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Stephanie McCoy, Brittney Rourke
and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

STEPHANIE MCCOY, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; BRITTNEY ROURKE, individually, and on behalf of other members of the general public similarly situated;

Plaintiffs,

vs.

VBR DHS MANAGEMENT, LLC, a California limited liability company; and DOES 1 through 100, inclusive,

Defendants.

Case No.: CVRI2104222

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

Hearing Information:

Date: June 12, 2025
Time: 8:30 a.m.
Dept.: 1
Judge: Hon. Harold W. Hopp

RESERVATION ID: 445335123229

[Filed concurrently with: (1) Declaration of Devin Rauchwerger; (2) Declaration of Plaintiff Stephanie McCoy; (3) Declaration of Plaintiff Brittney Rourke; (4) Declaration of Helene Mayer; (5) Declaration of Administrator, and (6) [Proposed] Order]

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on June 12, 2025, at 8:30 am, or as soon thereafter as this matter may be heard by the Court in Department 1 of the Riverside County Superior Court, located at 4050 Main Street, Riverside, CA 92501, Plaintiff Stephanie McCoy ("Plaintiff McCoy") and Plaintiff Brittney Rourke ("Plaintiff Rourke")(hereinafter collectively, "Plaintiffs"), on behalf of themselves and a Settlement Class, will and hereby do move for an Order:

1) Preliminarily approving the Parties' proposed class action settlement and PAGA settlement in the above-captioned case;
2) Preliminarily certifying the Settlement Class;
3) Preliminarily approving the appointment of Plaintiffs as Class Representatives;
4) Preliminarily approving the appointment of Lawyers for Justice, P.C. and Domb & Rauchwerger LLP as Class Counsel;
5) Approving appointment of Phoenix Class Action Administration Solutions as the Settlement Administrator;
6) Approving and directing distribution of notice to the Settlement Class; and
7) Setting a final fairness and approval hearing that is approximately 135 days after the Court grants Preliminary Approval.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which permits settlement of a purported class action, allows the Court to preliminarily certify a class for settlement purposes.

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The proposed settlement is fair, adequate, and reasonable and in the best interests of the settlement class as a whole, and the procedures proposed by the parties are adequate to ensure the opportunity of class members to participate in, opt out of, or object to the settlement.

Date: May 20, 2025

Respectfully submitted,

DOMB & RAUCHWERGER LLP

By: Devin Rauchwerger

ZACK I. DOMB
DEVIN E. RAUCHWERGER
ERIC Y. HAHN
Attorneys for Plaintiffs Stephanie McCoy and Brittney Rourke and the Proposed Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Stephanie McCoy and Plaintiff Brittney Rourke (collectively, "Plaintiffs" or "Class Representatives") on behalf of all others similarly situated, the State of California, and aggrieved employees, and Defendant VBR DHS Management, LLC, ("Defendant") have reached a proposed class action settlement. Plaintiffs and Defendant (collectively, the "Parties") submit the Joint Stipulation of Class Action and PAGA Settlement and Release (the "Settlement," or "Settlement Agreement,") to the Court for its preliminary approval. The Settlement Agreement ("SA") is attached to the Declaration of Devin Rauchwerger ("Rauchwerger Decl.") as **Exhibit 1**[1]. (Rauchwerger Decl. ¶ 2.)

The Settlement provides for a **non-reversionary** payment of $500,000 for which Defendant will be separately responsible for any employer payroll taxes. Approximately $195,000 will be available for disbursement to Participating Settlement Class Members (the "Net Settlement Amount") which does not include the separate PAGA Payments of $80,000 (including Individual PAGA Payments) that will be paid only to the PAGA Settlement Members. There are believed to be 310 Class Members as of the date of this Motion. Based on this figure, and the average Individual Settlement Payment will be approximately $629.03 (not including the separate Individual PAGA Payments that will be paid only to the PAGA Settlement Members).

The Settlement occurred as a result of extensive arm's length negotiations by experienced counsel after sufficient discovery and investigation into the facts with guidance of Jeffrey Krivis, Esq., a highly experienced and well-respected class action mediator. As detailed below, the Settlement is fair, reasonable, and in the best interests of the Settlement Class.

II. BACKGROUND AND PROCEDURAL HISTORY

A. The Pleadings & Nature of The Action

Defendant VBR DHS Management, LLC is a nationwide grower, cultivator, and manufacturer of cannabis products. (Rauchwerger Decl. ¶ 3.) Defendant's products are sold at numerous cannabis dispensaries throughout Southern California and Michigan. (*Id.*) Defendant

[1] For ease of reference and consistency, defined terms from the Settlement Agreement are utilized below.

is headquartered in Desert Hot Springs, California. (*Id.*) Plaintiff McCoy is a former employee of Defendant who worked from approximately May 2020 to approximately March 2021, as an hourly-paid Trimmer. (Rauchwerger Decl. ¶ 3; Declaration of Stephanie McCoy ("McCoy Decl.") ¶ 3.) Plaintiff Rourke is a former employee of Defendant who worked from approximately September 2018 to approximately June 2022, as an hourly paid Production Manager. (Rauchwerger Decl. ¶ 3; Declaration of Brittney Rourke ("Rourke Decl.") ¶ 3.)

