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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

MELISSA MOSS, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

SARES REGIS OPERATING COMPANY,
L.P.; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2021-01201041-CU-OE-CXC

[Assigned for all purposes to the Hon. William
Claster, in Department CX104]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: July 8, 2022

Time: 9:00 a.m.

Dept.: CX104

Reservation Number: 73780679

Complaint Filed: May 17, 2021

FAC Filed: August 16, 2021

SAC Filed: June 10, 2022

Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 8, 2022, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable William Claster, judge presiding, in Department CX104 of the above referenced Court located at 751 W. Santa Ana Blvd., Santa Ana, California 92701, Plaintiff Melissa Moss (“Plaintiff”) will seek an Order:

(1) approving the Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (“Stipulation” or “Settlement Agreement”) in this matter;

(2) conditionally certifying the following Class for settlement purposes only:

all individuals who worked for SRG as an hourly or non-exempt employee in the State of California from May 7, 2019 to July 8, 2021 (the “Class Period”), and who either

(a) earned non-discretionary incentive wages and received a meal or rest period premium during the same workweek at any time during the Class Period (“Meal/Rest Class Members”); or

(b) who were paid final wages (upon separation of employment) via a paycard at any time during the Class Period (“Paycard Class Members”);

(3) appointing Plaintiff Melissa Moss as the Class Representative, and Larry W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel;

(4) preliminarily approving the Stipulation and the total Maximum Settlement Amount in the amount of Two Hundred Twelve Thousand Five Hundred Dollars (\$212,500.00);

(5) finding on a preliminary basis that the Stipulation appears to be within the range of reasonableness of a settlement, including the amount of the class representative payment, attorneys’ fees and costs, claims administration fees, and the allocation of payments to Class Members, that could ultimately be given final approval by this Court;

(6) approving the Notice of Proposed Class Action Settlement (“Class Notice”) to be sent to Class Members;

(7) appointing Phoenix Settlement Administrators as the Claims Administrator; and

(8) setting the matter for a Final Fairness and Final Approval hearing.

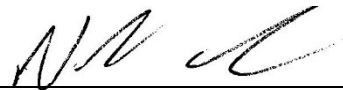
1 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
2 provides for court approval of the settlement of a purported class action and allows the Court to
3 preliminarily certify a class for settlement purposes.

4 The basis for this Motion, filed without any opposition from Defendant Sares Regis
5 Operating Company, L.P. ("Defendant"), is that the proposed settlement is fair, adequate, and
6 reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of
7 Class Members to participate in, opt-out of, or object to the settlement.

8 This Motion will be based on the attached Memorandum of Points and Authorities, the
9 Stipulation and the proposed Class Notice, and the supporting Declarations of Larry W. Lee,
10 Kristen M. Agnew, Nicholas Rosenthal, William L. Marder, and Plaintiff Melissa Moss, and
11 upon the oral arguments of counsel (should there be any) and on the complete records and file
12 herein.

13
14 DATED: June 10, 2022

DIVERSITY LAW GROUP, P.C.

15
16 By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

17
18 Attorneys for Plaintiff, the Class, and Aggrieved
19 Employees

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	7
II. PROCEDURAL HISTORY.....	7
III.DISCUSSION	9
A. Proposed Class Definition	10
B. Settlement Terms and Evaluation	11
1. Amount and Manner of Distribution of the Compensation to be Provided to Class Members Including the Amount, or an Estimate, of What Each Class Member Will Receive	16
2. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Class Members or Might Revert to the Defendants..	17
3. Scope of the Release of Class Members' Claims	17
4. Tax Treatment of Settlement Amounts.....	18
5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations.....	18
C. Notice to Class Members	18
D. Typicality and Adequacy of Representation	19
1. Class Representative's Claims are Typical of the Class	19
2. Class Counsel Have Adequately Represented the Class and Have Experience with Wage and Hour Class Actions	20
E. Costs and Fees	20
1. Attorneys' Fees and Costs	20
2. Proposed Payment to the Class Representative	22
3. Class Administration Fees.....	23
IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL	23

TABLE OF AUTHORITIES

Page(s)

State Cases

Brittany Ellis v. Sares-Regis Group, San Bernardino County Superior Court, Case No.

CVIDS1713085.....	12
<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018)	14, 15
<i>City and County of San Francisco v. Sweet</i> , 12 Cal.4th 105, 110 (1995).....	22
<i>City of San Jose v. Superior Court</i> , 12 Cal. 3d 447, 460 (1974)	20
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1803 (1996)	11
<i>Duran v. U.S. Bank Nat'l Ass'n</i> , 59 Cal.4th 1 (2014).....	15
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480, 503 (2016)	22, 23
<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462, 473 (1981).....	20
<i>Serrano v. Priest</i> , 20 Cal. 3d 25, 34 (1977)	21, 22
<i>Stephens v. Montgomery Ward & Co.</i> , 193 Cal. App. 3d 411, 421 (1987)	21
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800, 812-13 (1971).....	20
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224, 240 (2001).....	11, 21

