:

- Maximum Settlement Amount ("MSA"): $7,914,696.00
- Minus Court-approved attorneys' fees: $2,638,232.00
- Minus Court-approved verified costs (up to): $150,000.00

- Minus Court-approved Service Awards $75,000.00
- Amount designated as PAGA civil penalties: $300,000.00
- Minus estimated settlement administration costs: $35,000.00

Net Settlement Fund ("NSF"): $4,716,464.00

1. **The Settlement Provides for Reasonable Monetary Payments**

After deducting amounts for the Court-approved attorneys' fees and costs, Class Representative Service Awards to Plaintiffs, the amount designated as PAGA civil penalties, and settlement administration costs, the Settlement requires Defendants to pay a Net Settlement Fund ("NSF") of at least $4,716,464.00 to all Class Members who do not timely opt out. *See* Settlement, ¶ 9(A). The NSF shall be distributed to all Class Members who do not timely opt out based on each Settlement Class Member's proportionate number of workweeks worked in California during the Class Periods. *See* Settlement, ¶ 9(B)(i). Additionally, Seventy-Five Thousand Dollars ($75,000.00) has been designated as the "PAGA Amount," and shall be distributed to all "PAGA Group Members," including those who submit a valid and timely Request for Exclusion from the class action settlement, proportionally based on the number of pay periods worked during the PAGA Periods. Settlement, ¶¶ 3, 9(B)(ii).

According to Defendants, there are approximately 6,235 Class Members. Haines Decl., ¶ 21. Therefore, the average Individual Settlement Payment from the NSF is projected to be approximately $756.45. *Id*. There are also approximately 4,290 PAGA Group Members. *Id*. Therefore, the average payment from the PAGA Amount is estimated to be approximately $17.48. *Id*.

Class Members will have sixty (60) calendar days from the mailing of the Notice Packets to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 14(D), (F). Those Class Members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendants included within the Settlement. *See Id*., at ¶ 6(A).

2. **Attorneys' Fees and Costs, Service Awards, and PAGA Payment**

Plaintiffs will apply for Class Representative Service Awards at the time of seeking final approval of the proposed class action settlement as follows: Twenty-Five Thousand Dollars and Zero Cents ($25,000.00) for Plaintiff Marcus Johnson; Twenty Thousand Dollars and Zero Cents

($20,000.00) for Plaintiff Lew Musselman; Fifteen Thousand Dollars and Zero Cents ($15,000.00) for Plaintiff Keira Williams; Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) for Plaintiff Natalie Cortez; and Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) for Plaintiff Deloris Ward. *See* Settlement, ¶¶ 8(D)(3), 11; Haines Decl., ¶ 35. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases,* 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final approval, Plaintiffs' requested Service Awards are intended to recognize the time and effort Plaintiffs expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, discussing the claims and theories at issue in the litigation, actively participating in the prosecution of their claims, preparing for and attending depositions and mediations, obtaining critical pieces of evidence, as well as the significant risks Plaintiffs undertook by agreeing to serve as the named plaintiffs in this case, and the fact that Plaintiffs agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Settlement, ¶ 6(B); Haines Decl., ¶ 35; *see also* Plaintiffs' Declarations in Support of Approval of Class Action Settlement.

Class Counsel will also apply for an attorneys' fees award of one-third of the Maximum Settlement Amount, which is currently estimated to be $2,638,232.00 and up to $150,000.00 in verified costs reimbursement. *See* Settlement, ¶¶ 8(D)(4), 10; Haines Decl., ¶ 32. Plaintiffs submit the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Haines Decl., ¶ 32. Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research, conducting extensive informal and formal discovery, including propounding and responding to multiple sets of written discovery, meeting and conferring regarding said discovery and filing various discovery-related motions, interviewing Class Members regarding their work experiences, analyzing Class Members' timekeeping and payroll records, preparing for and attending three mediation sessions, defending Plaintiffs' depositions and taking the deposition of Defendants' PMQ and a percipient witness, negotiating and preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id*. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Class Members, preparing the final approval papers, and attending the Final Approval hearing. *Id*.

California courts recognize an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v. Robert Half Int'l, Inc.,* 1 Cal.5th 480, 506 (2016) (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of one-third of the Maximum Settlement Amount is well within the range of reasonableness, and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

Class Counsel submit their request for attorneys' fees is reasonable when viewed as an overall percentage of the Settlement and in light of the substantial risks and significant work undertaken, the results obtained, and the efficiency with which the litigation has been conducted. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified costs upon seeking final approval.