On July 13, 2021, Plaintiff McCoy submitted a letter to the Labor and Workforce Development Agency alleging various violations of the California Labor Code. (Declaration of Helene Mayer ("Mayer Decl.") ¶ 2.) On September 16, 2021, Plaintiff McCoy filed a civil complaint against Defendant in Riverside County Superior Court, for failure to pay overtime wages, provide compliant meal periods and associated premiums, provide compliant rest periods and associated premiums, pay minimum wages, timely pay final wages, timely pay wages during employment, furnish compliant wage statements, maintain accurate and complete payroll records, reimburse business expenses, violations of California Business and Professions Code section 17200, et seq. for the aforementioned alleged violations, and civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, et seq. ("PAGA") for the aforementioned alleged violations, on behalf of current and former non-exempt employees employed by Defendant at any time from July 13, 2020 to final judgment. (*Id.*) On April 19, 2024, the First Amended Complaint was filed to add Plaintiff Rourke as a named Plaintiff. (*Id.*)

B. <u>Discovery Taken By The Parties</u>

The parties engaged in extensive informal discovery leading up to mediation on March 1, 2023. (Mayer Decl. ¶ 3.) Prior to the mediation, Class Counsel requested and received class data for purposes of the mediation, including the number of employees, total workweeks, total pay periods, applicable meal and rest period policies and practices, time keeping policies and practices, applicable expense reimbursement policies and practices, and other documents relevant to the litigation. (*Id.*) In total, Defendant produced hundreds of pages of relevant documents prior to the mediation. (*Id.*) Defendant also provided Class Counsel with a large sampling of the time sheets and payroll records for the Class. (*Id.*)

In addition to the above referenced efforts, the Parties held numerous meetings and informal conferences prior to the mediation wherein information, additional class data, and theories of the case were exchanged. (Mayer Decl. ¶ 4.) The Parties also submitted detailed mediation briefs, which outlined the Parties' respective positions in the case. (*Id.*)

C. Mediation With Jeffrey Krivis, Esq.

On March 1, 2023, the Parties participated in a full-day mediation with Jeffrey Krivis, Esq. (Mayer Decl. ¶ 5.) Mr. Krivis was agreed to by the Parties based on his excellent skills and experience as a mediator in wage-and-hour class actions such as this one. (*Id.*) After contentious and lengthy negotiations, the Parties accepted a mediator's proposal of $500,000, on the understanding that the Parties would stipulate to the filing of an Amended Complaint adding Plaintiff Rourke as a named Plaintiff. (*Id.*) Once the Parties reached a Settlement, Class Counsel associated in Domb & Rauchwerger LLP in order to help move the case through the settlement process. (Mayer Decl. ¶ 5; Rauchwerger Decl. ¶ 4.) Thereafter, the Parties negotiated the long-form Settlement Agreement, which is now presented to the Court for preliminary approval. (*Id.*)

III. LEGAL ANALYSIS OF SETTLEMENT

A. Two-Step Settlement Process

Any settlement of class litigation must be reviewed and approved by the Court. (Cal. Rules of Court, rule 3.769; Fed. Rules Civ. Proc. 23(e).[2] This is done in two steps: (1) a preliminary review by the trial court, and (2) a final review after notice has been distributed to the Settlement Class informing them of the terms of the settlement and allowing them to exclude themselves from and/or object to the settlement.

B. The Settlement Warrants Preliminary Approval Because It Is Fair, Adequate, And Reasonable.

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial Court. (*Wershba v. Apple Computer* (2009) 91 Cal.App.4th 224, 234-35;

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[2] The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, Plaintiffs cite Federal Rule 23 and federal case law in addition to California law.

Dunk v. Ford Motor Co. (1966) 48 Cal.App.4th 1794.) Pursuant to California Rules of Court, rule 3.769(d), parties also may, at the preliminary approval stage, request that the Court provisionally approve certification of the class conditional upon final approval of the settlement. "[P]re-certification settlements are routinely approved if found to be fair and reasonable." (*Wershba v. Apple Computer, supra,* at 240.) A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. No one factor should be determinative, but rather all factors should be considered. These criteria have been summarized as follows:

> "If the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement."

(Manual of Complex Litigation, Second § 30.44, at 229.)

Moreover, a proposed settlement is presumptively fair and reasonable where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389 (citations omitted).) Here, as discussed above and further below, the Settlement meets all these criteria, including having been reached through an arms-length negotiation by way of a mediator's proposal, having a sufficient investigation conducted to determine the settlement is fair, and being agreed to by counsel who all have extensive experience with class actions. (Rauchwerger Decl. ¶¶ 5, 24-25; Mayer Decl. ¶¶ 6-12.) Furthermore, there is no reason to suspect that the amount of class members objecting will be high. (Rauchwerger Decl. ¶ 6.)

C. <u>Due To the Risks Of Continued Litigation, The Settlement Is Fair And In The Best Interests Of The Class.</u>

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel believe that the settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, adequate, and is in the best interest of the Class in light of all known risks, facts and circumstances. (Rauchwerger Decl. ¶ 9; Mayer Decl. ¶ 18.) These risks include: the risk of significant delay in class members receiving any type of funds, particularly if the Defendant were to declare bankruptcy; possible issues with Defendant's finances, risks associated with a contested class certification; the defenses asserted by Defendant, including the argument that the matters at issue will require individualized issues that make class certification inappropriate; the prospect of Defendant obtaining releases from putative class members; the potential for the Court to reduce PAGA penalties; Defendant having its employees sign arbitration agreements, exempting them from participation in a class action lawsuit, and numerous potential appellate issues. (Rauchwerger Decl. ¶ 9.)

