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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ELIA PAREDES ACOSTA, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

SMG/LONG BEACH CONVENTION AND ENTERTAINMENT CENTER, a business entity form unknown; ASM GLOBAL FRESNO, LLC, a Delaware limited liability company; and DOES 1 through 100,

Defendants.

CASE NO. 21STCV27103

[*Assigned for all purposes to the Hon. Stuart M. Rice*]

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: April 23, 2025
Time: 10:30 a.m.
Dept.: SSC-1

Action Filed: July 23, 2021
Trial Date: None Set

PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on April 23, 2025 at 10:30 a.m., or as soon thereafter as the matter may be heard, in Department 1 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Elia Paredes Acosta ("Plaintiff"), as an individual and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement") in this lawsuit, entered into between Plaintiff and Defendant SMG ("Defendant");
2. Pursuant to California Code of Civil Procedure § 382, and for settlement purposes only, provisional certification of the following Settlement Class: "All current and former non-exempt employees of Defendant in California who worked at any time between January 26, 2017 and June 30, 2024, at the Long Beach Convention and Entertainment Center."
3. Preliminary appointment of Elia Paredes Acosta as the Class Representative;
4. Preliminary appointment of Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham, and Susan J. Perez of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement Agreement should be finally approved and to award amounts for the Class Representative Service Payment, settlement administration costs, payment to the Labor and Workforce Development Agency for its share of civil penalties under the Private Attorneys General Act, and Class Counsel's attorneys' fees and costs;
6. Appointment of Apex Class Action Administration as the third-party settlement administrator; and
7. Approval of the proposed Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval ("Notice Packet"), and entry of the proposed Order instructing the Notice Packet to be disseminated to the proposed Settlement Class in English and Spanish, as provided in the Settlement Agreement.

This motion is based on this notice of motion, the attached memorandum of points and authorities, the declarations of Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham, Susan J. Perez, Plaintiff Elia Paredes Acosta, Sean Hartranft of Apex Class Action Administration, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: February 4, 2025

Respectfully Submitted,
HAINES LAW GROUP, APC

By: ______________________
Andrew J. Rowbotham
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Elia Paredes Acosta ("Plaintiff"), as an individual and on behalf of the proposed Settlement Class, respectfully requests that this Court preliminarily approve the proposed Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement" or "Settlement"),[1] entered into by Plaintiff and Defendant SMG ("Defendant") (collectively, the "Parties"). This non-reversionary $215,000.00 settlement is reached on behalf of the following Settlement Class: "All current and former non-exempt employees of Defendant in California who worked at any time between January 26, 2017 and June 30, 2024 (the "Class Period"), at the Long Beach Convention and Entertainment Center."

Based upon the data provided by Defendant, there are approximately 483 potential Settlement Class members. After Court-approved deductions for the Class Representative Service Payment, settlement administrator costs, the Labor & Workforce Development Agency's ("LWDA") share of Private Attorneys General Act ("PAGA") civil penalties, the Aggrieved Employees' share of PAGA civil penalties, and attorneys' fees and costs to Class Counsel, the remaining Net Settlement Amount ("NSA") is estimated to be no less than $69,343.33. This results in average Individual Settlement Payments of approximately $143.57, with the lowest possible estimated Individual Settlement Payment of $1.52 (in the event a Settlement Class member worked only one workweek during the Class Period) and the highest possible estimated Individual Settlement Payment of $589.13 (in the event a Settlement Class member worked every workweek during the Class Period). Aggrieved Employees defined as: "all current and former non-exempt employees of Defendant in California who worked at any time between July 23, 2020 and June 30, 2024 (the "PAGA Period"), at the Long Beach Convention and Entertainment

[1] The Settlement Agreement and Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval ("Notice Packet") are attached as Exhibit A to the Declaration of Andrew J. Rowbotham ("Rowbotham Decl."), filed concurrently herewith. The agreement is approved by Defendant and currently signed by Plaintiff and Plaintiff's counsel. Defendant has represented that it will provide the fully executed version imminently. Plaintiff will file a supplemental declaration with the fully-executed long form as soon as it is provided by Defendant.