Moreover, Class Counsel would like to apprise the Court of an agreement reached between Class Counsel, Plaintiffs, and Plaintiff Johnson's and Musselman's former attorney, Tina Mehr of Vision Legal, Inc. Prior to filing the *Johnson* Action, Plaintiffs Johnson and Musselman signed an attorney client contingency retainer agreement with Ms. Mehr. As indicated above, on December 19, 2019, Plaintiffs Johnson and Musselman, represented by Ms. Mehr of Vision Legal, Inc and Lauren Teukolsky of Teukolsky Law, APC, initiated the *Johnson* Action.

On June 7, 2023, a fully executed Joint Prosecution and Attorneys Fee Split Agreement ("JPA") was entered into by and between Haines Law Group, APC, Teukolsky Law, APC, The Myers Law Group, A.P.C., Lebe Law, APC, and Tina Mehr of Vision Legal, Inc., in connection with the litigation of the *Johnson* Action, *Williams* Action, and *Cortez* Action.

Ms. Mehr's license to practice law in the State of California was suspended effective July 1, 2023 via a Supreme Court Order (S280063), until payment of all current and accrued fees, penalties and/or costs were made. On July 1, 2023, Ms. Mehr's License Status with the State Bar of California was "Not eligible to practice in CA" under an Administrative Action of "Suspended, failed to pay fees." On January 23, 2024, Ms. Mehr filed a "Notice of Dissociation of Plaintiffs' Attorney Tina Mehr" in the *Johnson* Action.

In March 2025, a global settlement was reached in the *Johnson* Action, *Williams* Action, *Cortez* Action, and *Ward* Action. On or about May 9, 2025, Ms. Mehr's State Bar Status was reinstated to Active and Eligible to Practice Law.

There is a dispute concerning whether Ms. Mehr is entitled to any fee sharing under the JPA entered into in June 2023 because of Ms. Mehr's then forthcoming suspended attorney status. Class Counsel and Ms. Mehr also disagreed as to Ms. Mehr's entitlement to quantum meruit for hours worked on the *Johnson* Action prior to her suspension. However, Class Counsel, Plaintiffs, and Ms. Mehr have reached a settlement agreement to resolve any disputes relating to Ms. Mehr's and/or Vision Legal, Inc.'s entitlement to attorneys' fees and costs in connection with this litigation, the JPA entered into in June 2023, and the Settlement in this litigation. Pursuant to the settlement agreement with Ms. Mehr, in exchange for releasing any claims against Plaintiffs, the Settlement Class, the Settlement in this litigation, Class Counsel and Defendants in this litigation for claims of entitlement to attorneys' fees and quantum meruit, etc., Ms. Mehr will be paid One Hundred Fifty Thousand Dollars and Zero Cents ($150,000.00) from the anticipated award of attorneys' fees from the Settlement in this litigation. The proposed payment to Ms. Mehr is conditioned upon the Stipulation of Settlement receiving final approval, the entry of judgment, and upon the Effective Date occurring. In exchange for this payment, Ms. Mehr is releasing any and all claims, demands, causes of action, damages, and claim for attorneys' fees and costs against Class Counsel, Plaintiffs, and the "Released Parties" as defined in the Stipulation of Settlement. A true and correct copy of the "Settlement Agreement and General Release Agreement" with Ms. Mehr is attached to the Declaration of Paul K. Haines as Exhibit 6.

Additionally, the parties have agreed to designate $300,000.00 of the Maximum

Settlement Amount as PAGA civil penalties, of which $225,000.00 (75%) will be paid to the LWDA, with the remaining $75,000.00 (25%) for distribution to PAGA Group Members, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, ¶ 8(D)(5). Plaintiffs submit this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving PAGA payment of $7,500 to LWDA out of $6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013) (approving PAGA payment of $7,500 to LWDA out of $1.25 million common-fund settlement).

IV. <u>ARGUMENT</u>

A. <u>PRELIMINARY APPROVAL IS WARRANTED</u>

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g.*, *Hanlon*, supra, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.*, *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. <u>Standard for Preliminary Approval</u>

To make a fairness determination, the Court should consider several factors, including: "the strength of Plaintiffs' 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, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.,* 48 Cal.App.4th 1794, 1801 (1996). "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.,* 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

a. The Strength of Plaintiffs' Case

Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs acknowledge that there were substantial risks and uncertainty in proceeding with litigation. As described above in section II.B., *supra*, Defendants presented multiple defenses to Plaintiffs' claims, both on the merits and with respect to class certification. Thus, while Plaintiffs were prepared to litigate these claims through class certification, and ultimately trial, success was far from certain.

