

1 HOYER & HICKS
Richard A. Hoyer (SBN 151931)
rhoyer@hoyerlaw.com
2 Ryan L. Hicks (SBN 260284)
rhicks@hoyerlaw.com
3 4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
4 tel (415) 766-3539
5 fax (415) 276-1738

6 Attorneys for Plaintiffs

7 SUPERIOR COURT OF CALIFORNIA

8 IN AND FOR THE COUNTY OF ALAMEDA

9 ALEJANDRO CASAS, ELIEZER GODA,
and MARY MARTINEZ, on behalf of all
10 others similarly situated, aggrieved
employees, and the State of California,

11 Plaintiffs,

12 vs.

13 MISSION-HOPE DEVELOPMENTAL
SERVICES, INC., MISSION-HOPE DAY
14 PROGRAM, LLC, MISSION-HOPE DAY
PROGRAM BRENTWOOD, LLC, VILLAGE
15 PARKWAY WAY PROGRAM, LLC,
OSGOOD ROAD DAY PROGRAM, LLC,
16 MISSION BLVD DAY PROGRAM, LLC,
PROGRAM MANAGEMENT NETWORK,
17 LLC, GLORIA GONZALES, JIAN GAMEZ,
FELY BAUTISTA, NISSIE ESCOLANO, VY
18 LE, FENINA GAMEZ PHAM, DANIEL
RANGEL, JORELLE GAMEZ, NICOLE
19 NUNNERY, JAY GAMEZ, JUANITA NIMFA
GAMEZ, and DOES 16-25,

20 Defendants,
21
22
23
24
25
26
27
28

Case No. RG15797671
ASSIGNED FOR ALL PURPOSES TO
HON. WINIFRED Y. SMITH
DEPARTMENT 21

**CLASS, COLLECTIVE, AND
REPRESENTATIVE ACTION**

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES
SUPPORTING MOTION FOR:
PRELIMINARY APPROVAL OF
SETTLEMENT AND PROVISIONAL
CERTIFICATION OF SETTLEMENT
CLASS; APPROVING THE NOTICE
OF PROPOSED CLASS
SETTLEMENT, APPOINTING
SETTLEMENT ADMINISTRATOR AND
SETTING FINAL APPROVAL
HEARING DATE**

(SUPPORTING MEMORANDUM AND
[PROPOSED] ORDER SUBMITTED
CONCURRENTLY HEREWITH)

Date: October 26, 2018
Time: 10:00 a.m.
Dept.: 21
Reservation No.: R-2002828

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS 2

III. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT BECAUSE IT MEETS ALL OF THE REQUIRED CRITERIA. 5

 A. Settlement Class Size and Determination 5

 B. This is a Non-Reversionary Common Fund Settlement. 6

 C. The Value of the Proposed Settlement to the Class Is Within the Bounds of Reasonableness. 8

 1. The Settlement Was Reached Through Arm’s-Length Negotiations. ... 8

 2. Sufficient Discovery and Investigation Have Been Completed to Warrant Settlement..... 9

 i. Rest Period Claims 10

 ii. Meal Period Violations 11

 iii. Inaccurate Wage Statement Claims 13

 iv. Waiting Time Penalties 13

 v. PAGA Claims 13

 3. Class Counsel is Experienced and Endorses the Settlement..... 15

 4. No Objections Can Be Made Until the Final Approval Hearing..... 15

 D. The Scope of the Release Provisions Corresponds Only to Claims Related to the Class Claims. 15

 E. The Plaintiffs’ Proposed Enhancement Award is Fair and Reasonable. 16

 F. The Obligations Placed Upon PCMs Are Reasonable and Clearly Explained in the Notice Package. 16

 G. Method of Notice. 17

 H. Explanation of Settlement Payment Calculations and Procedures..... 18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. Cy Pres Beneficiary..... 19

J. Tax Consequences 19

K. Estimated Administration Costs 19

L. Class Counsel’s Request for Attorneys’ Fees and Costs. 19

M. The Proposed Settlement Will Have No Effect on Any Other Class Cases... 20

IV. THE COURT SHOULD APPOINT RUST CONSULTING, INC. AS THE SETTLEMENT ADMINISTRATOR AND APPROVE THE COSTS OF SETTLEMENT ADMINISTRATION. 20

V. THE COURT SHOULD SET A SCHEDULE FOR FINAL APPROVAL. 20

VI. CONCLUSION 21

1 **TABLE OF AUTHORITIES**

2 **State Cases**

3 *Brinker v. Superior Court* (2012) 54 Cal.4th 1004..... 11

4 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960..... 17

5 *Castellanos v. The Pepsi Bottling Group*, No. RG07332684 (Alameda Super Ct., Mar. 11,

6 2010)..... 16

7 *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785..... 8, 10

8 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794..... 8

9 *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal. 4th 1 11

10 *Hasty v. Elec. Arts, Inc.*, No. CIV 444821 (San Mateo Super. Ct., Sept. 22, 2006) 17

11 *Kullar v. Foot Locker Retail Inc.* (2008) 168 Cal.App.4th 116..... 8, 9, 10

12 *Ling v. P.F.Chang’s China Bistro, Inc.* (2016) 245 Cal.App.4th 1242 13

13 *Meewes v. ICI Dulux Paints, No. BC265880* (Los Angeles Super. Ct. Sept. 19, 2003) 17

14 *Nordstrom Commissions Cases* (2010) 186 Cal.App.4th 576 14

15 *Novak v. Retail Brand Alliance, Inc.*, No. RG 05-223254 (Alameda Super. Ct., Sept. 22,

16 2009)..... 16

17 *Thurman v. Bayshore Transit Mgmt., Inc.*, (2012) 203 Cal.App.4th 1112..... 15

18 *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224..... 17

19

20

21 **Federal Cases**

22 *Guifi Li v. A Perfect Day Franchise Inc.*, (N.D. Cal. 2012) 2012 WL 2236752 15

23 *Guilbaud v. Sprint/United Management Company*, N.D.Cal. Case No. 3:13-cv-4357-VC

24 (April 15, 2016)..... 17

25 *In re: Autozone, Inc.* (N.D.Cal. August 10, 2016) 2016 WL 4208200 13

26 *Mousai v. E-Loan, Inc.*, No. C 06-01993 SI (N.D. Cal. May 30, 2007)..... 17

27 *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938..... 16

28 *Tyson Foods, Inc. v. Bouaphakeo* (2016) ___ U.S. ___, 136 S.Ct. 1036 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Wal-Mart Stores, Inc. v. Dukes (2011) 564 U.S. 338 11

