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Attorneys for Plaintiff
HANNAH WILLIAMS,
and on behalf of all others similarly aggrieved.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, COMPLEX CIVIL

HANNAH WILLIAMS, individually and on behalf of all others similarly aggrieved.

Plaintiff,

vs.

CEDAR CREEK INN SJC, INC., a California Corporation; and DOES 1-50, Inclusive,

Defendant.

Case No. 30-2020-01174105-CU-OE-CXC

Assigned to Hon. Randall J. Sherman
Department CX105

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF.

[Filed Concurrently with:

1. **Declaration of Andrea W. S. Paris in Support Thereof; and**
2. **[Proposed] Order.]**

Date: March 24, 2023
Time: 10:00 a.m.
Dept.: CX105

Complaint Filed: December 10, 2020
Trial Date: None Set

Reservation #: 73927088

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on March 24, 2023, at 10:00 a.m. in Department CX-105 of the above-captioned Court located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, Named Plaintiff HANNAH WILLIAMS ("Plaintiff") will and hereby does move the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiff and Defendant CEDAR CREEK INN SJC, INC. ("Defendant").

Specifically, Plaintiff request that the Court enter an Order:

1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement ("Agreement" or "Settlement") attached as **Exhibit 2** to the Declaration of Andrea W. S. Paris ("Paris Decl.");

2. Certifying a Class for settlement purposes;

3. Appointing Plaintiff Hannah Williams as the Class Representative and as the PAGA Representative for settlement purposes;

4. Appointing Andrea W. S. Paris of Andrea Paris Law, PC as Class Counsel for settlement purposes;

5. Approving the Notice of Proposed Class Action Settlement ("Class Notice") attached as **Exhibit A** to the Agreement to be mailed to the Class Members;

6. Approving the opt-out and objection procedures provided in the Agreement and set forth in the Class Notice;

7. Directing Defendant to furnish the name, last known address, last known telephone number, social security number, start and end dates of employment, and dates of employment in an hourly-paid or non-exempt position of all Class Members to the Settlement Administrator within twenty-one (21) calendar days after the Court grants preliminary approval of the Settlement as well as any other information the Settlement Administrator may reasonably need to administer this Settlement; and

8. Setting a date for a hearing on final approval of the proposed settlement.

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A copy of the proposed Joint Stipulation of Class Action and PAGA Settlement, as well as the hearing date, time and location for the scheduled preliminary approval hearing on this matter, were submitted to the California Labor Workforce Development Agency via online filing at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html on January 9, 2023. (See Paris Decl. ¶17, Ex. 3.)

The motion is based upon this notice, the attached memorandum of points and authorities, the Declaration of Andrea W. S. Paris filed concurrently herewith and exhibits thereto, the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

DATED: January 11, 2023

ANDREA PARIS LAW, PC

By: ______________________

Andrea W. S. Paris
Attorneys for Plaintiff HANNAH WILLIAMS
and on behalf of all others similarly aggrieved

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiff Hannah Williams ("Plaintiff") seeks preliminary approval of a Joint Stipulation of Class Action and PAGA Settlement ("Settlement" or "Agreement") on behalf of a proposed class consisting of all current and former hourly-paid or non-exempt individuals who were employed by Cedar Creek Inn SJC, Inc. ("Defendant") within the State of California at any time between June 15, 2017, to May 26, 2022 (the "Class" or "Class Members"). The Settlement also resolves all claims under PAGA on behalf of a similar group of employees comprised of and all current and former hourly-paid or non-exempt individuals who were employed by Defendant within the State of California, at any time between October 16, 2019, and May 26, 2022 (the "PAGA Members"). The Settlement terms are outlined as follows:

- Size of the Class: approximately 200 Class Members.
- Gross Settlement Amount: $110,000.00 exclusive of employer-side payroll taxes.
- Settlement Administration Costs: not to exceed $10,000.00.
- Requested Class Representative and PAGA Representative Enhancement Payments: $15,000.00 to Plaintiff.
- PAGA Payment: $5,000.00, $3,750.00 of which will be paid to LWDA with the remaining $1,250.00 distributed to PAGA Members.
- Requested Attorney's Fees and Costs: $36,300.00 plus actual litigation costs and expense not to exceed $5,661.00.
- Estimated Net Settlement Amount: $38,039.00, being the portion of the Gross Settlement Amount that will be distributed to Class Members who do not request exclusion from the Settlement.
- Average estimated class payment to Participating Class Members: $190.20 - The amount payable to each Participating Class Member under the terms of the Settlement.