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

Although the parties engaged in significant informal and formal discovery prior to reaching the Settlement, the parties still had significant formal discovery to complete had the matter not settled. Haines Decl., ¶ 31. This would have required expenditure of substantial time and resources by both parties that would have very likely spanned several years. *Id*. Even if Plaintiffs were to certify the classes, the parties would incur considerably more attorneys' fees and costs through a possible decertification motion, summary judgment motions, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying expense. *Id.*

c. Risk of Maintaining Class Action Status

Plaintiffs have not yet filed their motion for class certification, and as such, the extent to which Plaintiffs' proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Settlement Class (either due to a narrowing of the class definition in a Court order on a contested motion for class certification, or through settlement agreements entered into by Defendants with individual class members by way of *Pick-up-Stix* type settlement agreements[2]), and the expected recovery could be significantly reduced, given the settlement amounts that are typically offered through the *Pick-up-Stix* process. Thus, this factor, too, supports preliminary approval of the settlement.

d. <u>Amount Offered in Settlement Given Realistic Value of Claims</u>

The Settlement provides a positive recovery for the Settlement Class in the face of hotly disputed claims. Plaintiffs conducted an analysis of potential meal and rest period premium payments owing, unpaid wages, unreimbursed business expenses, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiffs' exposure analysis are discussed below:

<u>Rest Period Violations</u>: $3,886,820

Based on information provided by Defendants as well as Plaintiffs' review and extrapolation of Defendants' records, Plaintiffs estimate there were approximately 1,319,116 shifts worked during the Class Periods in excess of 3.5 hours. Haines Decl., ¶ 22. Plaintiffs further calculated the average hourly rate of pay for Class Members during the Class Periods at approximately $16.88. *Id*. Defendants further represent that they paid approximately 3,334 rest period premiums during the Class Periods. *Id*. Accordingly, assuming a violation on each and every shift in excess of 3.5 hours, Plaintiffs calculate Defendants' maximum rest period exposure at approximately $22,210,400 ([1,319,116 shifts w/ non-compliant rest periods * $16.88 average premium]- 3,334 rest period premiums paid). *Id*.

However, as noted above, Defendants contend that their rest period policies/practices complied with California law throughout the Class Periods. Haines Decl., ¶ 22. Defendants further maintain that Defendants applied for, and in some instances obtained, rest period

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[2] In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an employer may enter into pre-certification settlement agreements with individual putative class members in which the putative class members release claims for past unpaid wages and penalties in exchange for consideration. The Court further held that such settlements could preclude those individual employees from recovery in class action litigation against the employer for the same wage claims.

exemptions with the Division of Labor Standards Enforcement ("DLSE"). *Id*. Lastly, Defendants argue that Plaintiffs' rest period claim are not amenable to class treatment, since individual inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift. *Id*. These manageability concerns are especially pertinent with respect to rest period claims, Defendants argue, given that rest periods are not recorded. *Id*. In light of Defendants' defenses, Plaintiff discounted the maximum amount by 50% for risk of non-certification and an additional 65% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of approximately $3,886,820. *Id*.

<u>Meal Period Violations</u>: $100,805

Plaintiffs' analysis and extrapolation of the timekeeping data showed that during the time period Defendants utilized an allegedly unlawful on-duty meal period agreement (i.e., until May 1, 2017), there were approximately 31,850 shifts worked in excess of 5.0 hours, for which no off-duty meal period was provided. Haines Decl., ¶ 23. Assuming a 100% violation rate for these shifts based on Defendants' allegedly unlawful on-duty meal period agreement, Plaintiffs calculated a maximum potential exposure of $537,628 (31,850 shifts * $16.88 average premium). *Id*.

However, Plaintiffs' theory of liability carried significant risks of both non-certification and on the merits even if Plaintiffs were to certify this claim, based on, *inter alia*, Defendants' assertion that its on-duty meal period agreements were lawful, and that even if unlawful, very few employees actually suffered any damages, given that almost none ever actually attempted to revoke the on-duty meal period agreement. Haines Decl., ¶ 23. Defendants further contend that Plaintiffs' assumed 100% violation rate was greatly exaggerated. *Id*. Thus, Plaintiffs discounted this maximum amount by 25% for a risk of non-certification, but discounted this claim by 75% for a risk of losing on the merits or actually being able to prove damages as to any individual Class Members, to arrive at an estimated exposure of $100,805. *Id*.