Finally, the Settlement was reached after lengthy negotiations, exchange of information, and with the assistance and supervision of Jeffrey Krivis, Esq. who mediated numerous wage-and-hour class actions, and clearly qualified to oversee serious and informed negotiations conducted by the Parties. (See *Toure v. Amerigroup Corp.* (E.D. N.Y. 2012) 2012 WL 1432302, at *1 ("The assistance of an experienced mediator, Linda Singer, Esq., reinforces that the Settlement Agreement is non-collusive"); *Morales v. Stevco, Inc.* (E.D. Cal. 2011) 2011 WL 5511767, at *11 (concluding that the class action settlement was not collusive because "[t]he parties utilized an impartial mediator, and the matter was 'resolved by means of a mediator's proposal.'")).

D. <u>The *Kullar* Requirements</u>

In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Court of Appeals explained that, although "not exhaustive," a determination of whether a settlement is "fair, adequate and reasonable" should take into account the strength of a plaintiff's case, the risk, expense, complexity and the likely duration of further litigation. (*Id*. at 127-128.) Subsequently, in *Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, the Court of Appeals clarified:

> "[Appellant] misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the Plaintiffs class could recover if it prevailed on all its claims—a number

> which appears nowhere in the record of this case. But Kullar does not, as [Appellant] claims, require any such explicit statement of value; it requires a record, which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."

(*Id.* at 409 (quoting *Kullar*, 168 Cal.App.4th at 120))

Here, the potential damages for the causes of action asserted in the Action along with the relative risks, complexities, and expenses are detailed below. The key data points and associated documentation upon which Plaintiffs relied in analyzing the exposure are as follows:

- Total Class Size: **310** individuals.
- Total number of Workweeks: **11,000**[3]**.**
- Total number of Pay Periods: **3,334**
- Average Regular Rate: **$15.51** per hour**.**
  - Average Overtime Rate: **$23.27** per hour.
- Pay Periods within the 1-year Statute of Limitations per Cal. Lab. Code § 226(a): **3,075**
- Employees during the 1-year Statute of Limitations per Cal. Lab. Code § 226(a): **209**

(Rauchwerger Decl. ¶ 10.)

1. <u>Failure to Pay Minimum and/or Overtime Wages.</u>

Plaintiffs allege that they and the other putative class members are owed compensation for work they performed off-the-clock and were never paid for due to Defendant's alleged policies and practices prohibiting the working and recording of hours outside of their scheduled shift times and discouraging recorded overtime work, but requiring employees to complete tasks that could not be performed during their scheduled working hours. (Rauchwerger Decl. ¶ 11.) However, Defendant strenuously denies these allegations and contends that any off-the-clock work performed was *de minimus*. (*Id.*)

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[3] As of the date of mediation, there were 10,895 workweeks, however 11,000 is the most recent estimated number since mediation.

To determine Defendant's exposure for these off-the-clock overtime allegations, Class Counsel assumed that Class Members worked approximately 1 hour off-the-clock in each work week. (Rauchwerger Decl. ¶ 12.) Using an average hourly rate of $15.51, this results in a loss to the Class Members of $170,610. If this time was instead paid at an overtime rate of $23.27, it would result in a loss for the Class Members of $255,915. (*Id.*)

The risks related to proving these off-the-clock, minimum wage and overtime claims are significant. It is impossible to discern from the records the exact amount of off-the-clock work that each employee performed and what they are entitled to; these questions could be viewed as creating individualized issues inappropriate for class certification. (Rauchwerger Decl. ¶ 13.) Even if Class Members were permitted to proceed with the overtime claim, Defendant will argue that even assuming Class Members lost time as a result of the off-the-clock allegations, such hours should not necessarily be calculated at an overtime rate, since not all such unpaid work would qualify at an overtime rate, as a significant percentage of the shifts provided in the data sampling were less than 8 hours. (*Id.*)

2. **Failure to Provide Meal & Rest Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198)**

Plaintiffs contend that they and the Class Members routinely did not receive lawful and compliant meal periods, nor were they paid meal period premiums when a meal period was short or late. Furthermore, Plaintiffs contend that Class Members frequently did not receive rest breaks or were required to work through such rest breaks due to Defendant's staffing and scheduling policies and practices. The premium owed for failing to provide a legally mandated meal or rest period, providing a short or interrupted meal or rest period, or failing to provide a timely meal or rest period is payment of one hour of wages at the employee's regular rate of pay. Defendant maintains it paid meal premiums in every instance they were due during the entirety of the covered period, and that Defendant obtained valid meal period waiver agreements. Plaintiffs dispute both claims. The range of these claims depends on the number of meal and rest periods that Class Members were denied because of Defendant's policies.