As set forth herein, the Settlement is the product of informed discovery, arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore respectfully requests that the Court grant preliminary approval of the proposed

Settlement, conditionally certify the Class, approve the proposed Class Notice and separate PAGA Notice, and set a hearing date for final settlement approval, among other requested relief.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff was employed as a server/waiter by Defendant at its restaurant, Cedar Creek Inn from around November 2018, until her termination on December 15, 2019. Plaintiff and other aggrieved employees were almost entirely part-time employees who worked approximately 10-15 hours per week as non-exempt employees. Defendant's restaurant was closed for a period of time in 2020 due to the COVID-19, and then was open reduced hours, thus, further reducing the number of hours worked by aggrieved employees. Additionally, Defendant faced relatively high turnover, resulting in aggrieved employees working for Defendant for relatively shorter periods of time than normal. Defendant paid Plaintiff the minimum wage of $11.00 per hour in 2018 and $12.00 per hour in 2019, plus tips. A sampling of other employees indicates that they were also generally paid minimum wage. Plaintiff alleges that during the course of her employment, she suffered meal and rest break violations, performed off-the-clock work, and failed to receive paid sick leave. (Paris Decl., ¶ 9.)

On April 28, 2020, Plaintiff provided notice to the California Labor and Workforce Development Agency ("LWDA") and Defendant of her intent to seek penalties pursuant to Labor Code § 2699, et seq. ("PAGA"). (Paris Decl., ¶ 10, **Exh. 1**.) On December 10, 2020, Plaintiff filed a complaint with the Orange County Superior Court, Case No. 30-2020-01174105-CU-OE-CXC alleging the following causes of action: 1) Failure to Pay for Missed Meal Periods (Lab. Code §§512, 226.7); 2) Failure to Provide Paid Rest Periods (Lab. Code § 226.7); 3) Failure To Pay Accrued Sick Time (Cal. Labor Code §246); 4) Failure to Maintain Records and Provide Accurate Itemized Wage Statements (Lab. Code §§226, 1174, 1175, 1198); 5) Failure To Pay All Wages 6) Failure to Timely Pay All Wages Upon Separation (Lab. Code §§201-203); and 7) Private Attorney General Act (Lab. Code §2699, Et Seq.). (Paris Decl. ¶ 11.)

Plaintiff and Defendant (collectively, "the Parties") agreed to stay formal discovery and participate in informal discovery and private mediation. (Paris Decl. ¶ 12.) Prior to mediation, Defendant produced Plaintiff's personnel file, including time and pay records, and a sampling of aggrieved employees' payroll records, time records, meal period waivers, and wage statements from 2018-2021. Additionally, Plaintiff's counsel reviewed Defendant's financial records evidencing Defendant's position that it suffered financial hardship prior to and as a result of the pandemic. (Paris Decl. ¶ 13.) After a thorough investigation and analysis of this data, the Parties attended formal mediation with Michael Diliberto, Esq., a neutral and highly respected mediator with extensive experience in complex wage and hour matters. At mediation, the Parties engaged in a full day of intensive settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims. (Paris Decl. ¶ 14.) After a full day of mediation, and with the mediator's assistance, the Parties reached an agreement to resolve this dispute on a class and representative basis for a Gross Settlement Amount of $110,000.00, contingent upon the execution of a Settlement Agreement and Court Approval. (Paris Decl. ¶ 15.) Thereafter, the Parties worked diligently to negotiate and memorialize the terms of a long-form settlement. On or around August 31, 2022, after extensive discussions and revisions to the agreement, the Parties entered into a fully executed Joint Stipulation of Class Action and PAGA Settlement. (Paris Decl. ¶ 16; **Exh. 2)** (hereinafter "Agreement").

Plaintiff now hereby moves for preliminary approval of the proposed Settlement and has notified the LWDA of the proposed Agreement. (Paris Decl., ¶ 17, **Ex. 2**.)