<u>Unpaid Wages Due to Unlawful Timekeeping Policies/Practices</u>: $659,884

Plaintiffs allege that Defendants utilized a timekeeping system that systematically underpaid wages due to rounding. Haines Decl., ¶ 24. Based on Plaintiffs' analysis of timekeeping and payroll data provided by Defendants, Class Members were underpaid by approximately 86,872.50 hours during the Class Period due to Defendants' rounding policies/practices. *Id*. Accordingly, Plaintiffs calculate Defendants' liability for this claim at approximately $2,199,612 (approximately 86,872.50 unpaid hours * $25.32 average overtime rate). *Id*. Defendants' documents evidence that they ceased their rounding practices beginning on or about June 6, 2021. *Id*.

As noted above, however, Defendants contend that they maintained lawful timekeeping policies and/or practices, and compensated Class Members for all hours actually worked. Haines Decl., ¶ 24. Defendants also assert that this claim is not amenable to class certification due to the individualized inquiries that would be required into whether each Class Member was in fact underpaid, or potentially overpaid, for each workday in question, including whether they were performing compensable work while clocked in for their shift, thereby precluding class certification. *Id*. In light of Defendants' arguments and defenses, Plaintiffs discounted the maximum recovery on this claim by 40% to account for the risk of non-certification and an additional 50% to account for being unsuccessful on the merits or failure to recover the full amount sought, for a projected total of approximately $659,884. *Id*.

<u>Regular Rate Claims</u>: $930,997

Plaintiffs allege that Defendants failed to pay all overtime wages owed by not including the value of all non-discretionary remuneration into the regular rate of pay. Haines Decl., ¶ 25. Based on Plaintiffs' review of timekeeping and payroll data and records produced by Defendants, unpaid overtime and double time wages owed based on bonus payments to employees due to the failure to include various payments into the regular rate was approximately $2,387,173. *Id.*

However, as stated above, Defendants contend that they properly included all forms of remuneration when calculating the regular rate of pay, and therefore, paid all overtime wages to Class Members. Haines Decl., ¶ 25. *Id*. In light of these defenses, Plaintiffs discounted the maximum amount that the class could potentially recover by 35% for risk of non-certification and discounted an additional 40% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated total of approximately $930,997. *Id*.

<u>Failure to Reimburse for Necessary Business Expenditures</u>: $106,544

Plaintiffs allege that Defendants failed to reimburse Plaintiffs and other Class Members for necessary business expenditures, including the use of their personal cellular phones for work activities, as required under Labor Code § 2802. Haines Decl., ¶ 26. Based on the analysis and extrapolation of Defendants' records, Plaintiffs estimate that Class Members have worked a total of approximately 76,103 aggregate months during the Class Periods. *Id.* Using a conservative estimate of $10 per month reimbursement for personal cellular phone use, Plaintiffs calculate Defendants' maximum exposure for this claim at approximately $761,030 ($10 reimbursement per month * 76,103 months). *Id*.

As noted above, Defendants maintain that Class Members were not required to use their personal cellular phones as part of their job. Haines Decl., ¶ 26. Defendants further argue that this claim would require individual inquiries into whether Class Members actually used their personal cellular phones for work purposes, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id*. Based on these defenses, Plaintiffs discounted the estimated maximum amount by 60% for risk of non-certification, and by an additional 65% to account for risk of losing on the merits and/or failure to recover the maximal amount sought, to arrive at an estimated exposure of approximately $106,544. *Id*.

<u>Wage Statement Penalties</u>: $1,532,617

Plaintiffs' analysis reflected that there were approximately 4,290 unique employees and approximately 99,454 pay periods worked during the liability period applicable to Plaintiffs' wage statement claim. Haines Decl., ¶ 28. Those penalties are calculated as $50 for each "initial" violation and $100 for each "subsequent" violation, with a maximum of $4,000 per employee. *See* Labor Code § 226(e); *Id*. Accordingly, Plaintiffs calculated Defendants' maximum exposure for wage statement penalties at approximately $9,730,900 ([$50 "initial" violations * 4,290] + [95,164 "subsequent" violations * $100]). *Id*.

But given Defendants' arguments that no violations occurred, that employees suffered no "injury," that any alleged violations were not "knowing and intentional," that the wage statements always accurately reflected hours worked and amounts paid to employees, as well as risks associated with Plaintiffs' underlying claims discussed above, Plaintiffs discounted the maximum exposure by 55% for risk of non-certification, and by an additional 65% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately $1,532,617. Haines Decl., ¶ 28.