Statutes

Bus. & Prof. Code § 17200, <i>et seq.</i>	9, 18
California Civil Code § 1542.....	23
Labor Code § 201.....	9, 18, 19
Labor Code § 202.....	9, 18, 19
Labor Code § 203.....	9, 13, 18, 19
Labor Code § 226(a)	9
Labor Code § 226.7.....	9, 18
Labor Code § 246.....	9
Labor Code § 2699(e)(2)	14
Labor Code § 212.....	19
Labor Code § 213.....	19

1	Labor Code § 221.....	19
2	Labor Code § 226.....	18
3	Other Authorities	
4	4 Alba Conte & Herbert B. Newberg, <i>Newberg on Class Actions</i> , § 11.26 (4th ed. 2002)....	10, 11
5	4 Alba Conte & Herbert B. Newberg, <i>Newberg on Class Actions</i> , § 11.24	11
6	4 Alba Conte & Herbert B. Newberg, <i>Newberg on Class Actions</i> , § 11.47	12
7	Manual for Complex Litigation (Third) § 30.41	10
8	Federal Cases	
9	<i>Bellinghausen v. Tractor Supply Co.</i> , No. 13-CV-02377-JSC, 2015 WL 1289342 (N.D. Cal. Mar.	
10	20, 2015)	16
11	<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472, 478 (1980).....	22
12	<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011, 1019 (1998).....	20
13	<i>Hammon v. Barry</i> , 752 F. Supp. 1087 (D.D.C. 1990)	12
14	<i>In re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979)	12
15	<i>In re Baldwin-United Corp.</i> , 105 F.R.D. 475, 478 (S.D.N.Y. 1984).....	11
16	<i>In re Chicken Antitrust Litig.</i> , 560 F. Supp. 957, 962 (N.D. Ga. 1980).....	12
17	<i>In re Mego Fin. Corp. Secs. Litig.</i> , 213 F.3d 454 (9th Cir. 2000)	16
18	<i>Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.</i> , 834 F.2d 677, 682 (7th Cir.	
19	1987)	12
20	<i>Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523, 528 (C.D. Cal. 2004).....	12
21	<i>Priddy v. Edelman</i> , 883 F.2d 438, 447 (6th Cir. 1989).....	12
22	<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n</i> , 79 F.R.D. 571 (E.D. Pa. 1978)	12
23	<i>Steinberg v. Carey</i> , 470 F. Supp. 471 (S.D.N.Y. 1979).....	12
24	<i>Van Ba Ma v. Covidien Holding Inc.</i> , U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) 16	
25	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. CV 09-00261 SBA EMC, 2012 WL 5878390 (N.D.	
26	Cal. Nov. 21, 2012).....	16
27	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759, 769 (9th Cir. 1997)	22
28		

1 **I. INTRODUCTION**

2 This is a wage and hour class action seeking statutory and civil penalties. Plaintiff
3 Melissa Moss (“Plaintiff”) brought her claims on a class-wide basis against Defendant Sares
4 Regis Operating Company, L.P. (“Defendant”) for violation of various Labor Codes. Defendant
5 denies each, every, and all of the allegations of the operative Complaint.

6 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating
7 to the claims alleged in the complaint and engaged in a thorough study of the legal principles
8 applicable to the claims asserted against Defendant. Defendant also informally produced data
9 needed by Plaintiff in order to formulate an accurate total damages estimate. Thereafter, the
10 Parties commenced private mediation and settlement negotiations and were ultimately able to
11 reach the current settlement. **Significantly, this entire amount is non-reversionary, such that**
12 **no monies will revert back to Defendant.**

13 The Parties believe that this amount is fair, adequate, and reasonable, especially given the
14 risks and uncertainty of class certification and the merits of this case.

15 Although Plaintiff and her counsel are confident that they could prevail on class
16 certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation
17 and the specific risks that a class might not be certified and/or that Plaintiff could fail to establish
18 liability. Based on their own independent investigation and evaluation, the Parties and their
19 respective counsel are of the opinion that the settlement for the consideration and on the terms
20 set forth in the Stipulation is fair, reasonable, and adequate and is in the best interests of the
21 Class and Defendant in light of all known circumstances and the expenses and risks inherent in
22 litigation.

23 Therefore, the Parties respectfully request that the Court grant this Motion for
24 Preliminary Approval of Class Action Settlement.