Statutes

C.R.C. 3.769 5, 17, 21

Civil Code § 1781 17

Labor Code § 226 14, 15

Labor Code § 2698, *et seq* 2

Labor Code § 2699(f) 15

1 **I. INTRODUCTION**

2 By and through the instant motion, which is unopposed by Defendants MISSION-
3 HOPE DEVELOPMENTAL SERVICES, INC., MISSION-HOPE DAY PROGRAM, LLC,
4 MISSION-HOPE DAY PROGRAM BRENTWOOD, LLC, VILLAGE PARKWAY WAY
5 PROGRAM, LLC, OSGOOD ROAD DAY PROGRAM, LLC, MISSION BLVD DAY
6 PROGRAM, LLC, PROGRAM MANAGEMENT NETWORK, LLC, GLORIA GONZALES,
7 JIAN GAMEZ, FELY BAUTISTA, NISSIE ESCOLANO, VY LE, FENINA GAMEZ PHAM,
8 DANIEL RANGEL, JORELLE GAMEZ, NICOLE NUNNERY, JAY GAMEZ, JUANITA
9 NIMFA GAMEZ (collectively “Defendants” or “Mission-Hope”), Plaintiffs ALEJANDRO
10 CASAS, ELIEZER GODA, and MARY MARTINEZ (“Plaintiffs”) hereby request that this
11 Court enter an Order: (1) Granting Preliminary Approval of the Settlement Agreement,
12 provisionally certifying a class of: “all individuals in California who have worked for Mission-
13 Hope as Program Instructors, Drivers, or a combination of both positions from December
14 22, 2011 through Preliminary Approval” for the purposes of settlement; (2) appointing
15 Plaintiff’s counsel as Class Counsel for the purposes of Settlement;¹ (3) Appointing the
16 proposed Settlement Administrator and maximum settlement costs; and (4) Approving the
17 proposed Class Notice (“Notice Package”) and setting a Final Approval hearing date.²

18 On August 14, 2018, the parties reached an agreement in principal to resolve this
19 litigation. After further negotiations regarding the full terms of the settlement agreement, all
20 parties and counsel had executed the agreement by September 20, 2018.

21 The opt-out Settlement Agreement encompasses all claims Plaintiffs assert in the
22 operative complaint on behalf of themselves and a proposed settlement class of
23 approximately four-hundred twenty (420) persons who are or were employed by the
24 Defendant Released Parties as non-exempt Program Instructors, Drivers, or a combination
25

26 ¹ A copy of the fully executed settlement agreement, entitled “CLASS ACTION SETTLEMENT AGREEMENT
27 AND RELEASE” (Settlement Agreement”) is attached as Exhibit 1 to the Declaration of Richard A. Hoyer
28 (“Hoyer Dec.”) filed concurrently herewith. The terms defined in the Settlement Agreement are used herein
with the definitions incorporated therefrom.

² The Proposed Notice Package is attached as Exhibits 1-2 to the Settlement Agreement itself.

1 of both positions at one of the five Mission-Hope adult care facilities in Antioch, Brentwood,
2 Dublin, Fremont, and/or Hayward, CA at any time during the period December 22, 2011
3 through the date this Court grants preliminary approval of the Settlement (the “Class
4 Period”).³

5 Plaintiffs’ operative complaint alleges that Defendants failed to provide the Class
6 with compliant meal periods and rest periods, which resulted in other derivative penalties
7 under the Labor Code including unpaid wages and overtime under state and federal law.
8 Plaintiffs seek to recover unpaid missed break premiums, unpaid wages and overtime and
9 resulting derivative penalties on behalf of themselves and all other similarly situated
10 putative class members (“PCMs”) employed by Defendants during the Class Period,
11 including derivative penalties on behalf of themselves, other aggrieved employees and the
12 State of California under the Private Attorneys General Act (“PAGA,” Labor Code § 2698, *et*
13 *seq.*).

14 Plaintiffs have agreed to settle their claims and those of the putative class members
15 in exchange for Defendants’ agreement to pay the class \$767,500, including the costs of
16 administering the Settlement Agreement, any enhancement awards to the respective
17 Plaintiffs, and reasonable attorneys’ fees and costs. The Settlement Agreement satisfies all
18 the criteria for preliminary class settlement approval under California Law and falls well
19 within the range of what constitutes a reasonable compromise for claims of this nature and
20 size.

21 **II. PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS**

22 On December 22, 2015, Plaintiffs filed a putative class action complaint against
23 Mission-Hope in Alameda Superior Court, Case No. RG15797671 asserting various wage-
24 related claims against Mission-Hope⁴ arising from Mission-Hope’s alleged failure to provide

25 _____
26 ³ Settlement Agreement at §§ 2.33 (Settlement Class definition); 2.36 (Settlement Class Period). We also note
27 that the parties have agreed that for individuals who had pending Labor Commissioner complaints regarding
the Class Claims that were dismissed to participate in this Action, the Class Period for those individuals will be
extended to March 21, 2011. *Id.*

28 ⁴ The initial complaint and 1AC asserted claims against defendants MISSION-HOPE DEVELOPMENTAL
SERVICES, INC., MISSION-HOPE DAY PROGRAM, LLC, MISSION-HOPE DAY PROGRAM BRENTWOOD,

1 meal period and rest breaks to its employees, on behalf of themselves and a proposed
2 class consisting of former and current Mission-Hope employees, and alleging the following
3 six causes of action: (1) failure provide rest breaks, (2) failure to provide meal periods, (3)
4 failure to pay straight time wages and overtime, (4) failure to provide accurate wage
5 statements, (5) waiting time penalties, and (6) unfair and unlawful business practices.
6 Hoyer Dec. at ¶5. That same day, Plaintiffs provided notice (the “PAGA Notice”) to
7 Defendants and the Labor Workforce Development Agency (“LWDA”) of their intent to seek
8 penalties pursuant to the PAGA based on those allegations. *Id.* After the PAGA notice
9 response period elapsed without any communication that the LWDA intended to prosecute
10 the claims asserted in the PAGA Notice, on February 8, 2016, Plaintiffs subsequently filed
11 their First Amended Complaint (“1AC”), adding causes of action for PAGA penalties. *Id.*
12 Defendants answered Plaintiffs’ First Amended Complaint, denying all material allegations
13 and asserting numerous affirmative defenses. *Id.*

14 Shortly after Plaintiffs filed the 1AC, Defendants requested that the parties engage in
15 an “early” mediation, to which Plaintiffs agreed subject to informal discovery sufficient to
16 adequately value the strengths and weaknesses of the case. Hoyer Dec. at ¶6. Plaintiffs
17 served their initial sets of discovery on Defendants in February 2017, to which Defendants
18 responded a month later, but the parties agreed to stay litigation and discovery pending the
19 “early” mediation. *Id.* at ¶7. The parties continued to negotiate the extent of the informal
20 discovery over the next several months, and repeatedly were compelled to continue the
21 mediation session while the parties disputed the scope of the informal discovery. *Id.*

22 However, Defendants ultimately produced substantial information regarding the
23 class both informally, and later formally, during discovery including: summary information
24 regarding each and every putative class member (“PCM”) who had worked as of the date of
25 production (including start date, end date, locations worked, hourly wages, total workweeks,
26 and whether they had executed a purported release of claims and the amount they were

27
28 LLC, while the other defendants were added as DOE defendants following the mediation as discussed below.