II. THE SETTLEMENT TERMS

A. Class Definition

For purposes of settlement only, the Parties have agreed that the Class shall be defined as: All current and former non-exempt employees of Defendant who worked for Defendant in California at any time between June 15, 2017, and May 26, 2022. (Paris Decl. ¶ 18 - 19; Agreement ¶ I(E).) The Parties have agreed that PAGA members shall be defined as: all current and former hourly paid or non-exempt individuals who were employed by Defendant within the state of California, at any time between October 16, 2019 through May 26, 2022. (Paris Decl. ¶ 20; Agreement ¶ I(Q) & I(DD.)) It is estimated that there are 200 Class Members within the Class Period and approximately 152 PAGA Members within the PAGA Period. (Paris Decl. ¶ 21.) Class

Counsel is not aware of any other currently filed individual, class, or PAGA action that would be affected by this agreement. (Paris Decl. ¶ 22.)

B. Amount of Settlement

The Parties have agreed to settle the class and PAGA claims at issue for a non-reversionary Gross Settlement Amount of $110,000.00, exclusive of any employer-side payroll taxes. (Paris Decl. ¶ 23; Agreement ¶ I(T) & III(A).)

C. Allocation of the Gross Settlement Amount

The Gross Settlement Amount is a Common Fund and therefore, includes all requests costs, fees, and other allocations. As stated above, the Gross Settlement Amount includes: (1) attorneys' fees in the amount of 33% equaling $36,300.00 of the Gross Settlement; (2) actual litigation costs, not to exceed $5,661.00; (3) Settlement Administration Costs currently estimated at $10,000.00; (4) Class Representative Enhancement Payment in the amount of $15,000.00; and (5) the PAGA Payment of $5,000.00, of which, 75% of the PAGA Payment ($3,750.00) shall be paid to the LWDA, and 25% of the PAGA Payment shall be distributed to Eligible Aggrieved Employees. (Paris Decl. ¶ 24; Agreement ¶¶ I(A); I(J);I(BB); III(H)(2).)

After the above-estimated amounts are deducted from the Gross Settlement Amount, approximately 200 Class Members will share in a Net Settlement Amount of $38,039.00. (Paris Decl. ¶ 25; Agreement ¶ I(W).) The Net Settlement Amount will be distributed to Class Members who do not request exclusion from settlement. (Paris Decl. ¶ 26.) In addition, Class Members who are also PAGA members will receive a *pro-rata* share of the 25% portion of the PAGA Payment allocated for aggrieved employees. (Paris Decl. ¶ 27; Agreement ¶ I(BB).) Payments to Participating Class Members shall be allocated as 20% wages and 80% interest and penalties. (Paris Decl. ¶ 28; Agreement ¶ III(G)(2)). Employee taxes on wages will be deducted from the wage portion of each Participating Class Member's Individual Settlement Payment. (Paris Decl. ¶ 29; Agreement ¶ I(T)). The Settlement Administrator will submit Defendant's portion of employer side taxes, along with each Participating Class Member's Individual Settlement Share withholdings, to the appropriate taxing authorities. (Paris Decl. ¶ 30; Agreement ¶ III(H)(3)).

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The proposed Agreement is a non-reversionary settlement. All money from the Net Settlement Amount will be distributed to Participating Class Members. No money from the Settlement will revert to Defendant. (Paris Decl. ¶ 31; Agreement ¶ I(T)).

Any residue Individual Settlement Payment checks remaining uncashed after 180 days will be distributed to the Controller of the State of California to be held in trust for such Class Members pursuant to California unclaimed property law. As such, no "unpaid residue" under California Code of Civil Procedure §384 will result from the settlement. (Paris Decl. ¶ 32; Agreement ¶ III(I)).

D. Release of Wage and Hour Claims

In exchange for participating in the settlement, Participating Class Members will release their wage and hour claims against Defendant and the "Released Class Parties"; however, the release for Participating Class Members will only occur upon the complete funding of the Gross Settlement Amount and is narrowly tailored to only release claims based upon the facts alleged in the operative complaint. (Paris Decl. ¶ 33; Agreement ¶ II(II)). In addition, upon the funding of the Gross Settlement Amount, all PAGA Members, the LWDA, and the State of California shall release Defendant, and the "Released PAGA Parties" from claims for the recovery of civil penalties that were alleged or reasonably could have been alleged based on the facts asserted in the operative complaint. (Paris Decl. ¶ 34; Agreement ¶ I(CC)).

III. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The settlement of a class action requires court approval. See, *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. "In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35, disapproved on other grounds.

The review and approval of a proposed class action settlement involves a two-step process. See, Cal. Rules of Court, Rule 3.769(c). First, counsel submits the proposed terms of settlement and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the range of a fair settlement to justify providing notice of the proposed settlement to class members. After notice is provided to the class, the Court must conduct a second inquiry into whether the proposed settlement is fair, reasonable and adequate. See, Cal. Rules of Court, Rule 3.769(d)-(g).

The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.” *Armstrong v. Board of School Directors* (7th Cir. 1980) 616 F.2d 305, 314, overruled in part on other grounds. Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed settlement is within the range of possible approval and, as a result, whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing. See, Cal. Rules of Court, Rule 3.769(f). A presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.

Preliminary approval does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. See, Cal. Rules of Court, Rule 3.769(f). In considering a potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. See, *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625.

III. <u>THE SETTLEMENT IS PRESUMED FAIR</u>

A. Arm’s-Length Bargaining

California courts recognize that “a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining.” *Wershba*, supra, 91 Cal. App. 4th at 245. Here, the Parties engaged in arms-length, non-collusive negotiations at all times. This litigation was vigorously contested at the outset and settlement negotiations were at all times arm’s length and adversarial. The Parties attended mediation with a respected mediator who helped the Parties assess and evaluate their respective positions. A final settlement was only reached after extensive discussions. Even after an Agreement was reached in principle, the Parties continued to work on finalizing the long-form agreement presently before the Court. At all times, Plaintiff was prepared to litigate this matter through class certification and trial if the Parties had been unable to reach an agreement. (Paris Decl., ¶ 38 - 40.)

B. Sufficient Investigation and Discovery by Experienced Class Counsel

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. *Dunk*, supra, 48 Cal.App.4th at 1801. As discussed above, the parties engaged in extensive informal discovery prior to reaching a settlement. Prior to mediation, Defendant produced a sampling of payroll records, employee time records, meal period waiver, and wage statements from 2018-2021, as well as Defendant's financial records. Using this information, Class Counsel was able to conduct a damages analysis and estimate Defendant's maximum liability prior to mediation. (Paris Decl., ¶ 38 – 40.)

Additionally, settlement negotiations were conducted by highly capable and experienced counsel. Moreover, Class Counsel is a respected member of the bar with strong records of vigorous and effective advocacy and is experienced in handling complex wage and hour PAGA litigation. (Paris Decl. ¶ 3- 8). Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and the Risks of Continued Litigation

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. *Wershba*, supra, 91 Cal.App.4th at 246, 250. In evaluating the reasonableness of a settlement, a trial court must consider "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, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Kullar v. Foot Locker Retail,* *Inc.* (2008) 168 Cal.App.4th 116, 128, internal quotations omitted.

Here, the proposed settlement is reasonable given the strength of Plaintiff's claims and Defendant's defenses, and the factual circumstances surrounding the proceedings. Based upon Class Counsel's experience litigating similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification and the merits absent a settlement.

1. Class Counsel's Analysis of the Maximum Available Liability and Damages

Prior to mediation, Class Counsel analyzed a representative sampling of time and payroll records and estimated that Defendant's exposure for was in excess of $537,437.50 in penalties, plus attorney's fees. The estimated liability is based on the claims at issue as follows: $104,037.50 for unpaid overtime penalties, $208,000.00 for minimum wage violation penalties, $17,500.00 for wage statement violation penalties, and $207,900.00 for waiting time penalties. (Paris Decl., ¶ 41.) Counsel for the Parties had discussed Defendant's financial condition and the fact that Defendant lacks sufficient funds to achieve a significant settlement. (Paris Decl., ¶ 42.) As explained below and set forth in the Declaration of Andrea W. S. Paris, the strengths and weaknesses of Plaintiff's claims faced its own unique challenges and barriers to recovery. Paris Decl., ¶ 43 - 66.)