Center" will each receive their share of PAGA civil penalties for their release of PAGA claims. The approximately 373 Aggrieved Employees will receive an average Individual PAGA Payment of $10.05 – with the lowest possible payment estimated to be $1.00 and the highest at $102.00. Settlement Class members who are also Aggrieved Employees will receive both an Individual Settlement Payment and Individual PAGA Payment (a combined average payment of $153.62).

Significantly, Settlement Class members do not need to file a claim form in order to receive an Individual Settlement Payment, and all Settlement Class members who do not opt-out will automatically receive their share of the Settlement. This Settlement represents a fair and reasonable result for the Settlement Class members, who will be agreeing to release only those claims that were actually asserted in the operative complaint, or which could have been asserted based on the facts alleged therein. All Aggrieved Employees, regardless of whether they opt out of the Settlement, will receive their share of PAGA civil penalties and will release all PAGA claims that are based on the Labor Code violations pled in the operative complaint or Plaintiff's letter to the LWDA dated July 23, 2021, or which could have been pled in the operative complaint based on the factual allegations therein, that arose during the PAGA Period.[2]

Prior to reaching this Settlement, Defendant produced a representative sampling of timekeeping and payroll records, policy documents, employee handbooks, and classwide data points. Plaintiff and Defendant's Person Most Qualified ("PMQ") witnesses also sat for their depositions prior to mediation. Plaintiff retained a data expert to analyze the production and create a class-wide exposure model for the claims at issue. On June 27, 2024, after extensive legal research and analysis, the Parties participated in a mediation session with the Hon. Glenda Sanders (Ret.). Through a mediator's proposal at the conclusion of mediation, this Settlement was reached. Over the following months, the Parties negotiated and executed the long-form Settlement Agreement that is now before this Court for preliminary approval.

This proposed Settlement is well within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation,

[2] Plaintiff's LWDA letter is attached to the Rowbotham Decl. as Exhibit B.

and the monetary benefit to the Settlement Class members. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. Factual And Procedural Background

Defendant operates a 400,000 square foot meeting and exhibit space for special events, converts, conventions, and trade shows in Long Beach, California (known as the "Long Beach Convention Center"). Rowbotham Decl., ¶ 10. The Long Beach Convention Center hosts numerous large-scale entertainment events, conventions, and conferences, including Comic-Con and Disney on Ice. *Id.* Plaintiff was employed by Defendant as a non-exempt employee in California during the Class Period. Declaration of Elia Paredes Acosta ("Acosta Decl."), ¶ 2. Like all Settlement Class members, Plaintiff was subject to Defendant's allegedly unlawful wage and hour policies and practices. *Id.*

On July 23, 2021, Plaintiff filed the initial complaint, alleging Defendant failed to: (i) pay all overtime wages owed; (ii) pay all minimum wages owed; and (iii) comply with California's Unfair Competition laws. Rowbotham Decl., ¶ 11. On March 30, 2022, Plaintiff filed the First Amended Complaint, adding a cause of action for civil penalties under the PAGA, Labor Code § 2698, *et seq.,* based on the same underlying Labor Code violations alleged in the complaint. *Id.* On July 25, 2024, Plaintiff filed the operative Second Amended Complaint, including a fifth cause of action for waiting time penalties, Labor Code §§ 201-203. *Id.*

Prior to mediation, the Parties completed a significant amount of formal written discovery and a *Belaire-West* notice mailing. Rowbotham Decl., ¶ 12. Defendant deposed Plaintiff and Plaintiff's counsel deposed three separate PMQ witnesses. *Id.* Shortly thereafter, the Parties agreed to attend private mediation with the Hon. Glenda Sanders (Ret.) *Id.* To ensure a productive mediation, Defendant produced an approximate 18% sampling of putative class timekeeping and payroll records, policy documents, employee handbooks, and classwide data points. *Id.* Plaintiff retained a data expert to analyze the production and create a class-wide exposure model for the claims at issue. *Id.* The Parties attended mediation on June 27, 2024, and were ultimately able to reach a tentative resolution of all claims at issue as a result of a mediator's proposal. *Id.*