<u>Waiting Time Penalties</u>: $1,747,297

Defendants' records reflected approximately 3,195 former Class Members who separated from their employment with Defendants and are eligible for waiting time penalties. Haines Decl., ¶ 27. Based on an hourly rate of $16.88, Plaintiffs estimated the average waiting time penalty per former employee to be $4,051 ($16.88 * 8 hours per day * 30 days). *Id*. Therefore, Plaintiffs calculated Defendants' maximum exposure for potential waiting time penalties to be approximately $12,942,945 (3,195 former employees * $4,051 average penalty). *Id*.

However, Defendants presented several defenses to this claim, most notably their assertion that because they possessed good-faith defenses to the underlying claims, any failure to pay wages was not "willful" as a matter of law. Haines Decl., ¶ 27. Moreover, because the waiting time claim is derivative of Plaintiffs' underlying wage claims, Plaintiffs would need to overcome Defendants' defenses, both as to class certification and on the merits, as to their underlying claims. *Id*. To account for Defendants' defenses, Plaintiffs discounted the maximum exposure by 55% for the risk of non-certification, and an additional 70% for risk of losing on the merits, and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately $1,747,297. *Id*.

<u>PAGA Penalties</u>: $372,952

Plaintiffs estimated a maximum total PAGA exposure at $9,945,400 (99,454 pay periods * $100 "initial" penalty). Haines Decl., ¶ 29; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from the underlying wage and hour violations discussed above, which Defendants vigorously dispute. Haines Decl., ¶ 29; *see* *e.g.*, *Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Defendants also assert that given their good faith defenses, the Court would drastically reduce any award of PAGA penalties as "confiscatory." Haines Decl., ¶ 29; *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiffs discounted the maximum figure by 75% for risk of losing on the merits and manageability issues and/or not recovering a PAGA penalty for each and every pay period, and an additional 85% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately $372,952. Haines Decl., ¶ 29.

Using these estimated figures for each of the claims described above, Plaintiffs predicted that the potential recovery for the Settlement Class would be approximately $9,337,916. Haines Decl., ¶ 30. The proposed settlement of $7,914,696 therefore represents approximately 85% of the reasonably forecasted recovery for the Settlement Class. *Id*. Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Settlement Class, which is consistent with what Plaintiffs' counsel believes could have been recovered had the case proceeded through trial.

e. <u>The Experience and Views of Counsel</u>

"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* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Haines Decl., ¶¶ 3-10; Declaration of Sean M. Blakely ("Blakely Decl."), ¶¶ 2-6; Declaration of David P. Myers ("Myers Decl."), ¶¶ 2-3; Declaration of Jason Hatcher ("Hatcher Decl."), ¶¶ 2-4; Declaration of Lauren Teukolsky ("Teukolsky Decl."), ¶¶ 3-25; Declaration of Jonathan Lebe ("Lebe Decl."), ¶¶ 3-9. Class Counsel conducted an in-depth review of Defendants' timekeeping and payroll records, and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs' case. *See* Haines Decl., ¶¶ 22-30. The Settlement was also reached with the assistance of an experienced and respected wage-and-hour class action mediator. *Id.* This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

2. <u>The Preliminary Approval Standard Is Met</u>

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

a. <u>The Settlement Is Within the Range of Possible Approval</u>

The proposed settlement reflects approximately 85% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Further, the average Individual Settlement Payment of approximately $756.45 is in line with average payments achieved in other wage and hour class action settlements.[3] Thus, Plaintiffs submit that the proposed settlement is within the

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[3] *See e.g.*, *Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately $105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately $90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619

range of possible approval, such that notice should be provided to the Class Members so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Class Members have had the opportunity to opt-out or object.

b. <u>The Settlement Resulted from Serious, Informed Negotiations</u>

The Settlement resulted from an exchange of substantial information, arm's-length negotiations by counsel, three full-day mediations before an experienced wage and hour mediator, and additional months of negotiations to finalize the settlement. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar*, *supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiffs carefully vetted the claims at issue and reviewed extensive timekeeping and payroll data, and conducted a detailed statistical analysis of the data to arrive at their estimated classwide damages figures. *See* Haines Decl., ¶¶ 22-30. Thus, this factor supports preliminary approval.

c. <u>The Settlement Is Devoid of Obvious Deficiencies</u>

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide substantial monetary relief to Settlement Class members. The amounts proposed for Class Counsel's attorneys' fees and costs, LWDA payment, settlement administration costs, and Plaintiffs' Class Representative Service Awards, are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of

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(Sacramento County Super. Ct.) (average net recovery of approximately $80); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately $65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately $35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately $20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately $60); *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an average of approximately $198.70…[T]his is a substantial recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar actions where the gross recoveries per class member were less than $90…[T]he Court finds that the results achieved are good"); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately $108).

obvious deficiencies, this factor supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

The Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the Settlement Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiffs' claims are typical of the claims of absent Class members; and (4) Plaintiffs and their counsel will fairly and adequately represent Class Members' interest. *See* Cal. Civ. Proc. § 382.