25 **II. PROCEDURAL HISTORY**

26 On May 17, 2021, Plaintiff filed a complaint against Defendant in the Superior Court of
27 the State of California for the County of Orange on behalf of herself and all similarly situated
28 employees (the “Action”). Declaration of Nicholas Rosenthal (“Rosenthal Decl.”) ¶ 2. Plaintiff

1 asserted claims for: (1) violation of Labor Code §§ 201, 202, 203, and 246; and (2) violation of
2 Labor Code § 226(a). Specifically, Plaintiff alleged that Defendant failed to pay sick pay at the
3 correct regular rate of pay, issued payment of wages on a paycard without written authorization,
4 failed to pay all wages owed upon separation of employment, and issued inaccurate wage
5 statements. *Id.* Plaintiff subsequently amended her complaint on August 16, 2021, adding causes
6 of action for: (1) violation of Labor Code § 226.7; and (2) violation of Business and Professions
7 Code § 17200, *et seq.* *Id.* ¶ 3. The first amended complaint adds claims for Defendant’s failure to
8 pay meal and rest period premium wages at the correct regular rate of pay. *Id.*

9 Separately, Plaintiff filed a representative action complaint against Defendant on June 21,
10 2021 (the “PAGA Action”), and a first amended complaint on June 23, 2021. *Id.* ¶ 4. The PAGA
11 Action asserts claims that are related to, and predicated on, the underlying Labor Code violations
12 asserted in the Action. *Id.*

13 Shortly after commencing written discovery, the Parties agreed to participate in private
14 mediation. *Id.* ¶ 5. In connection with mediation, the Parties agreed to exchange informal
15 discovery sufficient to allow Plaintiff to assess the claims and liability, as well as analyze the
16 maximum exposure of damages and penalties. *Id.* Defendant produced class data, including the
17 number of putative class members for each claim, the number of aggrieved employees, and
18 number of pay periods at issue. *Id.* This allowed Plaintiff to conduct a full damages analysis. *Id.*

19 On March 31, 2022, the Parties engaged in a full-day mediation with mediator Todd A.
20 Smith, Esq. *Id.* ¶ 6. As a result of the mediation and continued negotiations over the weeks that
21 followed, the Parties reached the current settlement. *Id.* In resolution of the class and PAGA
22 claims, the Parties subsequently executed the Joint Stipulation of Class Action and PAGA
23 Settlement and Release of Claims, a true and correct copy of which is attached as **Exhibit A** to
24 the Declaration of Nicholas Rosenthal.

25 In connection with the Parties’ settlement, on June 10, 2022, Plaintiff filed a second
26 amended complaint in the Action. Rosenthal Decl. ¶ 7. The second amended complaint alleges
27 class and representative action claims based on Defendant’s failure to pay meal and rest premium
28 wages at the correct regular rate of pay and issuance of final wages on a paycard without written

1 authorization. *Id.* The second amended complaint subsumes the claims in the PAGA Action and
2 excludes Plaintiff's sick pay and standalone wage statement claims. *Id.* The second amended
3 complaint is the operative Complaint ("Complaint").

4 **III. DISCUSSION**

5 Any settlement of a class action lawsuit must be reviewed and approved by the Court.
6 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final
7 review after notice has been distributed to the class members for their comment or objections.
8 The *Manual for Complex Litigation, Third* § 30.41 states:

9 Approval of class action settlements involves a two-step process.
10 First, counsel submits the proposed terms of settlement and the court
11 makes a preliminary fairness evaluation. If the preliminary
12 evaluation of the proposed settlement does not disclose grounds to
13 doubt its fairness or other obvious deficiencies, such as unduly
14 preferential treatment of class representatives or of segments of the
15 class, or excessive compensation for attorneys, and appears to fall
16 within the range of possible approval, the court should direct that
17 notice...be given to the class members of a formal fairness hearing,
18 at which arguments and evidence may be presented in support of
19 and in opposition to the settlement.

20 (Fed. Jud. Ctr., 3rd ed. 1995).

21 Thus, the preliminary approval by the trial court is simply a conditional finding that the
22 settlement appears to be within the range of acceptable settlements. As Professor Newberg
23 comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference
24 concerning a tentative settlement proposal may vary. The court may find that the settlement
25 proposal contains some merit, is within the range of reasonableness required for a settlement
26 offer, or is presumptively valid subject only to any objections that may be raised at a final
27 hearing." 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.26 (4th ed.
28 2002).

The procedures for the parties' submission of a proposed settlement for preliminary
approval by the court also are discussed in 4 *Newberg on Class Actions*:

When the parties to an action reach a monetary settlement, they will
usually prepare and execute a joint stipulation of settlement, which
is submitted to the court for preliminary approval. The stipulation
should set forth the central terms of the agreement, including but not
limited to, the amount of settlement, form of payment, manner of
determining the effective date of settlement and any recapture

1 clause.

2 *Id.* § 11.24.

3 Here, the Parties have reached such an agreement and have submitted to this Court in
4 connection with this Motion a copy of the Settlement Agreement fully setting forth the
5 agreement reached among the Parties. The Settlement Agreement sets forth all terms of the
6 agreement reached by the Parties, which include, among other things, the method for calculating
7 the Class Members' individual Settlements Shares.