B. Plaintiff's Claims and Defendant's Defenses

1. Unpaid Wages

Plaintiff contends that, between September 25, 2017 and December 31, 2023, Defendant maintained a security screening policy that required employes to undergo off-the-clock security screenings, which included a visual inspection of the employee's company ID and a visual and physical bag inspection, both of which were conducted before employees were physically able to clock in and enter the convention center. Rowbotham Decl., ¶ 13. Depending on the event, Defendant's off-the-clock security screenings resulted in a significant number of unpaid work hours due to the time spent participating in the security screening as well as the time spent waiting in line while others were screened. *See Frlekin v. Apple Inc*. (2020) 8 Cal. 5th 1038, 1045 (holding time spent undergoing mandatory bag checks is compensable as "hours worked."); *see also Huerta v. CSI Electrical Contractors* (2024) 15 Cal.5th 908 (holding that time spent on employer's premises waiting in personal vehicle to personally show identification badge and have a security guard peer into vehicle before exiting a security gate is compensable as "hours worked.")

Additionally, between January 26, 2017 and August 18, 2021, Defendant implemented a quarter hour rounding practice that, resulted in a failure to pay employees for all hours worked. *See* Wage Order 10, § 3, 4; Labor Code §§ 1197 and 1182.12 (establishing the right of employees to be paid minimum wages for all hours worked). Specifically, Defendant recorded employee time to the minute using an electronic timekeeping system and then rounded that time after the fact in an uneven manner. *See See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 903 ("Assuming a rounding-over-time policy is neutral, both facially and as applied, the practice is proper under California law because its net effect is to permit employers to efficiently calculate hours worked without imposing any burden on employees.")

Defendant concedes that employees were required to participate in a security screening prior to entering the facility each day. Rowbotham Decl., ¶ 15. However, Defendant contends that it maintains a written policy that requires employees to clock in **before** the security screening. *Id.* Additionally, in conjunction with a remodel of the employee entrance in early 2024, Defendant relocated the employee timeclock to ensure compliance with its written policy. *Id.* As to Plaintiff's rounding claim, Defendant claims that the rounding practice was neutral on its face and as applied, therefore legal under *See's Candy*. *Id.* Defendant claims that these claims are unmanageable as it requires individualized inquiries into whether employees brought a bag each workday (to be screened), whether employees followed policy by clocking in prior to screening, and how long each employee waited for the screening to be completed prior to be clocking in. *Id.*

2. Derivative Waiting Time and PAGA Penalties

As a result of Defendant's alleged failure to pay all wages described above, Plaintiff contends that Defendant also failed to pay former employees all final wages at the time of separation. Rowbotham Decl., ¶ 16. Plaintiff also seeks PAGA civil penalties on behalf of all aggrieved employees for these alleged violations. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213 ("As we have explained, they [civil penalties under PAGA] are mandatory, not discretionary.").

Defendant contends that Plaintiff's underlying claims will fail and, as a result, the derivative claims will also fail. *See Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.") Defendant also maintains that its good faith defenses to Plaintiff's underlying claims would preclude the recovery of waiting time penalties, which are only available for the "willful" failure to pay wages, and that this Court would exercise its discretion to substantially reduce any PAGA penalties awarded. *See also* 8 Cal. Code Regs. § 13520 ("[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203."); *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504 (affirming reduction of PAGA penalties).

III. THE PROPOSED SETTLEMENT

A. Essential Terms Of The Settlement

Defendant will pay a Gross Settlement Amount ("GSA") of $215,000.00. Settlement, ¶ 1.22. This Settlement is non-reversionary, and Settlement Class members will automatically receive their Individual Settlement Payments unless they affirmatively opt-out of the Settlement. *Id.* ¶ 3.1. The monetary terms of the Settlement are as follows:

Gross Settlement Amount:	**$215,000.00**
Minus Court-approved attorneys' fees (1/3):	$71,666.67
Minus Court-approved attorneys' costs (up to):	$40,000.00
Minus Court-approved Service Payment:	$10,000.00
Minus settlement administrator costs (up to):	$8,990.00
Minus amounts set aside for PAGA:	$15,000.00
Net Settlement Amount:	**$69,343.33**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for Court-approved attorneys' fees and costs, the Class Representative Service Payment, settlement administration costs, and the amounts set aside for PAGA civil penalties, the Settlement provides for an estimated NSA of no less than $69,343.33. *See* Settlement, ¶ 1.28. Individual Settlement Payments will be calculated based on the proportionate number of workweeks worked by each participating Settlement Class member during the Class Period. *Id*., ¶ 3.2.4. $3,750.00 (representing 25% of the $15,000.00 allocated to PAGA) will be paid to Aggrieved Employees based on the proportionate number of pay periods worked during the PAGA Period. *Id*., ¶ 3.2.5.1. For tax purposes, each Individual Settlement Payment will be allocated as 1/3 wages (subject to applicable withholdings), and 2/3 interest and penalties (not subject to withholdings). *Id*., ¶ 3.2.4.1. Individual PAGA Payments will be allocated as 100% penalties. *Id*. Defendant will pay the employer's share of payroll taxes separately from, and in addition to, the GSA. *Id*., ¶ 3.2.5.2.

According to Defendant's records, there are approximately 483 potential Settlement Class members. Rowbotham Decl., ¶ 20. Based on the estimated NSA, average Individual Settlement Payments are projected to be approximately $143.57 *Id.* Average Individual PAGA Payments are projected to be approximately $10.05. *Id.* Settlement Class members will have 60 calendar days from the date of the initial mailing of the Notice Packet to opt-out or object to the Settlement, thereby providing ample time to review the Notice Packet without unduly delaying the Settlement. *See* Settlement, ¶ 7.5.1. Settlement Class members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant as detailed in the Settlement. *Id*., ¶ 5.2. Settlement Class members will have 180 days from the date the Individual Settlement Payments are mailed to cash their checks. *Id*., ¶ 4.3.1. In the event that there are any uncashed checks remaining after 180 days, any remaining funds will be transferred to Legal Aid Foundation of Los Angeles, the Parties' agreed-upon *cy pres* designee. *Id*., ¶ 4.3.2. This distribution method ensures that no portion of the GSA will be "unpaid…unclaimed or abandoned," as required for California Code of Civil Procedure § 384 to apply.

2. <u>Attorney's Fees, Costs, and Class Representative Service Payment</u>

At the time of seeking final settlement approval, Plaintiff will apply for Class Representative Service Payment in the amount of $10,000 for Plaintiff's service to the Settlement Class and general release of all claims. Rowbotham Decl., ¶ 21; *see* Settlement ¶ 3.2.1. This payment is intended to recognize the significant time and effort that Plaintiff expended on behalf of the Settlement Class, including searching for relevant documents for use in the lawsuit, providing factual information to her attorneys, holding various phone calls with her attorneys to discuss the claims in the lawsuit and Defendant's policies and practices, responding to formal written discovery, preparing for and attending a full day deposition, assisting her attorneys with preparation for mediation, making herself available during mediation to assist and answer factual questions posed by the mediator, reviewing and providing input regarding the settlement documents, and otherwise assisted her attorneys in moving this case towards resolution. Rowbotham Decl., ¶ 21. Plaintiff's requested Service Payment is justified given the significant work done on behalf of the Settlement Class members, the risks Plaintiff undertook by serving as the named Plaintiff, and the fact that Plaintiff agreed to a general release of all claims subject to a waiver of Civil Code § 1542. Acosta Decl., ¶¶ 3-4; Settlement, ¶ 5.1.1.

Class Counsel will also apply for an attorneys' fee award of up to one third of the GSA (currently estimated at $71,666.67), and up to $40,000.00 in reimbursement for actual litigation costs. Rowbotham Decl., ¶ 22; *see* Settlement, ¶ 3.2.2. Plaintiff submits that the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Rowbotham Decl., ¶ 22. Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research and analysis, engaging in substantial formal written and deposition discovery, reviewing class documents and data produced by Defendant, extensively reviewing and evaluating the produced timekeeping and payroll records with the assistance of a retained expert to build a comprehensive damages model, preparing for and attending mediation, negotiating and drafting the Memorandum of Understanding, long-form Settlement Agreement, and Notice Packet documents, preparing this motion for preliminary approval, and otherwise litigating the case. *Id*. Class Counsel will also expend future attorney time attending the hearing on this Motion, overseeing the Notice process, drafting the Final Approval Motion and supporting documents, attending the Final Approval hearing, and completing other tasks, such as fielding questions from Settlement Class members. *Id*.