1 paid), the date of any purported On Duty Meal Period Agreement (“ODMPA”), copies of
2 handbooks, relevant policies, ODMPAs, purported release agreements, a Labor
3 Commissioner award wherein Defendants defeated a meal and rest period claim by a PCM,
4 and other documents related to Defendants’ meal and rest period policies. Prior to the
5 mediation, Defendants also deposed four PCMs, who corroborated Plaintiffs’ claims, and
6 Plaintiffs were able to gather declarations from nearly 30 PCMs (and were in the process of
7 completing at least a dozen more as of the date of the mediation. The mediation was then
8 finally set to be held on August 15, 2017. *Id.*

9 Plaintiffs compiled the data produced by Defendants, and estimated damages on all
10 claims for each of the 377 PCMs for whom data were provided during the complete Class
11 Period through the date of the mediation. *Id.* at ¶¶8-10. Plaintiffs’ counsel has obtained
12 sufficient discovery to evaluate the likelihood of success on the merits and assess the
13 potential risks facing Plaintiffs and the putative class. *Id.*

14 On August 15, 2017, the parties attended an exhaustive full-day mediation session
15 with Michael J. Loeb, Esq., a highly-respected mediator who specializes in wage and hour
16 class mediations. *Id.* at ¶11. Plaintiffs submitted a mediation brief summarizing the
17 evidence that counsel had marshalled and synthesized, the state of the applicable law, and
18 potential class-wide exposure. *Id.* Defendants submitted their own brief arguing that no
19 class could be certified and that they would also prevail on the merits against the individual
20 Plaintiffs and any other PCMs. *Id.* at ¶8. That mediation was ultimately unsuccessful,
21 though the parties continued settlement discussions thereafter with Mediator Loeb’s
22 assistance. *Id.* at ¶11.

23 Following the unsuccessful mediation, Plaintiffs recommenced discovery and lifted
24 the stay, and began to meet and confer regarding adding a number of defendants as Doe
25 defendants. Defendants resisted both the efforts to recommence discovery and the meet
26 and confer process regarding their initial discovery responses, and also the addition of
27 several Doe defendants, both entities and individuals. The discovery dispute was eventually
28 resolved and the parties agreed to a *Belaire* notice process, which was completed during

1 the fall of 2017 and 423 PCMs were sent such notices. *Id.* at ¶12. Defendants also finally
2 produced substantive responses to Plaintiffs' initial discovery requests during November
3 2017. *Id.*

4 When Defendants refused to stipulate to a Second Amended Complaint ("2AC")
5 naming an additional 15 defendants, on March 14, 2018 Plaintiffs were compelled to file a
6 motion for leave to file that 2AC, which was granted by the Court on April 6, 2018. *Id.* at
7 ¶13. On April 18, 2018, Plaintiffs filed the 2AC, the operative complaint in this action. On
8 May 22, 2018, the recently added defendants filed a demurrer to the 2AC, which the Court
9 overruled on July 26, 2018. *Id.*

10 Thereafter, the parties re-engaged in settlement negotiations with a class
11 certification deadline looming. On August 14, 2018, the parties reached an agreement in
12 principal to resolve this litigation. *Id.* at ¶14. After further negotiations regarding the full
13 terms of the settlement agreement, all parties and counsel had executed the agreement by
14 September 20, 2018. *Id.*

15 Plaintiffs and their counsel are of the opinion that the Settlement Agreement is well
16 within the range of reasonableness and is in the best interest of the proposed settlement
17 class in light of all known facts and circumstances, including the risk of significant delay,
18 defenses asserted by Defendants, and potential appellate issues. *Id.* at ¶¶16, 21.

19 **III. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**
20 **BECAUSE IT MEETS ALL OF THE REQUIRED CRITERIA.**

21 **A. Settlement Class Size and Determination**

22 Pursuant to C.R.C. 3.769(d), an order certifying a provisional settlement class is
23 appropriate. The proposed settlement class is sufficiently numerous, because Defendants
24 have identified approximately 423 class members. Hoyer Dec. at ¶17. It is also undisputed
25 that Defendants applied the same nominal rest and meal period policies, payroll practices
26 and meal and break policies to all of the PCMs throughout the class period, satisfying the
27 commonality requirement. *Id.* at ¶18. It is similarly undisputed that Plaintiffs' claims are
28 typical of those of the PCMs. *Id.* at ¶19. Plaintiffs are aware of no conflicts among Plaintiffs

1 and the class (*id.* at ¶20), and Plaintiffs' counsel are experienced wage and hour class
2 action attorneys and have litigated this matter in the best interests of the class (*id.*),
3 satisfying the adequacy requirement. Defendants do not dispute the provisional certification
4 of a class for settlement purposes.

5 **B. This is a Non-Reversionary Common Fund Settlement.**

6 The non-reversionary Settlement Agreement provides that Defendants will pay a
7 total of \$767,500 to Plaintiffs and other Participating Class Members ("CMs") who do not
8 opt-out of the class, including a Service Award to each Plaintiff in an amount up to \$7,500,
9 attorneys' fees up to 1/3 of the Settlement Fund (\$255,833.33) plus their reasonable costs
10 incurred, claims administrator's fees and expenses up to \$25,000, and \$10,000 allocated to
11 the PAGA claims to be divided 25% to the class (to be distributed on a *pro rata* basis) and
12 75% to the California Labor Workforce Development Agency ("LWDA").⁵ The distribution of
13 the settlement funds will be made in two parts.

14 Within fourteen (14) days of the Effective Date of the Court's Final Approval of the
15 Settlement Agreement and those deductions, Defendants will provide half of the Total
16 Settlement Amount to the administrator to fund the First Payment. *Id.* at § 5.1. Within seven
17 days of Defendants' First Payment to the administrator, CMs who have not opted out of the
18 settlement will be sent half of their *pro rata* share of settlement fund based on the number
19 of workweeks that each CM worked during the Class Period while employed by
20 Defendants.⁶

21 In order to account for those PCMs whom Defendants provided a payment in
22 exchange for Individual Releases, which Plaintiffs assert are invalid and were improperly
23 obtained, the distribution calculation shall be made by determining the sum of the Net

24 _____
25 ⁵ Settlement Agreement at §§ 2.37 (Total Settlement Amount); 2.2 (Class Counsel Award); 2.29 (Service
26 Award); 2.32 (Settlement Administrator Expenses); and 2.20 (PAGA Payment). Any deductions from the Total
27 Settlement Amount approved by the Court will similarly be paid one-half after the First Payment and the
28 remaining half following the Second Payment.