2. Class Counsel's Analysis of Claims and Risk-Based Adjustments

Despite this potentially large liability, substantial barriers to a class recovery existed. Defendant did not have sufficient funds to pay the penalties, let alone attorney's fees and unpaid wages that may be owed, and Defendant did not have an insurance policy that covered the claims made in this litigation. (Paris Decl., ¶ 43.) Furthermore, Defendant disputed the allegations of off the clock work or contended that employees were covered by meal break waivers, which were produced, and rarely worked in excess of 6 hours, if at all. This impacted Class Counsel's damages calculation. Defendant contended that its policies were compliant, that the maintained compliant practices, and no premiums were owed. (Paris Decl., ¶ 44.)

There would also likely be difficulties proving the alleged rest period violations, as Defendant was not required to record rest breaks. Plaintiff contended that Defendant failed to provide Class Members with timely, full, and uninterrupted rest periods which prevented or prohibited employees from taking compliant rest breaks. Plaintiff believed that she and others were routinely required to work through their rest and recovery periods which led to missed periods of adequate rest breaks for which they were not compensated which was unlawful and violated California law. See, *Augustus v. ABM Sec. Servs., Inc.* (2016) 2 Cal.5th 257, 275, holding that employers must relieve employees of all duties during rest breaks and relinquish control over how employees spend their time. Defendant claims that it allowed employees to take their rest period, that its practices comply with California law, and that in many instances, it would not be practical for employees to leave the premises in the time afforded. *Ibid*., noting that practical limitations imposed by the duration of rest period are permitted. (Paris Decl., ¶ 45.)

Subsequent Courts have also reached divergent positions regarding the appropriateness certifying rest period claims on these grounds. (Compare *Ritenour v. Carrington Mortgage Services*, 2018 WL 5858658 (C.D. Cal. Sept. 12, 2018))(declining to certify on-premises rest claim) with (*Acosta v. Remington Lodging, Contra Costa County Superior Court Case,* No. MSC-16-02404 (July 30, 2020))(certifying on-premises rest class). Plaintiff also alleged that Defendant's work-related demands interfered with employees' ability to take a compliant rest period. However, given the lack of records demonstrating rest period violations, there were legitimate concerns Plaintiff would not be able to certify these claims or prove substantial damages even assuming a uniform practice could be established. (Paris Decl., ¶ 45 - 48.)

Plaintiff also faced challenges certifying and proving liability for their minimum wage and overtime claims. These claims were largely based on unrecorded, off-the-clock work performed by the class members before and after their shifts. Plaintiff also alleged that Defendant failed to correctly calculate employees' regular rate of pay when providing employees with overtime compensation. Defendant contends it did not permit off-the-clock work, that it was not aware off-the-clock work was being performed, and that employees were properly compensated at their correct regular rate of pay. Defendant argued that even if a class could be certified, the individualized nature of the damages presented substantial concerns regarding the manageability of the case and the risk the Court could find these issues prevented certification. (Paris Decl., ¶ 49 - 51.)

Plaintiff's claim regarding sick leave violations was also challenging. Courts have held that sick leave is not a form of wages and therefore, employers are not required to pay their unused sick leave upon termination, whether or not the sick time was accrued. *McPherson v. EF Intercultural Found., Inc.* (2020) 47 Cal.App.5th 243, 263 fn. 15. The Class consists of all current and former non-exempt employees of Defendant who worked for Defendant within the aforementioned time period. Defendant's former employees would not be able to successfully claim sick leave violations because they forfeited their sick leave benefits when they terminated their employment with Defendant. Class Counsel had to consider the risk that maintaining this claim could defeat certification. (Paris Decl., ¶ 52.)

There are also substantial risks associated with the alleged waiting time penalty and wage statement claims. These claims were derivative of the previous claims and, if certification was denied on those underlying claims, this claim would also likely fail. Additionally, even if the underlying off-the-clock claims were successful, Plaintiff would still need to demonstrate that Defendant's violations of Labor Code § 203 were willful violations, a difficult prospect. See, e.g., *Choate v. Celite Corp.* (2013) 215 Cal.App.4th 1460, 1468, holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding of willfulness". (Paris Decl., ¶ 53 - 54.) Defendant argued Plaintiff would not be able to demonstrate that the alleged inaccuracies resulting from derivative violations could be proven to be knowing and intentional. Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them rather than a pure calculation of damages after liability is proven. (Compare *Jaimez v. DAIOHS USA, Inc*. (2010) 181 Cal.App.4th 1286 with *Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136. Accordingly, these derivative claims were extremely risky. (Paris Decl., ¶ 55-56.)