Both California and federal courts have recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. *See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254. Historically, courts have awarded percentage fees in the range of 20% to 50%. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013). Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall percentage of the Settlement in light of the risks and work undertaken, the positive results obtained for the class, and the efficiency with which the Parties have conducted the litigation. Class Counsel will seek an award of attorneys' fees when seeking final approval.

IV. ARGUMENT

A. Preliminary Approval Is Warranted

California Rule of Court 3.769 conditions the settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *In re Syncor ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product of fraud or collusion between the negotiating parties. *See e.g.*, *Hanlon*, *supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arm's length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

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

The Court should consider the following factors when making a fairness determination: "the strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "[T]he court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba*, *supra*, 91 Cal.App.4th at 245. As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors.

a. <u>The Strength of Plaintiff's Case</u>

Class Counsel carefully vetted the claims at issue, reviewed extensive timekeeping and payroll records spanning the entire Class Period, reviewed relevant policy documents, engaged in significant formal written discovery, took multiple depositions of Defendant's PMQ witnesses, and created a comprehensive damages model for Defendant's alleged liability. Rowbotham Decl., ¶ 12. Although Plaintiff steadfastly maintains that these claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with class certification and trial. As explained in detail in Section II.B., *supra*, Defendant presented numerous defenses to Plaintiff's claims, both on the merits and with respect to class certification. Although Plaintiff was prepared to litigate these claims through class certification and ultimately through trial, it was far from certain that Plaintiff would be able to recover a greater amount should this matter proceed through trial. Thus, this factor supports preliminary approval.

b. <u>Risk, Expense, Complexity, and Duration of Further Litigation</u>

Although the Parties engaged in substantial formal discovery and information exchange prior to mediation, the Parties had not yet completed their discovery efforts. Rowbotham Decl.,

¶ 12. Absent settlement, the Parties will be required to expend substantial time and resources conducting additional formal written and deposition discovery. *Id*. Moreover, Plaintiff had not yet filed for class certification, and thus, absent settlement, the Parties would face the prospect of appeals in the wake of a disputed class certification ruling and/or an adverse summary judgment ruling. *Id*. Even if Plaintiff succeeded in certifying one or more classes, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id*. This Settlement avoids these considerable costs, risks, and the accompanying burden of continued litigation on the Court. Thus, this factor supports preliminary approval.

c. <u>Risk of Maintaining Class Action Status</u>

At the time of the proposed Settlement, Plaintiff had not filed a motion for class certification. Rowbotham Decl., ¶ 12. Had the Court certified any claims, Plaintiff anticipated that Defendant would seek decertification. *Id*. Therefore, absent the Settlement, there was a potential risk that Plaintiff would be unable to move forward on a class-wide basis. *Id.* Thus, this factor supports preliminary approval.

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

This proposed Settlement provides a fair and reasonable recovery for the Settlement Class in the face of disputed claims. After analyzing Defendant's produced data, Class Counsel and their retained expert created a class-wide exposure analysis, forecasting the total expected recovery as follows:

<u>Unpaid Wages Due to Security Screenings/Bag Checks</u>: **$49,723**

Based on Plaintiff's experience, Plaintiff estimates that employees spent at least 3 minutes each shift undergoing the mandatory security screening and bag checks prior to clocking in. Rowbotham Decl., ¶ 13. Plaintiff's expert determined that putative class members worked 154,724 shifts between September 25, 2017, and December 31, 2023 (the time period prior to the entrance remodeling). *Id.* Plaintiff's expert also calculated the average hourly rate of putative class members during the relevant time period was $22.85 (resulting in an overtime rate of $34.28). *Id.* Based on these figures, Defendant's overtime exposure for the off-the-clock security screening/bag check claim is $265,190.00 (154,724 shifts x 3 minutes per shift ÷ 60 minutes per hour = 7,736 unpaid hours x $34.28 overtime rate = $265,190). *Id.*