⁶ *Id.* at §§ 5.1-5.9. Assuming the Court approves all maximum deductions from the Total Settlement Amount,
the funds to be distributed to Participating Settlement Class Members will be \$459,225, resulting in an
average payment of approximately \$1,085.64 per Participating Class Member (assuming 423 class
members).

1 Settlement Fund added to the amounts paid to Settlement Participating Class Members
2 who signed Individual Releases. *Id.* at § 5.3. All Settlement Class Members entitled to less
3 money under this Agreement than previously received through Individual Releases will be
4 removed from the distribution calculation. *Id.* Those Settlement Class Members entitled to
5 more money under the agreement will be entitled to an amount proportional to the
6 difference between what they would be entitled to under this Agreement and what they
7 previously received through Individual Releases. *Id.* The final distribution calculation will
8 disregard amounts previously paid in Individual Releases. *Id.*

9 The sum of any of the first set of settlement checks returned as undeliverable or
10 otherwise un-cashed within 180 days after being mailed will be redistributed among the
11 Participating Class Members who did timely cash their checks as part of the second
12 distribution. *Id.* at § 5.7. CMs who do not cash their first check will not be included in the
13 second distribution, which will be divided proportionally among the CMs who cashed their
14 first Individual Settlement Payment. *Id.* at § 5.6.

15 One year and seven days after the Effective Date, Defendants will make the Second
16 Payment to the Settlement Administrator in an amount equal to the other half of the Total
17 Settlement Fund. *Id.* at § 2.28; 5.1. The Settlement Administrator will then perform the
18 appropriate calculations and distribute the second Individual Settlement Payments to those
19 CMs who cashed their first settlement check as described above. *Id.* at §§ 5.6-5.7. All funds
20 not claimed prior to the Void Date following the second distribution will be distributed to the
21 *cy pres* beneficiary designated by the Court (the parties propose Legal Aid at Work as the
22 *cy pres* beneficiary of this Settlement). *Id.* at §§ 5.7, 10.4.⁷

23 ///

24 ///

25 ///

26 ⁷ Legal Aid at Work's qualifications to be designated as the *cy pres* beneficiary of this proposed settlement are
27 attached as Exhibits 3 and 4 to the Hoyer Dec. See also <https://legalaidatwork.org/our-mission-and-how-we-work/>.
28

1 **C. The Value of the Proposed Settlement to the Class Is Within the Bounds**
2 **of Reasonableness.**

3 The well-recognized factors that a trial court should consider in evaluating the
4 reasonableness of the value of a class action settlement agreement include, but are not
5 limited to:

6 [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of
7 further litigation, the risk of maintaining class action status through trial, the amount
8 offered in settlement, the extent of discovery completed and stage of proceedings,
9 the experience and views of counsel, the presence of a governmental participant,
10 and the reaction of the class members to the proposed settlement.

11 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.

12 [A] presumption of fairness [of a proposed class action settlement] exists where: (1)
13 the settlement is reached through arm's-length bargaining; (2) investigation and
14 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
15 is experienced in similar litigation; and (4) the percentage of objectors is small.

16 *Kullar v. Foot Locker Retail Inc.* (2008) 168 Cal.App.4th 116, 128 (*quoting Dunk, supra*, at
17 1801); *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 799.

18 However, the *Kullar* and *Clark* courts also noted that a court must be independently
19 satisfied that the consideration being received (here \$767,500) is reasonable in light of the
20 strengths and weaknesses of the claims and the risks of the particular litigation. *Clark*,
21 *supra*, at 452, *quoting Kullar, supra*, at 129.

22 **1. The Settlement Was Reached Through Arm's-Length**
23 **Negotiations.**

24 That the settlement was reached through arm's-length negotiations is exemplified by
25 the over two years of hotly contested litigation involving an unsuccessful mediation,
26 contentious discovery disputes and motion practice and that the proposed settlement was
27 achieved only with the assistance of an experienced mediator. Defendants, as evidenced in
28 their mediation brief, other moving and opposition papers, and case management
29 conference statements to date, believed and maintained that a class could not be certified.⁸
30 Furthermore, the parties legitimately disputed various defenses raised by Defendants, who

⁸ See, generally, all Case Management Conference Statements filed to date.

1 were faced with the prospect of lengthy and expensive litigation against experienced
2 counsel and a lengthy potential trial, and the spectre of appellate proceedings regarding the
3 use of representative testimony at trial.

4 On the other hand, while Plaintiffs' counsel remain ultimately confident in the merits
5 of their legal arguments, Plaintiffs were put in the position of negotiating a settlement at this
6 juncture with unclear case law regarding the propriety of the use of representative
7 testimony possibly facing years of litigation and costs which could exceed any recovery for
8 the class in order to achieve a verdict which still may not have been collectible for many
9 years due to potential appellate issues, and/or uncertainties regarding the precise amount
10 of damages due to each PCM. Similarly, it was agreed upon by Plaintiffs and their counsel
11 that a settlement at this juncture in the sum agreed upon was in the best interest of the
12 class. Hoyer Dec. at ¶21.

13 **2. Sufficient Discovery and Investigation Have Been Completed to**
14 **Warrant Settlement.**

15 A court must "receive and consider enough information about the nature and
16 magnitude of the claims being settled, as well as the impediments to recovery, to make an
17 independent assessment of the reasonableness of the terms to which the parties have
18 agreed." *Kullar, supra*, at 133. Here, the parties have engaged in substantial discovery
19 regarding certification, merits, and damages issues. Plaintiffs' counsel analyzed the data
20 provided for all PCMs and assessed the maximum total value of the non-PAGA class
21 claims to be just under \$5.1 million. Hoyer Dec. at ¶¶8-9.⁹

22 The "recovery represents a reasonable compromise, given the magnitude and
23 apparent merit of the claims being released" and Plaintiffs took into account "the risks and
24 expenses of attempting to establish and collect on those claims by pursuing them in the

25 ⁹ Including the estimated \$20,591,000 in duplicative PAGA penalties, including over \$13 million in penalties
26 for inaccurate wage statements under Labor Code § 226.3 (which provides for penalties of five times the
27 amount available directly to employees under § 226(a)) increases the total estimated exposure to
28 \$25,680,621.32. Defendant asserted that its maximum potential liability was only a fraction of that amount,
though it maintained that Plaintiffs would recover nothing. Based on the maximum potential exposure, each
PCM could have in theory recovered roughly \$12,030.92 for the non-PAGA claims, and \$48,679.77 in PAGA
penalties, though 75% of those would have gone to the state, leaving \$12,169.94 to the PCM.