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Plaintiffs calculated the amount of meal breaks at issue in this matter by analyzing the Class Data to determine the number of violations. (Rauchwerger Decl. ¶ 14.) The data provided by Defendant showed a roughly 10% violation rate. (*Id.*) However, Plaintiffs also alleged that they and other class members were not permitted to leave the premises during their meal breaks due to Defendant's policy of wanting employees to remain ready to work if needed. If Plaintiffs assume a 10% violation rate, this would equate to penalties of approximately $85,305. (*Id.*) This figure was reached by taking the total number of workweeks (11,000) and multiplying that by five shifts per week to get 55,000 shifts, then multiplying that amount by the 10% violation rate to get 5,500 expected violations and then multiplying that number by the average hourly rate of $15.51. (*Id.*) Alternatively, if we instead assumed there were two violations per workweek, that would equate to liability of $341,220. (*Id.*)

Estimating that each Class Member did not receive a compliant rest break at the same rate that they were denied meal periods, this would result in approximately $85,305 if Plaintiffs assume the violation rate of 10%, or $341,220 if Plaintiffs assume two rest break violations per work week. (Rauchwerger Decl. ¶ 15.)

There are unique risks particularly with respect to unrecorded rest period claims. Employers are not required to record rest periods and such rest periods are paid. Thus, unlike meal periods, where there are typically records showing whether an employee was subject to a violation, there is little evidence to prove a missed rest period. Managing such claims at trial may be exceedingly difficult. Plaintiffs will depend on sample witness testimony and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. (See *Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining "[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling.").)

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3. Failure to Reimburse Necessary Business Expenses (Lab. Code § 2802)

Plaintiffs have also alleged that Defendant failed to reimburse Plaintiffs and other Class Members for certain necessary business expenses, particularly the costs for usage of personal cell phones for work duties, as Plaintiff McCoy contended that she was required to use her personal cell phone as a calculator and to keep track of weight measurements. In addition, Plaintiff Rourke was required to use her personal cell phone to communicate with managers, customers, and other employees. Defendant disputes that Plaintiffs or the Class Members were required to use their personal cell phones as a part of their job duties.

Where an employer's policies require that mandatory use of employee's personal cell phone, Employers are required under Labor Code section 2802 to reimburse employees for some "reasonable percentage" of their telephone bills. (*Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144.) However, the specific amount of a "reasonable" percentage is not and has not been defined by either California Courts or the legislature. Thus, Class Counsel calculated the reasonable exposure of this claim by assuming that employees were entitled to $1.00 per workweek for the reasonable use of their personal cell phones, which is in line with the amounts paid for such expenses by other employers. (Rauchwerger Decl. ¶ 16.) Based on the 11,000 workweeks, Defendant's reasonable exposure for this claim is $11,000. (*Id.*)

4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226 (a))

Plaintiffs contend that due to working off the clock and lack of premium pay for noncompliant meal/rest periods and/or accurate calculation and payment of wages, the Class Members' wage statements were not accurate. (See *Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal.5th 93, 117 (Because premium pay for missed meal and rest breaks under Lab. Code, § 226.7 compensated employees for the work performed during a break period and therefore constituted wages within the meaning of Lab. Code, §§ 200(a), 203, 226, penalties are available for an employer's alleged failure to timely pay or report such payments.) Pursuant to Labor Code section 226(e), statutory damages are "fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000)." As proving actual damages for each employee on a class-wide basis is unlikely, this claim would likely be subject to a one-year statutory period.[4]

Plaintiffs contend that each paystub failed to include complete itemizations for monies owed, including overtime, the number of hours the Class Members worked and the appropriate hourly rates, and the meal and rest break premiums owed to the Class Members. (Rauchwerger Decl. ¶ 17.) As noted above, the Class Members worked 3,075 pay periods during the one-year statutory period for a wage statement claim, and there were 209 employees during that period. (Rauchwerger Decl. ¶¶ 10, 17.) Given these figures, the first 209 of the 3,075 wage statements would be subject to a $50 penalty, which results in a total exposure of $10,450 for first pay period violations (209 employees x $50). (Rauchwerger Decl. ¶ 17.) The remaining 2,866 wage statements would be subject to a $100 penalty, which results in a total potential exposure of $297,050. (*Id.*)

There are some hurdles to obtaining class certification for this claim. Defendant contends that the wage statements were accurate in all material respects and that Labor Code section 226 requires "a knowing and intentional failure by an employer to comply with subdivision (a)." (*See* Lab. Code § 226(e); *see also* Lab. Code § 226(e)(3) (For purposes of this subdivision, a "knowing and intentional failure" does not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake.")) In this regard, Defendant contends that any failure to include information on wage statements was an inadvertent or isolated mistake.

5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203)

An employer who willfully fails to pay any wages due to a terminated employee at the time of their termination or within 72 hours for employees who quit, may be assessed a waiting time penalty pursuant to California Labor Code section 203. The waiting time penalty is an

[4] "Courts that have recognized that two limitations periods apply to Section 226 have uniformly found that the $50 and $100 figures recoverable under Section 226(e)(1) are penalties, subject to a one-year limitation period." *Novoa v. Charter Communs., Ltd. Liab. Co.* (E.D. Cal. 2015) 100 F.Supp.3d 1013, 1025 (citing *Taylor v. W. Marine Prods.* (N.D. Cal. Sep. 19, 2014) No. C 13-04916 WHA, 2014 U.S. Dist. LEXIS 133728, at *7; *Sarkisov v. Stonemor Partners* (N.D. Cal. Apr. 3, 2014) *L.P.*, No. C 13-04834 WHA, 2014 U.S. Dist. LEXIS 47021, at *2; *Mouchati v. Bonnie Plants, Inc.* (C.D. Cal. Mar. 6, 2014) No. EDCV 14-00037-VAP (SPx), 2014 U.S. Dist. LEXIS 60855, at *8-9; *Singer v. Becton, Dickinson & Co., Med.-Safe Sys.* (S.D. Cal. July 23, 2008) No. 08cv821 IEG (BLM), 2008 U.S. Dist. LEXIS 56326, at *4-5.

amount equal to the employee's daily rate of pay for each day the wages remain unpaid, up to a maximum of 30 calendar days. The basis of this claim is largely derivative of the above claims that Defendant failed to compensate Plaintiffs and Class Members for all of the wages and compensation that there were owed.