8 The parties also may, at the preliminary approval stage, request that the court
9 provisionally approve certification of the class—conditional upon final approval of the
10 settlement. “[P]re-certification settlements are routinely approved if found to be fair and
11 reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *accord Dunk*
12 *v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was reached
13 before any “adversary certification,” the court was satisfied that it was “fair, adequate and
14 reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts
15 have employed this practice in the name of judicial efficiency in order to facilitate apparently
16 beneficial settlement proposals”). As further explained by Professor Newberg:

17 The strength of the findings made by a judge at a preliminary
18 hearing or conference concerning a tentative settlement
19 proposal...may be set out in conditional orders granting tentative
20 approval to the various items submitted to the court. Three basic
21 rulings are often conditionally entered at this preliminary hearing.
These conditional rulings may approve a temporary settlement class,
the proposed settlement, and the class counsel's application for fees
and expenses.

22 *4 Newberg on Class Actions* § 11.26.

23 In addition to such terms as class identification, settlement amount, and payment
24 procedures, the Settlement Agreement reached among the Parties contains a provision pursuant
25 to which the Parties stipulate to the Court's provisional certification of the Class for the purposes
26 of this settlement only.

27 **A. Proposed Class Definition**

28 The current settlement is being settled on behalf of “all individuals who worked for SRG

1 as an hourly or non-exempt employee in the State of California from May 7, 2019 to July 8, 2021
2 (the “Class Period”), and who either (a) earned non-discretionary incentive wages and received a
3 meal or rest period premium during the same workweek at any time during the Class Period
4 (“Meal/Rest Class Members”); or (b) who were paid final wages (upon separation of
5 employment) via a paycard at any time during the Class Period (“Paycard Class Members”).”
6 See Stipulation ¶ 4. The Class Period is defined as “the period of time from May 3, 2020
7 through July 8, 2021.” *Id.* ¶ 3. Defendant has represented that there are approximately 180
8 individuals that comprise the Class in total. Rosenthal Decl. ¶ 8.

9 The May 7, 2019 start date of the Class Period is based on a release incorporated in a
10 class action settlement in the related matter of *Brittany Ellis v. Sares-Regis Group*, San
11 Bernardino County Superior Court, Case No. CVIDS1713085. Rosenthal Decl. ¶ 9.

12 **B. Settlement Terms and Evaluation**

13 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
14 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*
15 *Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In*
16 *re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their
17 judgment for that of the proponents, particularly where, as here, settlement has been reached
18 with the participation of experienced counsel familiar with the litigation. *Nat’l Rural Telecomms.*
19 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp.
20 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car*
21 *Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav.*
22 *& Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

23 While the recommendations of counsel proposing the settlement are not conclusive, the
24 Court can properly take them into account, particularly where, as here, they have been involved
25 in informal discovery and negotiations for some period of time, appear to be competent, have
26 experience with this type of litigation, and have exchanged substantial evidence from the
27 opposing party. See *4 Newberg on Class Actions*, *supra*, § 11.47; *Nat’l Rural Telecomms. Coop.*,
28 221 F.R.D. at 528 (“[s]o long as the integrity of the arm’s length negotiation process is

1 preserved, however, a strong initial presumption of fairness attaches to the proposed
2 settlement...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who
3 are most closely acquainted with the facts of the underlying litigation”).

4 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage
5 and hour class action litigation. Plaintiff’s counsel has been approved as class counsel in a
6 number of wage and hour class actions and have extensive litigation experience. Rosenthal Decl.
7 ¶ 28; Declaration of Larry W. Lee Decl. (“Lee Decl.”) ¶¶ 5-7; Declaration of Kristen M. Agnew
8 (“Agnew Decl.”) ¶¶ 5-11; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 4-9. Each side
9 has apprised the other of their respective factual contentions, legal theories, and defenses,
10 resulting in negotiations taking place between the Parties. Rosenthal Decl. ¶ 25.

11 Based on the class data provided by Defendant, Plaintiff estimated that Defendant would
12 face potential liability of up to approximately \$820,104.00 for Plaintiff’s class claims if Plaintiff
13 succeeded at trial on all class claims. Rosenthal Decl. ¶ 19. Plaintiff was able to estimate the
14 potential class penalties based on class data provided by Defendant. *Id.* Specifically, this amount
15 was calculated based on the following breakdowns for each class claim:

- 16 • \$2,272.00 in underpaid meal and rest premiums. This amount is calculated based
17 on 1,136 instances of meal and/or rest premiums that were paid out to employees
18 during the Class Period in the same workweek as non-discretionary incentive
19 payments, based on an assumption that Defendant underpaid \$2.00 per hour for
20 each of the instance that the meal and/or rest break premiums were paid.
- 21 • \$636,422.40 in waiting time penalties under Labor Code § 203, resulting from the
22 underpayment of meal and rest premiums. This amount is calculated based on 116
23 former employees who were paid non-discretionary incentives and any meal/rest
24 premiums in the same workweek that the non-discretionary incentive was earned,
25 based on an average hourly rate of pay of \$22.86 [116 former employees x
26 (\$22.86 average hourly rate x 8 x 30)].
- 27 • \$76,809.60 in waiting time penalties under Labor Code § 203, resulting from the
28 payment of final wages on paycards. This amount is calculated based on 14

former employees who received final pay via paycards, based on an average hourly rate of pay of \$22.86 [14 former employees x (\$22.86 average hourly rate x 8 x 30)].