1 future,” when discounting the value of the claims being settled here. *Clark, supra*, at 800
2 (*quoting Kullar, supra*, at 129, emphasis omitted). Plaintiffs assert that Defendants
3 implemented the following common policies and practices which resulted in violations of the
4 meal and rest period requirements of the Labor Code:

5 i. Rest Period Claims¹⁰

6 Plaintiffs and other PCMs confirm that Defendants uniformly denied and discouraged
7 them from taking rest breaks. Defendants neither scheduled rest breaks nor made other
8 employees available to relieve the employees from their work so that they could take a rest
9 break. PCMs interviewed confirmed that they were never told of their right to take rest
10 breaks, either during their training or on the job. Indeed, Defendants’ practices and policies
11 required PCMs to remain on duty at all times and even falsely claimed that the IWC had
12 granted them a “Permit for Exemption” from permitting rest periods.

13 Plaintiffs and PCMs report that never received both rest breaks wherein they were
14 relieved of all work duties during their shifts, which exceeded six hours. Furthermore, there
15 is no evidence that Defendants ever paid any PCM the one hour of premium pay owed for
16 missed rest breaks. Finally, Defendants had no procedure in place for tracking if and when
17 the employees took rest breaks.¹¹

18 Defendants assert that there was enough time for PCMs to take a ten-minute rest
19 period, and that PCMs often had periods of “down time” during their shifts during which it
20 was possible for them to take rest periods. Or if a PCM did not take rest periods, it was their
21 own fault because they could have simply “endorsed” their charges to another co-worker or
22 manager. They further asserted that their rest period policies were at all times in
23 compliance with applicable law.

24
25
26 ¹⁰ An in-depth analysis of the relevant case law and evidence related to the meal and rest period and
27 derivative claims can be found in ¶¶22-47 of the Hoyer Dec. That analysis is summarized here for the sake of
28 brevity.

¹¹ However, Defendants provided a copy of a ruling from the Labor Commissioner in which they prevailed
against an employee who filed a claim for missed rest periods.

1 The area of law regarding the propriety of class treatment of meal and rest period
2 requirements remains unsettled, notwithstanding the California Supreme Court's ruling in
3 *Brinker v. Superior Court* (2012) 54 Cal.4th 1004. Furthermore, the issue of whether "down
4 time" during or at the end of a shift can be considered off-duty meal and/or rest period time
5 is still unclear, with only a few cases touching upon the issue without a full analysis.

6 Furthermore, proving up individual damages would likely require costly
7 representative testimony analyzed by experts on both sides, and Defendants would likely
8 dispute the application of *Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338, and *Duran v.*
9 *U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1 regarding any evidentiary showing and Trial Plan
10 with respect to both liability and damages. Defendants would undoubtedly move for class
11 decertification thereafter, making appellate proceedings almost certain regardless of which
12 side prevailed at trial.¹² Plaintiffs estimated that Defendants' potential exposure was
13 \$1,865,439.48 for the rest period violations. Hoyer Dec. at ¶9. Plaintiffs' counsel were
14 aware of these risks and took them into account when discounting the claims for settlement
15 purposes. *Id.* at ¶29.

16 ii. Meal Period Violations

17 Plaintiffs assert that Defendants required them and other PCMs to take on-duty meal
18 periods (and execute an ODMPA), and even then, they could only eat if their work allowed
19 them do so. However, Plaintiffs maintain that the "nature of the work" exception does not
20 apply to the PCMs' work, as Defendants could and should have provided relief staff during
21 the time that the PCMs were at the facilities so that PCMs could take an off-duty meal
22 period.

23 In California, on-duty meal periods, in which employees are not relieved of all
24 duties, are only legal under certain narrow circumstances. As here, some employers
25 require employees to sign forms agreeing to take "on-duty" meal periods. However, on-duty

26 _____
27 ¹² In light of *Wal-Mart*, and its prohibition of so-called "trials by formula," and the California Supreme Court's
28 recent opinion in *Duran*, it remains unclear as to what extent Plaintiffs would be permitted to use
representative testimony at trial. *But see Tyson Foods, Inc. v. Bouaphakeo* (2016) ___ U.S. ___, 136 S.Ct.
1036.

1 meal periods are permissible only under very limited circumstances where the nature of the
2 work prevents an employee from being relieved of all duty. Under this narrow exception to
3 the general rule that employers must provide off-duty meal periods, an employer who opts
4 to implement on-duty meal periods carries the burden of establishing that the facts justify
5 an on-duty meal period. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 961 (9th Cir. Cal.
6 2013).¹³

7 The Ninth Circuit, interpreting California law, has held that the “on duty” meal period
8 is a limited alternative to the off-duty meal period requirement, and can only be used by
9 employers in the narrowest of circumstances, based upon the “nature of the work.”
10 *Abdullah, supra*, 731 F.3d at 959. Generally, the nature of the work exception has been
11 applied in only two circumstances: “(1) where the work has some particular, external force
12 that requires the employee to be on duty at all times, and (2) where the employee is the
13 sole employee of a particular employer.” *Id.* at 959.

14 Here, Defendants maintain that their ODMPAs were valid due to the nature of the
15 PCMs’ work with adults with developmental disabilities, and that changing caregivers
16 throughout the day could result in poorer services being provided to the clients, or could
17 even cause a client to become violent or attempt to flee the facility. While Plaintiffs
18 vigorously dispute these assertions, a Court or jury could find that the “nature of the work”
19 exception was applicable, or that it may or may not apply based on the individual clients or
20 individual circumstances of a PCM’s work.

21 All of the issues discussed above with respect to representative testimony and
22 damages apply equally to the meal period claims Plaintiffs estimated that Defendants’
23 potential exposure was \$1,865,439.48 for the meal period claims. Hoyer Dec. at ¶9.

25 ¹³ In *Abdullah*, a private security guard sued his employer regarding the employer’s on duty meal break
26 policy. The employer argued that on duty meal breaks were necessary because employees worked at “single
27 post” locations, meaning no other guards could provide coverage during an employee’s meal break. The Ninth
28 Circuit held that a common issue of law was presented, namely whether the employer’s decision to adopt a
single-guard staffing model that does not allow for off-duty meal periods was permissible under California law.
Abdullah, 731 F.3d at 963.

1 Plaintiffs' counsel were aware of these risks and took them into account when discounting
2 the claims for settlement purposes. *Id.* at ¶33.

3 iii. Inaccurate Wage Statement Claims

4 Plaintiffs maintain that the testimony and evidence show that Defendants' wage
5 statements did not reflect the premium wages that PCMs were owed for missed or
6 otherwise noncompliant breaks. *Id.* at ¶34. Using the data provided by Defendants, the
7 maximum value of the inaccurate wage statement claim was approximately \$891,150.00. *Id.*
8 at ¶8. The parties have vigorously disputed whether Plaintiffs and the other CMs were
9 "injured" as a result of any inaccurate wage statements. *Id.* at ¶35.¹⁴ Plaintiffs' counsel were
10 aware of these risks and took them into account when discounting the claims for settlement
11 purposes. *Id.* at ¶36.