Due to the Employer ceasing ownership of the business as of September 20, 2022, all of the estimated 310 employees are former employees. (Rauchwerger Decl. ¶ 18.) Using the hourly rate of $15.51, the potential exposure for waiting time penalties is $1,153,944.00 ($15.51/hour x 8 hours/per day x 30-day maximum x 310 separated employees). (*Id.*)

As noted above, this claim is largely derivative of the other wage and hour claims analyzed above and Defendant's liability is couched on the presumption that Defendant is liable to Plaintiffs and the Class for those claims. Moreover, to prevail under Section 203, Plaintiffs must establish not only the underlying violations addressed above and that the wages were paid late, but also that Defendant's failure to timely pay such wages was willful. (Lab. Code § 203(a).) A good faith belief in a legal defense precludes any finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54.) Unfair Competition (Bus & Prof. Code § 17200 *et. seq.*)

6. <u>Violations of California Business and Professions Code §§ 17200, et seq.</u>

Though a Plaintiff may assert a UCL claim for purported wage violations, remedies are still limited to restitution and injunctive relief. (See *Korea Supply v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1148-51; see also *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 173.) In wage-and-hour class actions, a UCL claim typically has little to no independent value and is instead pled for the purposes of extending the statute of limitations on unpaid wage claims to four years. The unfair competition law's (UCL) four-year limitations period, rather than the shorter periods of limitation applicable to contractual or statutory wage claims, governs a UCL action based on failure to pay wages because the UCL provides that "any" action on "any" UCL cause of action is subject to the four-year period of limitations. (*Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 178.)

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7. **Civil Penalties pursuant to the Private Attorney General Act of 2004 (“PAGA”) (Lab. Code § 2698 *et seq*.)**

PAGA penalties for unpaid minimum wages and meal period violations are $100 per pay period for each initial violation and $200 per pay period for any subsequent violation. (Lab. Code § 2699(f)(2).) Courts have held that there is no “subsequent violation” until an employer has been notified by the Labor Commissioner or a court that its practices are in violation of the law. (*Amaral v. Cintas* (2008)163 Cal.App.4th 1157). A Court also may award a lesser amount “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.” (Lab. Code § 2699 (e)(2).) The statute of limitations under PAGA is one year.

There are 3,334 pay periods in the PAGA period. (Rauchwerger Decl. ¶ 19.) Assuming that no penalty “stacking” will apply (i.e. the imposition of multiple penalties per pay period) and that the Court will use the violation rate of $100 per pay period, potential PAGA penalties equal $333,400. (*Id.*) Plaintiffs’ PAGA claims are also predicated on the violations described above, and thus subject to the same disputes and defenses. (*Id.*) Additionally, PAGA states that a court has discretion to award a lesser amount than the maximum penalty. (Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 528-529 (affirming the trial court’s PAGA penalty award of $5 per violation). These uncertainties increased the risks related to the PAGA cause of action.

Pursuant to California Labor Code section 2699(l), the Settlement Agreement has been provided to the Labor and Workforce Development Agency and a proof of service has been concurrently filed and is also attached as **Exhibit 2** to the Declaration of Devin Rauchwerger. (Rauchwerger Decl. ¶ 20.) The amount to be paid to the LWDA ($60,000 of the $80,000 total) comports with PAGA settlement amounts approved by other courts.[5]

[5] *See Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of $7,500 to LWDA out of $6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of $7,500 to LWDA out of $1.25 million common fund settlement); *Hicks v. Toys ‘R’ Us–Delaware, Inc.* (C.D. Cal. Sept. 2, 2014) 2014 WL

8. Total Damages.

Based on the above estimates, the total amount of the possible damages that the class could be awarded at trial, including PAGA penalties, is approximately **$2,904,359.00**. (Rauchwerger Decl. ¶ 21.)

IV. CLASS CERTIFICATION ANALYSIS

A. The Class Is Properly Certified For Settlement Purposes.

Plaintiffs seek certification of this action for settlement purposes under California Code of Civil Procedure section 382. The California Supreme Court has summarized that:

> "Code of Civil Procedure section 382 authorizes class actions when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court. The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. The "community of interest" requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class."

(*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (internal citations omitted).)

While Defendant reserves all rights to dispute Plaintiffs' ability to satisfy any of these requirements, the Parties agree that for purposes of settlement, Defendant will not raise such a dispute. (Rauchwerger Decl. ¶ 22.) Therefore, the proposed Settlement Class should be certified for purposes of settlement.