- \$104,600.00 [180 x \$50 + 956 x \$100] in wage statement penalties for wage statements reflecting payment for meal/rest period premiums in the same pay period that non-discretionary incentive payments were made.

See Rosenthal Decl. ¶ 19.

With respect to potential liability of Plaintiff's PAGA claims, Plaintiff estimated that Defendant could face civil penalties of up to \$95,800.00. *Id.* ¶ 20. The breakdown for the calculation of Plaintiff's PAGA penalties is as follows:

- \$47,200.00 for PAGA penalties with respect to the meal and rest period premium regular rate claims, based on 472 pay periods at issue during the PAGA Period, calculated based on PAGA's initial violation penalty of \$100 per aggrieved employee per pay period [472 x \$100 initial penalty].
- \$1,400.00 for PAGA penalties with respect to the paycard claims, calculated based on PAGA's initial violation penalty of \$100 per aggrieved employee per pay period [14 former employees x \$100 penalty].
- \$47,200 for PAGA penalties with respect to wage statements that list the inaccurate meal and/or rest period rate due to underpaid premiums during the PAGA Period, calculated based on PAGA's initial violation penalty of \$100 per aggrieved employee per pay period [472 x \$100 initial penalty].

See Rosenthal Decl. ¶ 20. However, even assuming Plaintiff ultimately prevails on her PAGA claims, the Court still has discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline to award PAGA penalties where "if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%,

1 citing the employer's good faith attempt at complying with the law. *Id.* at p. 517. Upon review,
2 the Court of Appeal found such reduction to be proper. *Id.* at p. 539. Thus, even if Plaintiff were
3 to successfully prove her claims at trial, there is a possibility that the Court may only award a
4 small percentage of PAGA penalties, as the Court has discretion to do so.

5 While Plaintiff believes in the merits of the alleged claims, Plaintiff is aware that
6 Defendant may raise defenses to the claims and further with respect to the reduction of PAGA
7 penalties and that it could be persuasive to the Court. Rosenthal ¶ 22. For example, Defendant
8 contends that waiting time penalties are not available for any alleged late payment of meal and
9 rest period premiums, as it disputes that meal and rest period premiums constitutes "wages." It is
10 Defendant's position that waiting time penalties are only available in an action or claim to
11 recover nonpayment of wages. Further, Defendant asserts that Plaintiff cannot actually point to
12 an underlying policy that would result in inadequate meal/rest periods. In other words, it would
13 take an individualized inquire to determine whether the meal/rest periods in question actually
14 were in violation of the law, which is a threshold question before getting to the issue of whether
15 the premiums paid were at the proper rate. *Id.* The Maximum Settlement Amount was premised
16 with this risk in mind, associated with the possibility of the Court significantly reducing
17 Plaintiff's PAGA penalties, along with other attendant risks. *Id.*

18 Although Plaintiff believes that the class can be certified, Plaintiff also believes in the
19 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
20 involved in not prevailing on one or more of the causes of action or theories alleged in the
21 operative Complaint, the possibility of non-certification, and the potential for appeals. Rosenthal
22 Decl. ¶ 23. These risks on class certification are compounded by the California Supreme Court's
23 holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained
24 class certification and subsequently prevailed at trial after eight years of litigation, but the
25 judgment and the certification ruling were reversed by the California Supreme Court after an
26 additional five years of litigation. The case was remanded back to superior court where class
27 certification was denied and plaintiffs' subsequent appeal also was denied.

28 Thus, the settlement for each Class Member is fair, reasonable, and adequate, given the

1 inherent risks of litigation, including the substantial risks relative to class certification, the costs
2 of pursuing such litigation, and the risks associated with the Court’s discretion to reduce PAGA
3 penalties. The settlement is the result of extensive arm’s-length negotiations between the Parties
4 and their counsel and was facilitated by an experienced and neutral mediator. Rosenthal Decl. ¶
5 25.

6 Indeed, numerous courts have held that gross settlements approximating between only 8
7 and 25% of the defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin.*
8 *Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement
9 recovering 16% of potential exposure was fair and reasonable; “[i]t is well-settled law that a cash
10 settlement amounting to only a fraction of the potential recovery does not per se render the
11 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be
12 assessed relative to risks of pursuing the litigation to judgment”; noting that whether the
13 settlement is fair and adequate depends on the “the difficulties in proving the case”);
14 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at p.*6 (N.D.
15 Cal. Mar. 20, 2015) (holding that class action settlement recovering between **8.5% and 25%** of
16 the defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct.
17 Case No. 8:12-cv-02161 (C.D. Cal. 2014) (granting preliminary approval of wage and hour class
18 settlement which obtained **only 9.1%** of projected damages, given the risks of continued
19 litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL
20 5878390, at p.*6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of
21 approximately 15% of the potential recovery was fair and reasonable). Here, based on the
22 amounts explained above, the total exposure for Plaintiff’s class and PAGA claims amount to
23 **\$915,004.00**. The Maximum Settlement Amount here is **\$212,500.00**, and thus amounts to
24 approximately **23.2%** of the total estimated liability. Rosenthal Decl. ¶ 26. The percentage-to-
25 recovery ratio of this settlement is within the range of fairness and reasonableness and should be
26 approved by the Court. *Id.*