12 iv. Waiting Time Penalties

13 Plaintiffs assert that any failure to pay the premium wages for a missed meal or rest
14 period necessarily exposed Defendants to liability for waiting time penalties. *Id.* at ¶¶37-39.
15 Based on the data provided by Defendants, Plaintiffs estimated Defendants' exposure for
16 the Waiting Time Penalties to be approximately \$467,049.60. *Id.* at ¶8. Plaintiffs' counsel
17 were aware of these risks and took them into account when discounting the claims for
18 settlement purposes. *Id.* at ¶39.

19 v. PAGA Claims¹⁵

20
21
22
23 ¹⁴ We also note that there is one recent California case, that asserts in dicta that claims for inaccurate wage
24 statement and waiting time penalties cannot be based on a claim for missed meal or rest breaks (*Ling v.*
25 *P.F.Chang's China Bistro, Inc.* (2016) 245 Cal.App.4th 1242), contrary to the vast majority of cases reaching
26 the opposite conclusion. See *In re: Autozone, Inc.* (N.D.Cal. Aug. 10, 2016) 2016 WL 4208200 (disagreeing
27 with *P.F. Chang's* "[b]ecause the Court is persuaded by the numerous [courts] recognizing that section 203
28 penalties are available for wage payments under section 226.7....")

¹⁵ See ¶¶40-45 for a further in-depth discussion of the PAGA claims, with citations to relevant authority which
are summarized here for the sake of brevity. As discussed in footnote 9, *supra*, Plaintiffs estimated that the
potential exposure for the duplicative and derivative PAGA claims to be approximately \$20,591,542.77, over
\$13 million of which were for § 226.3 wages statement violations on top of those already sought pursuant to §
226.

1 Plaintiffs also assert that the underlying alleged meal and rest period violations gave
2 rise to penalties for violations of Labor Code §§ 201-203, 204, 226, 226.3, 226.7, 210, 512,
3 558, 1174, 1174.5, 1197, 2802, 2810.5, and 2699(f) available under the Private Attorneys'
4 General Act. *Id.* at ¶40. Defendants contend that no claim for PAGA penalties of any nature
5 is valid. The PAGA claims were at issue and were resolved as a part of the overall
6 settlement of the case. In such cases, California Courts have held that none of the
7 proceeds of a settlement must necessarily be allocated and distributed to the LWDA as
8 settled PAGA penalties. *Nordstrom Commissions Cases* (2010) 186 Cal.App.4th 576, 589.¹⁶

9 Notwithstanding Defendants' asserted defenses based on the underlying meal and
10 rest period and unpaid wages claims, the case law regarding the wholly-derivative and
11 duplicative PAGA claims remains inconsistent at best, and downright murky and conflicted
12 at worst. The asserted § 226.3 penalties sought under PAGA derive from the same conduct
13 for which Plaintiffs seek penalties under § 226, which itself is derivative of the missed break
14 claims, and all of the asserted PAGA penalties are derivative of other underlying claims.
15 Courts have discretion to reduce any amount of penalties awarded under PAGA, and there
16 is currently no uniform guidance or authority available to predict whether this Court would
17 award all of the PAGA penalties, deem them to be wholly duplicative, or something in
18 between.¹⁷ In counsel's experience, Plaintiffs always calculate potential PAGA penalties,
19 but they are given little weight in settlement negotiations, due to an expectation that a Court
20 would, like the Labor Commissioner, refuse to "stack" duplicative penalties and focus
21 instead on the underlying violations. *Hoyer Dec.* at ¶43. Plaintiffs' counsel were aware of
22 these risks and took them into account when discounting the claims for settlement
23 purposes. *Id.* at ¶45.

24 _____
25 ¹⁶ Plaintiffs submitted the proposed settlement agreement along with these moving papers to the LWDA on
the same date that they file the instant motion through the LWDA's new online submission system. *Hoyer*
Dec. at ¶44.

26 ¹⁷ Labor Code § 226 incorporates its own penalty provisions, so an award of the maximum penalty amount
27 provided by PAGA is uncertain. See Lab. Code § 2699(f); see also *Guifi Li v. A Perfect Day Franchise Inc.*,
(N.D. Cal. 2012) 2012 WL 2236752 at *17. Moreover, even assuming Plaintiffs' remaining claims qualify for
28 PAGA penalties, any such award is not automatic. Cal. Lab. Code § 2699(e)(2); see also *Thurman v.*
Bayshore Transit Mgmt., Inc., (2012) 203 Cal.App.4th 1112, 1135-36.

1 **E. The Plaintiffs’ Proposed Enhancement Award is Fair and Reasonable.**

2 Named Plaintiffs in class action litigation are eligible for reasonable service awards.
3 See *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977.²⁰ The settlement agreement
4 provides for a Class Representative Payment of up to \$7,500 to each Plaintiff subject to the
5 Court’s approval, in recognition of their efforts and work in prosecuting the class action.²¹ If
6 approved, the \$7,500 enhancement award would constitute .97% (less than 1%) of the total
7 Settlement Fund. In counsel’s experience, the enhancement awards will be reviewed at the
8 Final Approval stage, and Plaintiffs will submit a declaration from each plaintiff at that time
9 which details the time they put into the case, and the risks that they faced in doing so.

10 **F. The Obligations Placed Upon PCMs Are Reasonable and Clearly**
11 **Explained in the Notice Package.**

12 The Notice Packet (Exhibit 1 to the Settlement Agreement) clearly identifies the
13 options available to PCMs under the Settlement Agreement. (1) request exclusion from the

14 awarded by the Court in the Class Counsel Award authorized by this Agreement), that arise from or are
15 reasonably based on or related to Mission-Hope’s alleged failure to provide meal periods or rest breaks to
16 Settlement Class Members by other entities or individuals, and specifically including the following claims
17 arising from, based on, or reasonably relating to the claims asserted and the facts alleged in the Action:
18 including claims (based on the facts alleged in the Action) for unpaid wages (including claims for minimum
19 wage, regular wages, overtime, final wages, calculation of the correct overtime or regular rate, and meal
20 period and rest period premiums), liquidated damages, expense reimbursements, interest, penalties
21 (including waiting time penalties pursuant to Labor Code Section 203, wage statement penalties pursuant to
22 Labor Code Section 226, restitution, and civil penalties pursuant to the PAGA based on any provision of the
23 Labor Code, Wage Orders or any other statute or regulation to the fullest extent permitted by law), claims
24 pursuant to Labor Code Sections 200-204, 206.5, 207, 208, 210-214, 216, 218 218.5, 218.6, 221, 222.5,
25 225.5, 226, 226.3, 226.7, 226.8, 227.3, 350-356, 432.4, 450, 510, 512, 551–552, 558, 1174, 1174.5, 1182.12,
26 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2753, 2802, 2804, and 2699 et seq., CCP § 1021.5, 8
27 C.C.R. §§1010 and 11040, the Industrial Welfare Commission Wage Orders, claims under Business and
28 Professions Code Section 17200, et seq., claims under the federal Fair Labor Standards Act, claims for
attorneys’ fees and costs, and unfair business practices. “Settlement Class Members’ Released Claims” do
not include claims that, as a matter of law cannot be released and do not include claims for retaliation,
discrimination, wrongful termination, or individual claims filed with the appropriate agency for the recovery of
workers’ compensation benefits. “Settlement Class Members’ Released Claims” are released through the
Preliminary Approval Date.” Notably, the release is narrowly tailored to the facts asserted in the operative
complaint.