Defendant argues that its timekeeping policies/practices comply with California law and that it has always compensated Settlement Class members for all hours worked throughout the Class Period. Rowbotham Decl., ¶ 15.Defendant further asserts that Plaintiff and other non-exempt employees were not subject to Defendant's control when undergoing these security screenings, and that even if they were, Plaintiff has overstated the amount of time spent at screenings. *Id.* Additionally, Defendant contends this claim is not certifiable as it requires individualized inquiries into which employees failed to follow company policy and clock in prior to the screening as well as how long each employee spent engaging in the screening each day. *Id.* Given these defenses, Plaintiff discounted the maximum exposure by 75% for the risk of non-certification, and by an additional 25% for risk of losing on the merits, to arrive at an expected exposure of $49,723. *Id.*, ¶ 13.

<u>Unpaid Wages Due to Unlawful Timekeeping Policies/Practices</u>: **$76,802**

After a review of Defendant's timekeeping and payroll production, Plaintiff's expert determined that Defendant's rounding policy resulted in a failure to compensate employees for over 3,983 hours. Rowbotham Decl., ¶ 14. Every single putative class member had at least 1 workweek with an underpayment of wages due to the rounding policy. *Id.* Plaintiff therefore calculates Defendant's overtime exposure for the unlawful timekeeping policies claim at $136,537.00 (3,983 unpaid hours x $34.28 overtime rate = $136,537). *Id.*

Defendant maintains that its rounding system is legally compliant because it is neutral on its face, a permissible practice based on the presumption that the arrangement averages out so that employees are fully compensated for all the time they actually work. *Id.* Defendant also claims that the majority of employees were actually overpaid as a result of the rounding practice, thereby precluding liability for those individuals altogether. *Id.* Given these defenses, Plaintiff discounted the maximum exposure by 25% for the risk of non-certification, and by an additional 25% for risk of losing on the merits, to arrive at an expected exposure of $76,802. *Id.*, ¶ 14.

<u>Waiting Time Penalties</u>: **$83,288**

Plaintiff's expert's analysis determined that 243 individuals separated their employment with Defendant within 3 years of the filing of the complaint. Rowbotham Decl., ¶ 16. Plaintiff's expert also determined that the maximum waiting time penalty per employee was $5,484 ($22.85 average hourly rate x 8 hours x 30 days). *Id.* Given Plaintiff's contention that each of these employees are owed overtime wages as a result of Defendant's unlawful policies and practices, Plaintiff calculated Defendant's maximum potential exposure on this claim at $1,332,612 (243 former employees x $5,484). *Id*.

Defendant maintains that waiting time penalties are not appropriate here because Plaintiff's claims fail on the merits. Rowbotham Decl., ¶ 18. Additionally, given Defendant's good-faith defenses, Defendant contends that Plaintiff cannot show that any willful failure to pay all final wages . *Id*. Given these arguments, Plaintiff discounted this claim by 75% for the risk of non-certification and by an additional 75% for risk of being unsuccessful on the merits, failing to establish wilfulness, or that the Court would find a reasonable, good faith dispute over whether any wages are due precluding the imposition of waiting time penalties, for an expected exposure of $83,288. *Id.*, ¶ 16.

<u>PAGA Penalties</u>: **$56,619**

Given that Plaintiff's underlying Labor Code violations occurred on a daily basis (daily security screening and daily rounding of hours) Plaintiff contends that PAGA civil penalties would be recoverable for each pay period in the PAGA time period. Rowbotham Decl., ¶ 17. Settlement Class members worked a combined total of 9,059 pay periods during the PAGA liability period in which at least one of Plaintiff's alleged Labor Code violations occurred. *Id*. Plaintiff therefore calculates Defendant's maximum PAGA exposure at $905,900.00 (9,059 pay periods x $100 per "initial" violation). *See Amaral, supra*, 163 Cal.App.4th at 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties are exclusively derivative of the underlying violations that Defendant vigorously disputes, both as to certification and the merits. Rowbotham Decl., ¶ 18. Plaintiff also recognizes that the Court has discretion to substantially reduce any award of PAGA penalties. *Id.* Therefore, Plaintiff discounted the maximum exposure by 75% for the risk of losing on the merits of all underlying claims and by 75% for the likely possibility that this Court would reduce the PAGA penalties awarded, to arrive at an expected exposure of $56,619. *Id.*, ¶ 17.