27 Despite the asserted fairness of the settlement terms, as set forth in the Notice of
28 Proposed Class Action Settlement (“Class Notice”), should any Class Member wish to pursue his

1 or her own case for the claims being released herein, each Class Member has the right to submit
2 a Request for Exclusion (*i.e.*, opt-out) from the settlement. Stipulation ¶ 27; *see also* Class
3 Notice, attached to the Settlement Agreement. Moreover, as set forth in the Class Notice, Class
4 Members are advised of their right to object to any of the terms contained in the Stipulation and
5 attend the final approval hearing. *Id.*

6 **1. Amount and Manner of Distribution of the Compensation to be**
7 **Provided to Class Members Including the Amount, or an Estimate, of**
8 **What Each Class Member Will Receive**

9 The Settlement Agreement provides for Two Hundred Twelve Thousand Five Hundred
10 Dollars (\$212,500.00) as the Maximum Settlement Amount. Stipulation ¶ 13. The Net
11 Settlement Amount (calculated after deduction of attorneys' fees (up to \$70,762.50), costs (up to
12 \$20,000.00), payment to the Class Representative (up to \$10,000.00), LWDA portion of the
13 PAGA Payment (\$5,625.00), and claims administration costs (up to \$15,000.00)) is estimated to
14 be approximately \$91,112.50. Stipulation ¶¶ 13, 14.a-e. To determine the amount that each
15 Settlement Class Member is entitled from the Net Settlement Amount, the Claims Administrator
16 will first evenly distribute four percent (4%) of the Net Settlement Amount to all Paycard Class
17 Members. The remaining ninety-six (96%) of the Net Settlement Amount will be distributed to
18 Meal/Rest Class Members on a *pro rata* basis, based on the number of weeks each Class
19 Member worked during the Class Period. *Id.* ¶ 15.

20 Based thereon, on a raw average, each Paycard Class Member potentially may recover
21 approximately \$260.32, and each Meal/Rest Class Member potentially may recover
22 approximately \$526.66. Rosenthal Decl. ¶ 17.

23 The amount paid to each Settlement Class Member may increase or decrease depending
24 on the actual number of workweeks worked during the Class Period and the number of opt-outs
25 received. *Id.* To the extent that there are valid opt-outs, the Claims Administrator will
26 proportionately increase the individual Settlement Shares to each Settlement Class Member so
27 that the amount actually distributed to Settlement Class Members equals 100% of the Net
28 Settlement Amount. *Id.*

Finally, uncashed checks (upon the expiration date) shall escheat to the nonprofit

organization Legal Aid Society of Orange County. Stipulation ¶ 42.

2. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Class Members or Might Revert to the Defendants

None of the settlement funds will revert to Defendant. Stipulation ¶ 13.

3. Scope of the Release of Class Members' Claims

As a condition of participating in this class action settlement, Settlement Class Members shall waive and release Releasees from “any and all claims, demands, rights, liabilities, and causes of action of any kind whatsoever, that have been, or that could have been, asserted against the Releasees.” Stipulation ¶ 19.

Specifically, Meal/Rest Class Members release the following claims:

- i. all claims, including penalties, interest, costs, and attorneys’ fees related thereto, that could have been brought under the facts and allegations made in the operative Second Amended Complaint for violation of Labor Code section 226.7, and derivative violations of the Industrial Welfare Commission Wage Order 4 sections 11 and 12, and Business and Professions Code section 17200, during the Class Period;
- ii. all claims, including penalties, interest, costs, and attorneys’ fees related thereto, that could have been brought under the facts and allegations made in the operative Second Amended Complaint for violation of Labor Code section 226 based on the failure to display the accurate meal/rest period pay of pay during the period of May 17, 2020 to July 8, 2021;
- iii. all claims, including penalties, interest, costs, and attorneys’ fees related thereto, that could have been brought under the facts and allegations made in the operative Second Amended Complaint for violation of Labor Code sections 201, 202 and 203 during the Class Period; and
- iv. all claims for penalties under the California Private Attorneys General Act, including interest, costs and attorneys’ fees related thereto, predicated on the violation of Labor Code sections 201, 202, 203, 226 and 226.7 that accrued during the period of May 3, 2020 through July 8, 2021.

Id. ¶ 19.a.

Paycard Class Members release the following claims:

- i. all claims, including penalties, interest, costs, and attorneys’ fees related thereto, that could have been brought under the

facts and allegations made in the operative First Amended Complaint for violation of Labor Code sections 201, 202, 203, 212 and 213 during the Class Period; and

- ii. all claims for penalties under the California Private Attorneys General Act, including interest, costs and attorneys' fees related thereto, predicated on the violation of Labor Code sections 201, 202, 203, 221 and 213 that accrued during the period of May 3, 2020 through July 8, 2021.