²⁰ See, e.g. *Castellanos v. The Pepsi Bottling Group*, No. RG07332684 (Alameda Super Ct., Mar. 11, 2010) (award of \$12,500); *Novak v. Retail Brand Alliance, Inc.*, No. RG 05-223254 (Alameda Super. Ct., Sept. 22, 2009) (award of \$12,500); *Hasty v. Elec. Arts, Inc.*, No. CIV 444821 (San Mateo Super. Ct., Sept. 22, 2006) (award of \$30,000); *Meewes v. ICI Dulux Paints, No. BC265880* (Los Angeles Super. Ct. Sept. 19, 2003) (service awards of \$50,000, \$25,000 and \$10,000 to the plaintiffs); *Mousai v. E-Loan, Inc.*, No. C 06-01993 SI (N.D. Cal. May 30, 2007) (service award of \$20,000); *Guilbaud v. Sprint/United Management Company*, N.D.Cal. Case No. 3:13-cv-4357-VC (April 15, 2016, \$10,000 awards).

²¹ Settlement Agreement at § B.13.

1 lawsuit and not be bound by the settlement and be free to file their own lawsuit; (2) submit
2 an objection to and be bound by the proposed settlement; or (3) do nothing, and be bound
3 by the settlement and receive a *pro rata* share of the settlement proceeds.

4 **G. Method of Notice.**

5 California law vests the Court with broad discretion in fashioning an appropriate
6 notice program so long as it satisfies all due process requirements. Civil Code § 1781; *Cartt*
7 *v. Superior Court* (1975) 50 Cal.App.3d 960, 970-974; C.R.C. 3.769. The actual form and
8 contents of the notice are within the Court’s discretion. *Wershba v. Apple Computer* (2001)
9 91 Cal.App.4th 224, 251.

10 The parties have drafted a Class Notice document based upon the general form
11 proposed by the Federal Judicial Center and in “Plain English” (which will also be translated
12 into Tagalog, the native language of a substantial portion of the settlement class),” and
13 have incorporated information discussed in the Court’s guidance documents for class
14 settlements and notices available on the Court’s website. Plaintiffs’ counsel have utilized
15 this same general format in multiple Class Notices approved by Courts in California. The
16 notice explains to the PCMs the meaning and nature of the action and the proposed
17 settlement class, the key terms of provisions of the Settlement Agreement, the manner in
18 which payments to PCMs will be calculated, the total estimated amount the PCM should
19 receive if the Court approves the requested amounts of attorneys’ fees, Service Awards,
20 Administration Costs, and all PCMs participate in the settlement, the time, date and place of
21 the Final Approval Hearing (once set by the Court), and the procedures and deadlines for
22 requesting exclusion from the Class and/or objecting to the settlement.

23 Within fourteen (14) days of this Court granting Preliminary Approval of the
24 Settlement Agreement, Defendants will provide the Class Information list to the proposed
25 settlement administrator, Rust Consulting (<http://www.rustconsulting.com/>).²² The
26

27 ²² Settlement Agreement at § 6.1-6.12 (notice procedures). The Class Information list includes: full name,
28 phone number, last four digits of Social Security Number, number of Qualifying Workweeks and last known
address.

1 administrator will then perform a Reasonable Address Verification Measure, or “skip trace”
2 to obtain the most current mailing addresses of the PCMs. *Id.* at § 6.6. No later than twenty-
3 one (21) days after the order granting preliminary approval, the administrator will send the
4 PCMs by First-Class U.S. Mail the Notice Package. *Id.* at § 6.4. The Opt Out Period will last
5 sixty (60) days from the date Notice is mailed. *Id.* § 2.7 (Exclusion/Objection Deadline). A
6 copy of the Notice Package will also be available on Class Counsel’s website. Plaintiffs are
7 unaware of any method available to provide greater notice to the PCMs. Assuming the
8 Court grants final approval of the Settlement, class members will be mailed a Notice of
9 Final Approval providing notice of same. *Id.* § 3.3.

10 **H. Explanation of Settlement Payment Calculations and Procedures**

11 A CM’s *pro rata* share of the Settlement Agreement’s common fund will be
12 determined based on the number of weeks that he or she worked as a PCM during the
13 Class Period as compared to all CMs (subject to the exception for those PCMs who had
14 asserted Labor Commissioner claims prior to the filing of this class action). *Id.* at §§ 5.4-5.5;
15 2.36. As discussed above, in order to account for the disputed Individual Releases
16 Defendants obtained from some PCMs, the distribution calculation shall be made by
17 determining the sum of the Net Settlement Fund added to the amounts paid to Settlement
18 Participating Class Members who signed Individual Releases. All Settlement Class
19 Members entitled to less money under this Agreement than previously received through
20 Individual Releases will be removed from the distribution calculation. Those Settlement
21 Class Members entitled to more money under this settlement agreement will be entitled to
22 an amount proportional to the difference between what they would be entitled to under this
23 Agreement and what they previously received through Individual Releases. The final
24 distribution calculation will disregard amounts previously paid in Individual Releases *Id.* If a
25 CM disputes the Qualifying Workweeks identified in their Class Notice, they can provide
26 documentation and/or some explanation of the disputed number of workweeks to the
27 administrator. *Id.* at §§ 6.3, 6.11; See *also* Proposed Notice at p. 4.