Class Counsel also separately contemplated the risks of proceeding with the PAGA action and potential the liability Defendant could face from this claim. As part of the valuation of the potential PAGA claims, Class Counsel also included claims under Labor Code §§204 and 1174(d). Plaintiff's claim under Labor Code § 204 could be recovered either through Labor Code § 210 or PAGA, but as a matter of law, Plaintiff is not entitled to a duplicative recovery. See, Labor Code §

210(c), permitting recovery of penalties through § 210 or PAGA, but not both. Plaintiff's claims under Labor Code § 1174(d) were arguably only recoverable under PAGA.

The Parties agreed during settlement negotiations to allocate $5,000.000 of the Settlement towards the PAGA claims, which represents approximately 4.55% of the Gross Settlement Amount. This percentage of the settlement is above the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. Settlements that allocate only 1% of the total settlement value to resolve PAGA claims is typical of wage and hour settlements and PAGA amounts as little as 0.27% of the Gross Settlement Amount have been approved as reasonable by courts. Class Counsel also recognizes that the PAGA claims would be subject to the same defenses and risks as Plaintiff's class claims, concerns regarding manageability, defenses unique to PAGA, that PAGA penalties may not be stacked for violations based on the same conduct, and the substantial risk that PAGA penalties may be reduced where they are duplicative, arbitrary or oppressive. See e.g., *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1131, imposition of both statutory and civil penalties for the same conduct is impermissible double recovery, disapproved on other grounds; *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529, reducing penalties from $50 per pay period to $5 per pay period based on good faith attempt to comply with obligations and minimal violations. (Paris Decl., ¶ 57 - 62.)

Therefore, after taking into account the risk the strengths and weaknesses of each claim, the unique risks associated therewith, the general risks associated with litigating the case, the significant additional costs and expenses that would be incurred in litigating these Actions through class certification, trial, and appeals, it is clear that the Gross Settlement Amount is fair, adequate, and reasonable. Paris Decl., ¶ 64-65.)

IV. <u>CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED</u>

Code of Civil Procedure section 382 provides that three basic requirements must be met in order to sustain any class action: "(1) there must be an ascertainable class; and (2) there must be a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." *Dunk*, supra, 48 Cal.App.4th at 1806, internal quotations omitted. Plaintiff contends that this action, which is primarily based upon Defendant's wage and hour policies and practices, satisfies the class certification requirements under Code of Civil Procedure §382. Defendant denies these allegations, but for purposes of this Settlement only, have stipulated to certification of the proposed class.

A. An Ascertainable Class Exists Which Is So Numerous That Joinder of All Members Is Impracticable

Whether an ascertainable class exists turns on three factors: "(1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." *Aguirre v. Amscan Holdings, Inc.* (2015) 234 Cal.App.4th 1290, 1300. In this case, all three considerations strongly favor class certification. Here, the Class is defined as all current and former non-exempt employees of Defendant who worked for Defendant in California at any time between June 15, 2017, and May 26, 2022. (Paris Decl., ¶ 19; Agreement ¶I(E). This provides a clear and definite scope for the proposed class.

Next, the class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Under the Federal Rules, the minimum number of a class is one-hundred individuals. Under California law, that number is significantly less. See e.g., *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934, holding forty-two class members sufficient to satisfy numerosity, disapproved on other grounds. Here, the estimated Class size of 200 favors class certification.

Finally, the question of whether class members are easily identifiable turns on whether a plaintiff can establish "the existence of an ascertainable class." *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 706. The existence of an ascertainable class, in this case, can be established through Defendant's payroll records, and the class definition is sufficiently specific to enable the parties, potential Class Members, and the Court to determine the parameters of the Class. See, *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 617,proposed class defined as all persons nationwide subscribing to telephone service who were charged for long distance calls deemed "plainly" ascertainable.