1. The Proposed Class is Numerous and Ascertainable

The requirement of Code of Civil Procedure section 382 that there be "many" parties to a class action suit is indefinite and has been construed liberally. (*Renken v. Compton City School Dist.* (1962) 207 Cal.App.2d 106, 113.) No set number is required as a matter of law for the maintenance of a class action. (*Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030; See also *Bowles v. Superior Court* (1955) 44 Cal.2d 574 (class with 10 members sufficiently numerous); see also *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 (class of 48 members satisfies

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4703915, at *1 (approving $5,000 PAGA payment in a case involving $4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801 at *14 (approving PAGA penalties of $10,000 as part of $2.5 million settlement).

the numerosity requirement)). Class members are "ascertainable" where they may be readily identified without unreasonable expense or time by reference to official records. (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932). Here, the class is sufficiently numerous because there are 310 employees in the Class, and there is a common interest to many persons as this claim will confer significant benefits to those persons. (Rauchwerger Decl. ¶ 23.) Furthermore, it would be impracticable to bring all of them before the Court on an individual basis. (*Id.*) Moreover, the Class is readily ascertainable as Defendant is in possession of contact information for its current and former employees via regularly maintained employment records. (*Id.*)

2. <u>The Community of Interest Requirement Is Also Satisfied.</u>

"The 'community of interest' requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) Here, the common questions of law and fact clearly exist, as the underlying dispute involves Defendant's employment policies and practices which affected all the employees in the proposed Class. (Rauchwerger Decl. ¶ 23.) Plaintiffs are typical of the class they seek to represent because Plaintiffs worked for Defendant, contend that the alleged violations occurred as a result of a common policy affecting all the putative Class Members and contend that they had a similar experience to each of the Class Members because they were all subjected to common policies and practices by Defendant. (McCoy Decl. ¶ 4; Rourke Decl. ¶ 4.)

B. <u>Class Counsel Has Extensive Experience In Class Actions And Similar Cases.</u>

Class Counsel has extensive experience in similar cases and believe that the proposed Settlement is adequate, reasonable, fair, and in the best interests of all class members. (Rauchwerger Decl. ¶¶ 24-25; Mayer Decl. ¶¶ 6-12.)

C. <u>The Class Representatives Are Adequate.</u>

The Plaintiffs do not have any conflicts of interest with the absent Class Members and will be adequate Class Representatives. (Rauchwerger Decl. ¶ 26.) Plaintiffs and the Class Members have strong and co-extensive interests in this litigation because they all worked for

Defendant during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between the Plaintiffs and the Class Members. (*Id.)* Moreover, Plaintiffs have demonstrated commitment to the Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with counsel to assist in identifying the claims asserted in this case, meaningfully participating in the mediation, and exposing themselves to the risk of attorneys' fees and costs awarded against them if this lawsuit had been unsuccessful. (Rauchwerger Decl. ¶ 26; McCoy Decl. ¶ 5; Rourke Decl. ¶ 5.) Plaintiffs have remained intricately involved in this lawsuit and have understood their responsibilities with respect to the class. (McCoy Decl. ¶ 5; Rourke Decl. ¶ 5.) Plaintiffs understood from the beginning that they had a duty to look out for the best interests of the Class, and they understood that by taking on this case, they were agreeing to take on significant responsibilities, which could include being deposed, as well as potentially testifying at trial. (*Id.*) Plaintiffs have taken their responsibilities as Class Representatives seriously and learned the laws as they relate to the payment of wages, requirements for meal and rest periods, and other issues related to this Action. (McCoy Decl. ¶ 6; Rourke Decl. ¶ 6.) Moreover, Plaintiffs are unaware of any conflicts between their own interests and goals and the interests and goals of anyone else in the Class. (McCoy Decl. ¶ 7; Rourke Decl. ¶ 7.)

D. <u>The Proposed Enhancement Awards to Plaintiffs Are Reasonable.</u>

In connection with the final approval hearing, Class Counsel will request approval of the Class Representative Enhancement Awards of $5,000 to each Plaintiff for their service as class representatives and in consideration for a general release of all claims against Defendant. This amount is based on the extent of Plaintiffs' assistance in this lawsuit, including providing relevant information and documents to Class Counsel, answering various questions and providing additional information throughout the entirety of the case, participating in mediation, reviewing the settlement agreement and having related discussions. (*See* e.g., McCoy Decl. ¶¶ 5-6; Rourke Decl. ¶¶ 5-6.). This amount is also reasonable given that Plaintiffs are providing general releases of all known and unknown claims against Defendant. The requested incentive payment is well within the accepted range of awards for purposes of preliminary approval. (*See*, e.g. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393.)

E. <u>Settlement Administration Costs are Reasonable.</u>

The parties received a bid for settlement administration work and have agreed upon Phoenix Class Action Administration Solutions. (Rauchwerger Decl. ¶ 27.) Phoenix works in the settlement administration business, and costs of administration should not exceed $15,000. (Rauchwerger Decl. ¶ 27.) Moreover, Phoenix is highly qualified to administer the settlement and has significant experience with class administration and handling potential disputes. (Declaration of Jodey Lawrence of Phoenix Administrators ("Phoenix Decl.") ¶¶ 5-8.) Plaintiffs respectfully request that the Court approve the appointment of Phoenix Class Action Administration Solutions as the Settlement Administrator. (*See*, e.g., Phoenix Decl. ¶¶ 5-16.)

V. <u>THE PROPOSED SETTLEMENT</u>

A. <u>The Settlement Class & Released Claims</u>

<u>Class & Class Size</u>: The "Class," "Class Members" or "Settlement Class" is defined as: "all current and former hourly-paid or nonexempt employees of Defendant in California between September 16, 2017 through September 4, 2023[6]." (SA § 13.) The "Class Period" means the period from September 16, 2017 through September 4, 2023. (SA § 15.) Class Members who do not submit a valid and timely request for exclusion from the Class Settlement are referred to as the "Settlement Class." (SA § 46.)