1. The Proposed Class Is Ascertainable and Numerous

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed classes are defined as all current and former non-exempt employees of Defendants who worked in California during the Class Periods. *See* Settlement, ¶ 2. Therefore, Class Members can be identified from Defendants' personnel and employment records. Defendants represent that the Settlement Class consists of approximately 6,235 current and former non-exempt employees. *See* Haines Decl., ¶ 21. It would therefore be impracticable to bring all Class Members before the Court, or for each Class Member to bring an individual lawsuit. The proposed Settlement Class therefore satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not the merits, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiffs' claims are predicated on, among other issues, Defendants' uniform meal and rest period policies and/or practices. These types of claims are commonly held to be proper for class certification. *See e.g.*, *Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

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3. <u>The Claims of the Named Plaintiffs Are Typical</u>

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiffs' claims are typical of those held by the Class Members. First, Defendants employed Plaintiffs as non-exempt employees during the Class Periods, and Plaintiffs were subject to Defendants' wage and hour policies at issue in this case. *See* Johnson Decl., ¶ 2; Musselman Decl., ¶ 2; Williams Decl., ¶ 3; Cortez Decl., ¶ 2; Ward Decl., ¶ 2. Second, Plaintiffs were injured by the same challenged policies/practices that allegedly injured the Settlement Class as a whole. For example, Plaintiffs assert that they were deprived of all legally–compliant meal and rest periods. Plaintiffs further assert that they did not receive accurate and compliant wage statements, and did not receive all wages at the time of separation of employment. *See generally*, Plaintiffs' Declarations. Because Plaintiffs have suffered the same injuries as the other members of the Settlement Class, the typicality requirement is satisfied.

4. <u>Plaintiffs and Class Counsel Will Fairly and Adequately Represent the Class</u>

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services* 155 Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiffs and the proposed Settlement Class, and Plaintiffs possess claims that are in line with those of the Settlement Class. *See McGhee v. Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation. *See* Haines Decl., ¶¶ 3-10; Blakely Decl., ¶¶ 2-6; Myers Decl., ¶¶ 2-3; Hatcher Decl., ¶¶ 2-4; Teukolsky Decl., ¶¶ 3-25; Lebe Decl., ¶¶ 3-9.

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C. <u>THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE</u>

This Court should order distribution to the Settlement Class of the proposed Class Notice and Notice of Individual Settlement Payment, by U.S. Mail, postage prepaid, using last known mailing address information provided by Defendants. *See* Settlement, ¶ 14. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement be administered by ILYM Group, Inc. ("ILYM"), an experienced class action settlement administrator. *See generally* Declaration of Anthony Rogers ("Rogers Decl.") and attached exhibits. Class Members' addresses will be ascertainable through Defendants' personnel and payroll records, which Defendants will provide to ILYM within ten (10) business days of preliminary approval of the Settlement. *See* Settlement, ¶ 14(A). Within ten (10) business days of receipt of the Class Members' addresses, ILYM will run the addresses through the National Change of Address Database (which provides updated addresses for any individual who has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address) and mail the Class Notice to all Class Members. *See* Settlement, ¶ 14(B). To the extent that any notices are returned, ILYM will perform a "skip trace" to track any Class Member's current mailing address. *Id*., at ¶ 14(C).

The content of the proposed Class Notice satisfies California Rule of Court 3.766(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 60-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Class member, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Haines Decl., Exhs. B and C, to Exh. 1. The proposed Class Notice will also notify Class Members of the final approval hearing date and provides the Settlement Class contact information for Class Counsel, and advises Class Members that they may enter an appearance through counsel if they wish to. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Class

Members.

D. <u>THE COURT SHOULD SET A FINAL APPROVAL HEARING</u>

Finally, this Court should set a hearing for Final Approval of the Settlement on a date appropriately scheduled to follow the deadline by which Class Members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

V. <u>CONCLUSION</u>

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

Dated: July 28, 2025

Respectfully submitted,

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