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B. The Class Shares a Well-Defined Community of Interest

The community of interest requirement embodies three factors: "(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class" *Dunk*, supra, 48 Cal.App. 4th at 1806. Here, all three requirements are easily satisfied.

The commonality criterion requires the existence of a common question of law or fact and is generally established with the issues of predominance and typicality. See, *Daar*, supra, 67 Cal. 2d 695, 706. What is required is that a common question of fact or law exists which predominates over issues unique to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising from employment—is not a bar to class certification as long as they do not render class litigation unmanageable or predominate over the common issues. See, *B.W.I. Custom Kitchen v. Owens-Illinois, Inc*. (1987)191 Cal.App.3d 1341, 1354-55.

In this case, the claims alleged present sufficient common issues of law and fact that predominate and warrant class certification. Plaintiff alleges that Defendant denied compliant meal and rest periods to employees, required employees to perform work off-the-clock, and failed to fully compensate employees for all time actually worked. These policies and practices meant that Defendant failed to pay minimum and overtime wages, and other related claims. Plaintiff alleges that Defendant's policies and practices were uniform as to all Class Members. Thus, class treatment is appropriate.

To satisfy the typicality requirement, California law does not require that Plaintiffs have claims identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct that is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct. See, *Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502. The typicality requirement for a class representative refers to the nature of the claim or defense of the representative, and not to the specific facts from which it arose or the relief sought. See, *Ibid*.

Here, Plaintiff has claims that are similar to that of the other Class Members and arise out of the same alleged facts and course of conduct. Plaintiff's claims are typical of the other Class

Members because they seek the exact same relief for the alleged violations. Because Plaintiff's claims are based upon the same alleged conduct and business practices as those of Class Members, the typicality requirement has been satisfied.

Finally, the question of the adequacy of representation "depends on whether the plaintiff's attorney qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of the class." *McGee v. Bank of America* (1976) 60 Cal.App.3d 442, 450. Here, these considerations are satisfied. Counsel for Plaintiff is a well-regarded and accomplished lawyer who is qualified and experienced in employment-related, representative action litigation. (Paris Decl., ¶ 3 - 8) Plaintiff will vigorously, adequately, and fairly represent the interests of the class. Because Plaintiff's claims are typical of other class members and are not based on unique circumstances, there is no antagonism between the interests of Plaintiff and the class.

C. A Class Action is Superior to a Multiplicity of Litigation

Under the circumstances, proceeding as a class action is a superior means of resolving this dispute, as the class members and the court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged violations. See, *Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 435, relevant considerations include the probability that each class member will come forward to prove his or her separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing. Further, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior to individual litigation.

V. <u>THE REQUESTED INCENTIVE PAYMENTS ARE REASONABLE</u>

Plaintiffs in class and PAGA Actions are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz v. BCI Coca-Cola Bottling Co*. (2010) 186 Cal.App.4th 399, 412. Courts routinely grant approval of class action settlement agreements containing enhancements for the class representative, which are necessary to provide an incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. See, *Van*

Vranken v. Atlantic Richfield Co. (N.D. Cal. 1995) 901 F. Supp. 294, 300, approving $50,000.00 enhancement.

Plaintiff initiated this litigation on behalf of her former co-workers and the State who will now benefit from the settlement. Plaintiff invested substantial time and effort into litigation including reviewing documents and extensive discussions with Class Counsel. For these reasons, Plaintiff request that an incentive/enhancement payment of $15,000.00 to Plaintiff be preliminarily approved by the Court. Plaintiff will provide declarations regarding her efforts throughout these Actions and additional reasons the Court should grant the requested incentive payments as part of their motion for final approval. (Paris Decl., ¶ 66.)

VI. REQUESTED ATTORNEYS' FEES AND COSTS

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal, Inc.* (2000) 82 Cal.App.4th 19, 41. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id*. at 47. In cases where class members present claims against a settlement fund and the defendant agrees to a percentage of the fund as part of the settlement, the use of the percentage method is appropriate. *Id.* at 32.

Here, the requested attorneys' fees of $36,300.00, which is thirty-three percent (33%) of the Gross Settlement Amount, is disclosed to Class Members and PAGA Members in the Notice of Proposed Class Action Settlement ("Class Notice"). *See* Agreement Ex. A. The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel's request for the reimbursement of litigation costs not to exceed $5,661.00. (Paris Decl., ¶ 67.)