Id. ¶ 19.b.

Given that the release is tailored to only claims pled in the operative Complaint and any claims arising from the facts alleged therein and nothing more, and for the limited time period of May 3, 2020 through July 8, 2021, the release is appropriately limited.

4. Tax Treatment of Settlement Amounts

The Parties have agreed that the individual Settlement Shares to Class Members shall be allocated as wages, penalties, and interest. The actual amounts owed to Class Members for unpaid meal period premiums shall be allocated as wages, for which an IRS Form W-2 shall issue. The remaining amount shall be allocated as penalties and interest, for which an IRS Form 1099 shall issue. Stipulation ¶ 18.

Pursuant to the Settlement Agreement, employer-side payroll taxes on the wage portion of the individual Settlement Shares paid to Class Members will be paid by Defendant separate from, and in addition to, the Maximum Settlement Amount. *Id.*

5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations

As stated above, Class Members do not need to do anything should they wish to receive their share of the settlement funds. In other words, because this is **not** a claims-made settlement, Class Members will not be required to make a submission to participate in the settlement. Thus, this substantially decreases the amount of burden each Class Member must bear in order to receive their individual Settlement Share. If a Class Member does not wish to take part in this settlement and be bound by the release, the Class Member must submit a Request for Exclusion. Stipulation ¶ 27.

C. Notice to Class Members

Should the Court grant the instant Motion, Defendant will provide the Claims

1 Administrator with an electronic database containing each Class Member’s full name, last known
2 mailing address, telephone number, Social Security Number, dates of employment as a Class
3 Member, number of weeks worked during the Class Period, and information indicating whether
4 the Class Member is a member of the Paycard class (“Class Member Data”). Stipulation ¶ 25.
5 Defendant shall provide this information within thirty (30) calendar days of preliminary approval
6 of this settlement. *Id.* Upon receipt of the information and prior to mailing the Class Notice, the
7 Claims Administrator shall perform a search based on the National Change of Address Database
8 for information to update and correct for any known or identifiable address changes. *Id.* ¶ 26.
9 Within fifteen (15) calendar days of receipt of the Class Member Data, the Claims Administrator
10 shall mail the Class Notice to all Class Members. *Id.* Any Class Notices returned to the Claims
11 Administrator as non-deliverable on or before the opt-out deadline shall be sent promptly via
12 regular first-class U.S. mail to the forwarding address affixed thereto within five (5) calendar
13 days. *Id.* ¶ 26.a. If no forwarding address is provided, the Claims Administrator shall promptly
14 conduct a skip-trace search to determine the correct address and perform a re-mailing. *Id.*

15 As set forth in the Class Notice, Class Members will be allowed to opt out of the
16 settlement by a certain deadline, or object to the settlement. Stipulation ¶¶ 27, 28.

17 Regardless of whether a Class Member submits a written objection, Class Members may
18 appear and make oral objections at the Final Approval Hearing. *Id.* ¶ 28; *see also* Class Notice.

19 **D. Typicality and Adequacy of Representation**

20 **1. Class Representative’s Claims are Typical of the Class**

21 The commonality requirement is met when there are questions of law and fact common to
22 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared
23 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient
24 facts couple with disparate legal remedies within the class”). Commonality requires only that
25 some common legal or factual questions exist; the plaintiffs need not show that all issues in the
26 litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981).
27 Defendant’s conduct is central to the commonality inquiry. *See City of San Jose v. Superior*
28 *Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal.3d 800, 812-13 (1971).

Where the employer's conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the Defendant's policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure violated the Labor Code by failing to pay meal and rest period premiums at the correct regular rate of pay and issuing final wages to separated employees in the form of a paycard without written authorization. Declaration of Melissa Moss ("Moss Decl.") ¶¶ 3, 5. In other words, Plaintiff contends she was subjected to the same policies and practices as other Class Members and that her claims are typical to those of the Class.

Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such issues been raised or presented. Moss ¶ 6. Plaintiff has taken all necessary steps to represent the interests of the Class, and by providing information and documents to Plaintiff's counsel. *Id.* ¶ 7. For such reasons, Plaintiff has adequately represented the Class and will continue to do so.

2. Class Counsel Have Adequately Represented the Class and Have Experience with Wage and Hour Class Actions

From the inception of the case, Class Counsel have zealously represented the interests of the Class. Class Counsel have engaged in significant meet and confer discussions with opposing counsel to obtain informal data and documents and to discuss the merits of the claims on behalf of the Class. Rosenthal Decl. ¶¶ 5-6, 22, 25. The settlement was obtained for the benefit of the Class, as opposed to the individual Class Representative. Further, Class Counsel have been approved as class counsel on a number of prior cases, have litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 5-7; Agnew Decl. ¶¶ 5-11; Rosenthal Decl. ¶¶ 27-28; Marder Decl. ¶¶ 4-9.