<u>Release</u>: The scope of the release for Participating Class Members is limited to all claims under State, Federal, or local law, arising out of the claims expressly plead in the Action, or that could have been asserted based on the facts plead in the Action for failure to pay overtime, meal period premiums, rest period premiums, all minimum wages, timely payment of wages upon termination, timely payment of wages during employment, non-compliant wage statements, non-compliant payroll records, reimbursement of business expenses, and violation of California's unfair competition law. . (SA § 39.) The named Plaintiffs have agreed to a broader release, which

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[6] From a practical perspective, the Class cuts off as of September 20, 2022 because Defendant sold its business and did not have any employees after that date. (Rauchwerger Decl. ¶ 7.)

only applies to the named Plaintiffs. (SA § 74.) The Aggrieved Employees also agree to release all claims for civil penalties under PAGA. (SA § 40.)

B. <u>The Settlement Payment</u>

Defendant will, through the Settlement Administrator, create a ***<u>non-reversionary</u>*** settlement fund in the amount of Five-Hundred Thousand Dollars ($500,000) ("Total Settlement Amount"). (SA § 47.) The settlement is allocated such that twenty percent (20%) of the recovery will be considered wages, and any employer share of payroll taxes that become due shall be paid separate and apart from the Total Settlement Amount by Defendant. (SA § 68.) The Escalator Clause provides that if the verified count of the number of workweeks increases by more than 5% over 11,000 for the period of September 16, 2017 through March 1, 2023, the Total Settlement Amount shall be increased, on a pro-rata basis equal to the percentage increase in the Workweeks above 5%, meaning Defendant will increase the Total Settlement Amount by the percentage amount above 5%. (SA § 77.)

C. <u>Settlement Payment Distribution Plan</u>

All expenses associated with the Settlement are to be paid from the Settlement's Total Settlement Amount (SA § 47.), including up to $175,000 to Class Counsel for Attorneys' Fees (35% of the Total Settlement Amount), reimbursement of actual costs and expenses to Class Counsel in an amount not to exceed $25,000 (SA § 52.); Settlement Administration Costs not to exceed $15,000 to be paid to the qualified Settlement Administrator Phoenix to administer the notice and process payments (SA § 54.); Class Representative Service Payments of $5,000 to each Plaintiff for their service as the class representatives and in consideration for general releases of all claims against Defendant (SA § 53.); and a PAGA Allocation Payment of $80,000 in resolution of any claims that have been or could have been asserted under the Private Attorney General Act of 2004 ("PAGA"), codified in California Labor Code section 2698, *et seq.*, pertaining to the allegations in the Operative Complaint and the PAGA letter sent to the LWDA. Pursuant to California Labor Code section 2699(i), and subject to approval by the Court under California Labor Code section 2699(l), $60,000 or 75% of the PAGA Settlement Amount will be paid to the California Labor and Workforce Development Agency, in resolution of the PAGA claims for the Aggrieved Employees. (SA §§ 34, 55.) The remaining $20,000 of the PAGA Settlement Amount will be paid to the Aggrieved Employees through Individual PAGA Payments. (*Id.*)

1. Calculating Participating Class Members' Individual Settlement Payments

All Participating Class Members will receive an Individual Settlement Payment. The Net Settlement Amount will be distributed to the Participating Class Members through "Individual Settlement Payments." (SA § 56.a.)

Individual Class Settlement Payments will be paid from the Net Settlement Amount and the Settlement Administrator will (1) divide the final Net Settlement Amount by the Workweeks for all Settlement Class Members to yield the "Final Workweek Value," and (2) multiply each Settlement Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share. (SA § 56.b.) The estimated Net Settlement Amount will be approximately $195,000 (not including the $80,000 PAGA Award).[7] (Rauchwerger Decl. ¶ 28.) Based on the Net Settlement Amount available, the total class size and number of workweeks, the average Individual Settlement Payment is approximately $629.03. (*Id.*)

The Parties agree that the formula for allocating the Individual Settlement Payments to Participating Class Members is reasonable and that the payments provided herein are designed to provide a fair settlement to such persons, in light of the uncertainties regarding the calculation of alleged wages, penalties and interest to each Participating Class Member. (Rauchwerger Decl. ¶ 29.)

2. Calculating PAGA Settlement Members' Individual PAGA Payments

Individual PAGA Payments will be calculated and apportioned from the Employee PAGA Amount based on the Aggrieved Employees' Workweeks during the PAGA Period, as follows:

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[7] The estimated Net Settlement Amount of $195,000 is calculated by taking the $500,000 Gross Settlement Amount and subtracting: the requested attorneys' fees of 35% of the Gross Settlement Amount ($175,000), reimbursement of litigation costs (in the maximum amount of $25,000), Class Representative Enhancement Awards of $5,000 to each named Plaintiff, Settlement Administrator costs of up to $15,000, and a PAGA Allocation of $80,000. (Rauchwerger Decl. ¶ 28.)

the Settlement Administrator will divide the Employee PAGA Amount by the Workweeks during the PAGA Period for all Aggrieved Employees to yield the "PAGA Workweeks Value," and multiply each Aggrieved Employee's individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her estimated Individual PAGA Payment that he or she may be eligible to receive under the PAGA Settlement. (SA § 57.) The average PAGA Payment will be approximately $95.69 (calculated by taking the total PAGA amount of $20,000 and dividing by the number of PAGA members). (Rauchwerger Decl. ⁋ 30.)