VII. NOTICE TO THE CLASS, THE OPT-OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS

The Parties have jointly drafted a PAGA and Class Notice which will be delivered to the PAGA and Class Members. (*See* Agreement, Ex. A.) The Notice will include information regarding the nature of the lawsuit, a summary of the terms of the Settlement, the PAGA and Class definition, information on how to object and opt-out, and the date of the Final Approval Hearing. The Notice will also list each Member's Total Work Weeks and the approximate Individual Settlement Payment to be paid to the Class and/or PAGA Member. *Id.*

Within 21 calendar days after entry of the Preliminary Approval Order, Defendant will provide the Class List to the Settlement Administrator including the name, last known address, last known telephone number, social security number, and dates of employment as a non-exempt employee of Defendant during the Class Period, amongst other information. The Settlement Administrator shall perform any searches necessary for confirmation of the Class Members' addresses and shall mail the Class Notice to Class Members within 7 days of receiving the Class List. (Paris Decl. ¶ 68; Agreement ¶I(LL), III(G - J).)

In determining whether to approve a settlement of a class action, a trial court has virtually complete discretion as to the manner of giving notice to class members, and review on appeal is governed by the abuse of discretion standard. See, *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380. Here, Class Counsel is not aware of an alternative method of providing notice to the Class which would result in a higher likelihood of actual notice. (Paris Decl. ¶ 69.) The original source of the mailing addresses is from each Class Member, who provided the information to Defendant during the employment process. As a fail-safe, additional searches will be performed on any notice returned as non- deliverable. The Settlement Administrator will track any and all opt outs, objections and disputes. (*Ibid.*; Agreement ¶ I(LL).)

Any Class Member who wishes to be excluded from the Settlement must mail the Settlement Administrator a signed written request for exclusion including their name, address, telephone number, and last 4 digits of their social security number. The request for exclusion must be postmarked no later than the Response Deadline. (Agreement ¶III(J).) Any Class Member wishing to object to the approval of this Settlement shall provide a signed written statement stating the specific reason for the objection as well as their full name, address, phone number, the case name and number of the Action, as well as the name and address of the objecting Class Member's counsel. Such written statement must be mailed to the Settlement Administrator no later than the

Response Deadline. Class Members may also appear and object at the final approval hearing, regardless of whether they have submitted a written objection. (Agreement ¶III(J).)

VIII. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully request that this Court grant Plaintiff's Motion for Preliminary Approval and the relief requested herein.

DATED: January 11, 2023 ANDREA PARIS LAW, PC

By: ______________________________
Andrea W. S. Paris
Attorneys for Plaintiff HANNAH WILLIAMS
and on behalf of all others similarly aggrieved

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Orange, State of California. My business address is 23 Corporate Plaza, Suite 150, Newport Beach, CA 92660.

On January 12, 2023, I served true copies of the following document(s) described as **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties in this action as follows:

Lizbeth Ochoa
Victory Xu
Fisher & Phillips LLP
2050 Main Street, Suite 1000
Irvine, California, 92614
Telephone: (949) 851- 2424
Facsimile: (949) 851- 0152

E-mail: lochoa@fisherphillips.com
E-mail: vxu@fisherphillips.com

☒ **BY E-FILE SERVICE:** I caused the document(s) to be served on the persons listed above by requesting that One Legal Online Court Services, the Orange County Court's e-file vendor, electronically serve them.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 12, 2023, at Newport Beach, California.

Andrea W. S. Paris

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Orange, State of California. My business address is 23 Corporate Plaza, Suite 150, Newport Beach, CA 92660.

On August 28, 2023, I served true copies of the following document(s) described as **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties in this action as follows:

Labor and Workforce Development Agency (LWDA)
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814
Telephone: (916) 653-9900
Facsimile: (916) 653-6913

E-mail: PAGAinfo@dir.ca.gov

☒ **BY PRIVATE ATTORNEYS GENERAL ACT (PAGA) ELECTRONIC FILING:** I electronically filed the document(s) with the Labor and Workforce Development Agency (LWDA) using the PAGA Filing System available at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 28, 2023, at Newport Beach, California.

Desirée G. Townsend