Using these estimated figures, Plaintiff estimated that the potential expected recovery for the Settlement Class would be approximately $266,432. Rowbotham Decl., ¶ 19. Thus, the proposed recovery to the Settlement Class of $215,000 represents 80.7% of Plaintiff's reasonably forecasted class-wide recovery, which is well within the range approved by courts as being fair, reasonable and adequate, while also avoiding further expense and risk of proceeding towards class certification and trial. *Id.*; *see, e.g.*, *Altamirano v. Shaw Industries, Inc*, 2015 WL 4512372, *9 (N.D. Cal. 2015) ("Although 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval..."); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement of "roughly one-sixth of the potential recovery"); *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.") (internal quotations omitted). Preliminary approval is appropriate since the Settlement will provide tangible monetary relief to the Settlement Class without the uncertainty, delay, and additional expense of further litigation.

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

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent and experienced counsel who possesses extensive experience litigating wage and hour class actions from both the Plaintiff and defense side, and who have been appointed as class counsel in numerous cases alleging similar claims. Rowbotham Decl., ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-11; Declaration of Fletcher W. Schmidt ("Schmidt Decl."), ¶¶ 2-9; and Declaration of Susan J. Perez ("Perez Decl."), ¶¶ 2-6. Class Counsel conducted an extensive review and analysis of Defendant's produced timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. Rowbotham Decl., ¶ 12. It was only after the completion of this work that the Parties attended mediation and ultimately accepted a mediator's proposal for a class-wide settlement of all claims at issue. *Id*. Thus, this factor supports preliminary approval.

2. The Preliminary Approval Standard is Met

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

a. Settlement is Within the Range of Possible Approval

The proposed Settlement reflects a fair and reasonable recovery for the Settlement Class members in light of the significant risks of litigation. The proposed Settlement will provide compensation for contested claims, while only releasing the claims actually at issue in this litigation. Further, the average payment of $143.57 is in line with average payments achieved in other wage and hour class action settlements that have been approved.[3] Thus, the proposed Settlement is within the range of possible approval such that notice should be provided to the Settlement Class members to consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

b. Settlement Resulted from Informed and Non-Collusive Negotiations

This proposed Settlement is entitled to an initial presumption of fairness as it is the result of the exchange of pertinent information, including all relevant policies, employee timekeeping and payroll records which were analyzed by Plaintiff's counsel and a retained expert; arm's-

[3] *See e.g.*, *Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately $105); *Ressler v. Federated Department Stores, Inc*., Case No. BC335018 (L.A. County Super. Ct. Jan. 2, 2009) (average net recovery of approximately $90); and *Schiller v. David's Bridal, Inc*., Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an average of approximately 198.70 . . . [T]his is a substantial recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar actions where the gross recoveries per class member were less than $90 . . . [T]he Court finds that the results achieved are good").

length negotiations by counsel; mediation before an experienced wage and hour class action mediator; and additional negotiations until the terms of the long-form Settlement were agreed upon and finalized. Rowbotham Decl., ¶ 12; *see also Kullar*, *supra*, 168 Cal.App.4th at 130. Thus, this factor supports preliminary approval.

c. Settlement is Devoid of Obvious Deficiencies

The Settlement will provide tangible monetary relief to the Settlement Class members. Moreover, the amounts proposed for the Class Representative Service Payment, settlement administration costs, attorneys' fees and costs to Class Counsel, and PAGA civil penalties are all reasonable and appropriate. Because the Settlement is devoid of obvious deficiencies, this final factor supports preliminary approval.