3. Distributions To Settlement Class

Within five (5) business days after the Effective Date[8], the Settlement Administrator will provide the Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms of the Settlement Agreement. (SA § 51.a.) Within fifteen (15) business days after the Effective Date, Defendant will deposit the Total Settlement Amount plus an amount sufficient to pay its Employer Taxes into a settlement account established by the Settlement Administrator. (SA § 51.b.) Within five (5) business days after receipt of the Total Settlement Amount plus an amount sufficient to pay its Employer Taxes, the Settlement Administrator will issue payments due under the Settlement in the following order of priority: (a) Individual Settlement Payments to Settlement Class Members; (b) Individual PAGA Payments to Aggrieved Employees; (c) LWDA Payment to the Labor and Workforce Development Agency; (d) Enhancement Awards to Plaintiffs; (e) Attorneys' Fees and Costs to Class Counsel; and (f) Settlement Administration Costs to the Settlement Administrator. (SA § 51.c.) The Parties agreed that all funds remaining in the Qualified Settlement Fund in connection with canceled checks shall be distributed to the

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[8] The "Effective Date" means the date when all of the following events have occurred: (1) the Settlement Agreement has been executed by all parties, (2) the Court has given preliminary approval of the Settlement, (3) the notice has been mailed to class members, (4) the court has held a final approval hearing and entered a Final Approval Order and Judgment, (5) sixty-five calendar days have passed since the Court enters a Final Approval Order and Judgment, and (6) in the event there are written objections filed prior to the Final Approval Hearing which are not later withdrawn or denied, the later of the following events: five business days after the period for filing any appeal, writ, or other appellate proceeding opposing the Court's Final Approval Order and Judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed; or, if any appeal, writ or other appellate proceeding opposing the Court's Final Approval Order and Judgment has been filed, five business days after any appeal, writ, or other appellate proceedings opposing the Settlement has been finally and conclusively dismissed with no right to pursue further remedies or relief. (SA § 22.)

Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the names of and for the benefit of those Settlement Class Members who did not cash, deposit, or otherwise negotiate their checks, until such time that they claim their property. (Rauchwerger Decl. ¶ 31.) The Parties agreed on this method as it ensured that unpaid funds would always be available to the employee who earned or is otherwise entitled to those funds and was determined to be the fairest method of distributing uncashed funds. (*Id.*)

D. **Notice To The Class Members**

Attached to the Declaration of Devin Rauchwerger as **Exhibit 3** is the [Proposed] Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice"), Objection Form, and Exclusion Form, (together, "Notice Packet"). (Rauchwerger Decl. ¶ 32.) To protect the rights of absent class members, the court must provide class members with the best class action settlement notice practicable. (See Cal. Rules of Court, rule 3.769(f); *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12.) The primary purpose of class notice is to provide affected parties with due process rights reasonably calculated to apprise interested parties of the pendency of the action affecting their interests and an opportunity to present their objections. (See *Ryan v. Cal. Interscholastic Fed'n – San Diego Section* (2001) 94 Cal.App. 1048, 1072.) The proposed Notice of Class Action Settlement and Hearing Date for Final Court Approval satisfies these requirements. The proposed Class notices ensure the Settlement Class is alerted to the terms of the Settlement and allows them to protect their rights. The proposed notice plan, calling for first-class mailed notice to all members of the Settlement Class is consistent with noticed approved by State and Federal Courts and constitutes the best notice practicable. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 966; *Cooper v. Am. Sav. & Loan Ass'n.* (1976) 55 Cal.App.3d 274, 285.)

Within fifteen (15) calendar days of Preliminary Approval, Defendant will provide the Class Data List to the Settlement Administrator. (SA § 59.) Within fourteen (14) calendar days after receiving the Class Data and List from Defendant, the Settlement Administrator will perform a search based on the National Change of Address Database or similar service available, for information to update and correct any known or identifiable address changes, and will mail the

Notice in English and Spanish to all Class Members via First-Class U.S. Mail. (SA § 60.a.) With respect to Notices that are returned as undeliverable and received by the Settlement Administrator on or before the Response Deadline, the Settlement Administrator will search for an alternative address by way of skip-trace and re-mail the Notice within five (5) calendar days. (SA § 60.b) If Class members wish to submit a request for exclusion, notice of objection, or dispute regarding the workweeks credited to them, they must do so within sixty (60) calendar days from the initial mailing of the Notice by the Settlement Administrator. (SA § 43.) In the event the Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended by fifteen (15) calendar days. (*Id.*)

VI. CONCLUSION

For the foregoing reasons, the Parties respectfully submit that the Settlement's terms are fair, adequate, and reasonable and that it is in the best interest of the Class Members. Under the applicable class action criteria and guidelines, this Class should be conditionally certified, the Settlement should be preliminarily approved, the Class should be notified regarding the Settlement, and the Court should schedule a final approval hearing for 135 days after the Court grants Preliminary Approval.

Dated: May 20, 2025

Respectfully submitted,
DOMB & RAUCHWERGER LLP

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