1 **I. Cy Pres Beneficiary**

2 In the event that there are uncashed checks after 180 days following the second
3 settlement distribution, the parties propose that the residue will be distributed to a *cy pres*
4 beneficiary.²³ The parties propose Legal Aid at Work as the *cy pres* beneficiary of this
5 settlement.²⁴

6 **J. Tax Consequences**

7 As for the settlement payments, thirty-three percent (33%) of each CM's *pro rata*
8 Settlement Sum payment will be treated as wages in the form of back pay for tax purposes,
9 thirty-three percent (33%) will be treated as interest, and thirty-four percent (34%) percent
10 of each payment will be treated as penalties, interest and other non-wage payments. *Id.* at
11 § 4.2. This allocation is appropriate because the potential damages arise out of the
12 underlying meal and rest period claims for premiums, but a substantial portion of the
13 potential damages are made up of prejudgment interest on the premium wages, and all of
14 the potential derivative penalties. A CM's *pro rata* share of the twenty-five (25%) of the
15 PAGA payment to be distributed to the Settlement Class will also be treated as penalty. *Id.*;
16 Defendants will pay the employer's share of payroll taxes, such as FICA. *Id.* The Settlement
17 Administrator will issue tax forms to all individuals receiving a payment. *Id.* at § 5.9.

18 **K. Estimated Administration Costs**

19 Rust Consulting has provided a quoted cap of \$25,000 for administration costs
20 (Hoyer Dec. at ¶50, Ex. 2). In the event that Rust does not incur the full \$25,000 of
21 estimated costs permitted by the Settlement Agreement, any costs not incurred will be
22 distributed to the Participating Class Members. (Settlement Agreement at § 2.32).

23 **L. Class Counsel's Request for Attorneys' Fees and Costs.**

24 Class Counsel seeks fees in the amount of \$255,833.33 (one-third of the total
25 amount of the settlement) plus reasonable costs incurred,²⁵ which will result in a modest

26 _____
²³ Settlement Agreement at § 10.4.

27 ²⁴ *Id.* Attached as Exhibits 3-4 to the Hoyer Dec. are documents provided by Legal Aid at Work which describe
their qualifications to be designated as the *cy pres* beneficiary of this class settlement.

28 ²⁵ Settlement Agreement at § 2.2.

1 multiplier of 1.2 to Plaintiffs' counsel's current lodestar of approximately \$215,000 (which
2 will further reduce after Plaintiffs' counsel prepares the final approval papers and incurs
3 hours assisting with administration of the settlement). Hoyer Dec. at ¶56. Plaintiffs' counsel
4 will address that request at the final approval stage, as is counsel's experience with the
5 Alameda County Complex Litigation departments.

6 **M. The Proposed Settlement Will Have No Effect on Any Other Class Cases.**

7 Plaintiffs are aware of one related case filed by two PCMs in this matter, entitled
8 *Martinez v. Mission-Hope Day Program, LLC*, Alameda County Case No. RG17861276,
9 currently pending and set for trial in March 2019. The Plaintiffs in *Martinez* joined Plaintiffs
10 at the mediation, and Plaintiffs anticipate that they will either resolve their individual claims
11 separately, or opt out of this Settlement and proceed on their own. *Id.* at ¶60.

12 **IV. THE COURT SHOULD APPOINT RUST CONSULTING, INC. AS THE**
13 **SETTLEMENT ADMINISTRATOR AND APPROVE THE COSTS OF SETTLEMENT**
14 **ADMINISTRATION.**

15 The settlement contemplates that the parties would jointly select a Settlement
16 Administrator who will be responsible for mailing and re-mailing class notices, processing
17 claim forms and requests for exclusion, calculating settlement awards, preparing reports,
18 and verifying payments. Rust Consulting, Inc. is well qualified to serve as the Administrator
19 and has administered hundreds of settlements in the state of California alone. The parties
20 nominate Rust Consulting, Inc. to be the Settlement Administrator and request that the
21 Court preliminarily approve the payment of up to \$25,000 to Rust Consulting, Inc. to
22 administer the settlement, noting of course that Rust has agreed not to charge for any work
23 not performed, and such leftover funds will be distributed to the Participating Class
24 Members. (Settlement Agreement at § 2.32.)

25 **V. THE COURT SHOULD SET A SCHEDULE FOR FINAL APPROVAL.**

26 Where a court grants preliminary approval to a class settlement, the court's order
27 must include the time, date and place of the final approval hearing, and any other matters
28

1 deemed necessary for the proper conduct of a settlement hearing. C.R.C. 3.769(e). The
2 parties respectfully propose the following schedule for the final approval hearing:

3		
4	21 Days After Preliminary Approval (11/16/2018)	Mailing of the Notice Package.
5		
6	60 Days after Mailing of the Notice Package (1/15/19)	Opt Out/Exclusion Deadline. The last day for PCMs to request exclusion or submit objections.
7		
8	91 Days after Preliminary Approval	Proposed date for Final Approval hearing. (the earliest Friday is 1/25/19) ²⁶
9		
10	14 Days after the Final Effective Date	Disbursement of First Payment to the Settlement Administrator, to be then distributed to the CMs, Counsel, and the LWDA
11		
12	One year and fourteen (14) Days after the Final Effective Date	Disbursement of Second Payment to the Administrator to be distributed along with the funds of any uncashed first payments to those CMs who cashed their first settlement check
13		
14	181 Days after mailing of second settlement payments	Disbursement of uncashed funds to <i>cy pres</i> beneficiary approved by the Court per CCP § 384

15 **VI. CONCLUSION**

16 For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant
17 the instant motion in its entirety and preliminarily approve the Settlement Agreement.
18

19 Respectfully submitted,

20 Date: October 1, 2018

HOYER & HICKS

21 
22 _____
23 Richard A. Hoyer
24 Ryan L. Hicks
25 Attorneys for Plaintiffs
26 ALEJANDRO CASAS, ELIEZER GODA,
27 and MARY MARTINEZ

28 _____
²⁶ Motion for Final Approval, Attorneys' Fees and Enhancement Awards filed no later than 1/18/19.

1 **PROOF OF SERVICE BY EMAIL**

2 I declare that I am employed in the City and County of San Francisco, State of
3 California. I am over eighteen years of age and not a party to the within entitled cause. My
4 business address is 4 Embarcadero Center, Suite 1400, San Francisco, California 94111.

5 On the date below, I served:

6 **NOTICE OF MOTION AND MOTION FOR: PRELIMINARY APPROVAL OF**
7 **SETTLEMENT AND PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS;**
8 **APPROVING THE NOTICE OF PROPOSED CLASS SETTLEMENT, APPOINTING**
9 **SETTLEMENT ADMINISTRATOR AND SETTING FINAL APPROVAL HEARING DATE**

10 to:

11 Rob Hulteng
12 Sean Piers
13 333 Bush Street, 34th Floor
14 San Francisco, CA 94104
15 rhulteng@littler.com
16 spiers@littler.com
17 tolin@littler.com

18 on:

19 OCTOBER 1, 2018

20 BY EMAIL: I served the document(s) on the person(s) listed above by emailing them
21 pursuant to the parties' written e-service agreement. I declare under penalty of perjury that
22 the foregoing is true and correct, and that this declaration was executed at San Francisco,
23 California, on the date above.

24 
25 Ryan L. Hicks