B. The Court Should Certify the Settlement Class for Settlement Purposes

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

1. The Proposed Class is Ascertainable and Numerous

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement Class is defined as all current and former non-exempt employees of Defendant in California who worked at any time between January 26, 2017 and June 30, 2024, at the Long Beach Convention and Entertainment Center. *See* Settlement, ¶ 1.5. Settlement Class members can be easily identified using Defendant's employment and payroll records. Rowbotham Decl., ¶ 20. Based on the information provided by Defendant, the Settlement Class consists of approximately 483 individuals, rendering it impracticable to bring all Settlement Class members before the Court.

Id. Thus, the proposed Settlement Class satisfies numerosity. *See Collins v. Rocha* (1972) 7 Cal.3d 232, 234.

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiff's claims are predicated on Defendant's alleged failure to pay all minimum and overtime wages owed due to off the clock security screenings and time rounding. Additionally, Defendant is allegedly liable for penalties due to its failure to pay all final wages owed to employees upon separation of employment. These types of claims are commonly held to be proper for class certification. *See, e.g., Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1052 (2012) ("The theory of liability—that Brinker has a uniform policy, and that that policy…allegedly violates the law—is by its nature a common question eminently suited for class treatment.").

3. The Claims of the Named Plaintiff are Typical

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347. Here, like other Settlement Class members, Plaintiff were employed by Defendant as a non-exempt employee in California and were subject to Defendant's allegedly unlawful wage and hour policies/practices during the Class Period. Acosta Decl., ¶ 2. Plaintiff were therefore impacted by the same challenged policies that allegedly injured the Settlement Class as a whole and was subjected to the same defenses forwarded by Defendant as to the Settlement Class, and are therefore typical.

4. Plaintiff and Class Counsel are Adequate to Represent the Class

The adequacy of representation requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel will adequately represent the Settlement Class members as there are no conflicts between them, and Plaintiff possess claims that are in line with those of the Settlement Class members. *See McGhee* *v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding adequacy satisfied where there was no indication that the Plaintiff's counsel were not qualified and the Plaintiff had no interests antagonistic to those of the class). Class Counsel also has extensive experience in wage and hour class action litigation. *See* Rowbotham Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-11; Schmidt Decl., ¶¶ 2-9; Perez Decl., ¶¶ 2-6.

C. <u>The Court Should Order Distribution Of The Proposed Notice Packet</u>

This Court should order distribution of the proposed Notice Packet in English and Spanish to the Settlement Class members by first class mail, postage prepaid, using the last known mailing address information provided by Defendant. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S. 156, 173. The Parties propose that the settlement be administered by Apex Class Action Administration ("Apex"), an experienced class action settlement administrator. *See* Declaration of Sean Hartranft. Settlement Class members' Defendant will provide all Settlement Class members' name, last-known mailing address, phone number, Social Security number, and workweeks / pay period data to Apex within ten (10) court days after of the Court signs an order preliminarily approving the Settlement. *See* Settlement, ¶ 4.1. Apex will run the Settlement Class members' addresses through the National Change of Address database and/or conduct skip traces to obtain current address information. *Id.*, ¶ 4.3.1.

The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because it advises the Settlement Class members of the nature of the claims, basic contentions and denials of the Parties, the key terms of the Settlement, the uniform 60-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class members, and advises them that they will be bound by the terms of the Settlement if they do not request exclusion. *See* Rowbotham Decl., Exhibit A. The proposed Notice Packet will also notify the Settlement Class of the Final Approval Hearing date, provide Class Counsel's contact information, and advise Settlement Class members that they may enter an appearance through counsel if they wish. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members. Additionally, because the proposed Settlement includes settlement of the representative PAGA claim, notice of the Settlement has been submitted to the LWDA. *Id*. ¶ 9, Exhibit C (LWDA Settlement Submission); Proof of Service.

D. <u>The Court Should Set A Final Approval Hearing</u>

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

V. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the [Proposed] Order submitted concurrently herewith.

Dated: February 4, 2025

Respectfully Submitted,
HAINES LAW GROUP, APC

By: ______________________
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