E. Costs and Fees

1. Attorneys' Fees and Costs

California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to Class Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472,

1 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of
2 this equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation costs
3 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
4 burden alone.” *Vincent*, 557 F.2d at 769.

5 The common fund doctrine is predicated on the principle of preventing unjust
6 enrichment. When a litigant’s efforts create or preserve a fund from which others derive benefits,
7 she may require the passive beneficiaries to compensate those who created the fund. Both
8 California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35;
9 *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th
10 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has
11 been applied “consistently in California when an action brought by one party creates a fund in
12 which other persons are entitled to share.” The reasons for applying the common fund doctrine
13 include: “fairness to the successful litigant, who might otherwise receive no benefit because his
14 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to
15 the others who are entitled to share in the fund and who should bear their share of the burden of
16 its recovery; encouragement of the attorney for the successful litigant who will be more willing
17 to undertake and diligently prosecute proper litigation for the protection or recovery of the fund
18 if he is assured that he will be properly and directly compensated should his efforts be
19 successful.” *Id.*

20 Indeed, in 2016, the California Supreme Court has also held that the award of attorneys’
21 fees in common fund wage and hour class action settlements should start with the percentage
22 method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming
23 majority of federal and state courts in holding that when class action litigation establishes a
24 monetary fund for the benefit of the class members, and the trial court in its equitable powers
25 awards class counsel a fee out of that fund, the court may determine the amount of a reasonable
26 fee by choosing an appropriate percentage of the fund created”).

27 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
28 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that

1 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is
2 “extraordinarily high or low [should] the trial court [] consider whether the percentage method
3 should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

4 Here, the Parties have agreed to a payment of approximately one-third of the Maximum
5 Settlement Amount, or \$70,762.50, for payment to Class Counsel as attorneys’ fees. *See*
6 Stipulation ¶ 14.a. The Parties have agreed to a payment of the foregoing attorneys’ fees and thus
7 this payment should be presumed to be fair. Further, the Parties have agreed to reimbursement of
8 Class Counsel’s litigation costs up to \$20,000.00. *Id.* ¶ 14.b. Class Counsel have, at their own
9 risk, expended costs, for example, to file this instant action and other pleadings in the case, effect
10 service of process, participate in mediation, and advance other litigation-related costs.

11 Based on the foregoing, the court should preliminarily approve the attorney’s fees and
12 costs being requested by the Parties.

13 **2. Proposed Payment to the Class Representative**

14 Class Representative Melissa Moss requests a modest enhancement of \$10,000.00.
15 Stipulation ¶ 14.c. The Class Representative discussed the lawsuit with her counsel on a number
16 of occasions, provided documents and information to her counsel, and reviewed various
17 pleadings and documents, including her PAGA letter, complaints and amendments thereto, the
18 Memorandum of Understanding, and the Settlement Agreement. Moss Decl. ¶ 7. As part of her
19 duties as the Class Representative, Plaintiff provided invaluable information, evidence, and
20 documents that resulted in this settlement. Furthermore, in consideration for her enhancement
21 payment, Plaintiff also executed a general release of all claims including a waiver under
22 California Civil Code § 1542, which other members of the Class did not have to do. Stipulation ¶
23 20; Moss Decl. ¶ 9.

24 In addition to the invaluable services that she provided, Plaintiff also took a significant
25 risk, both professionally and monetarily, in acting as the Class Representative and seeking
26 benefits on behalf of the Class. Because the claims alleged by the Class Representative involved
27 the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs
28 of Defendant, had she not prevailed in this action.

Furthermore, given that future employers are much less likely to hire individuals who have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the future from other potential employers. Plaintiff took this risk upon herself and the whole Class benefited from these risks taken by Plaintiff. Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a public lawsuit.

3. Class Administration Fees

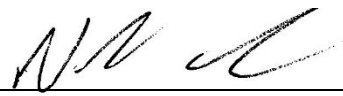
The Parties have agreed to an estimated payment of \$15,000.00 to the Claims Administrator, Phoenix Settlement Administrators, to send notices and to administer this settlement. Stipulation ¶¶ 8, 14.d. Phoenix Settlement Administrators is a well-recognized class action settlement administrator. The Parties believe that the administration fee is reasonable and should be approved.

IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL

Here, the proposed settlement is fair, adequate, and reasonable. It will result in both substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arm's length negotiations conducted by counsel for the respective parties who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice, and set a date for a final approval hearing.

DATED: June 10, 2022

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff, the Class, and Aggrieved Employees

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4 *Attorney for Defendant Sares Regis Operating Company, L.P.*

5 X BY ELECTRONIC SERVICE: Based on a court order I caused the
6 above-entitled document(s) to be served through the One Legal E-Filing System at the website
7 www.onelegal.com, addressed to all parties appearing on the electronic service list for the above-
8 entitled case. The service transmission was reported as complete and a copy of the filing
9 receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this
10 office.

11 I declare under penalty of perjury under the laws of the State of California that the
12 above is true and correct. Executed on June 10, 2022, at Los Angeles, California.

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Erika Mejia