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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CHRISTINA WILLIAMS, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

AVALONBAY COMMUNITIES, INC., a
Maryland corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 22STCV14614

[Assigned for all purposes to the Hon. Carolyn B. Kuhl, SSC-12]

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

Date: November 6, 2023
Time: 11:00 a.m.
Dept.: SSC-12

Action filed: May 2, 2022
Trial Date: None set

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 November 6, 2023 at 11:00 a.m. in Department SSC-12 of the above-entitled Court, located at 312 North
4 Spring Street, Los Angeles, California, 90012, Plaintiff Christina Williams (“Plaintiff”), individually and
5 on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

- 6 1. Preliminary approval of the proposed class settlement of this lawsuit;
7 2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of
8 the following Settlement Class defined as follows:

9
10 All current and former non-exempt, hourly employees of AvalonBay who worked in
11 California at any time during the Class Period. Class Period means the period
12 between May 2, 2018 and either (i) April 10, 2023 (*i.e.*, 90 days after the January
13 12, 2023) mediation, or (ii) the latest date when there are no more than 193,551
total Workweeks collectively worked by the Class Members, whichever of these
two dates occurs later.

- 14 3. Preliminary appointment of Plaintiff Christina Williams as Class Representative;
15 4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman
16 Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
17 5. The scheduling of a hearing to consider whether the Settlement should be finally approved and
18 to permit a Service Payment to Plaintiff, Settlement Administration costs, civil penalties
19 payable to the California Labor Workforce Development Agency, and attorneys’ fees and costs
20 to Class Counsel;
21 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
22 Administrator for mailing notices; and
23 7. Approval of the proposed Class Notice which is the Court Approved Notice of Class Action
24 Settlement and Hearing Date for Final Court Approval which is attached to the Settlement as
25 Exhibit A and an order that it be disseminated to the proposed Settlement Class Members as
26 provided in the Settlement Agreement.

27 This Motion is based on this notice of motion, the memorandum of points and authorities, the
28 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Christina

1 Williams, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto,
2 the pleadings and other papers filed in this action, and on any further oral or documentary evidence or
3 argument presented at the time of hearing.

4
5 Dated: September 1, 2023

Respectfully submitted,
LIDMAN LAW, APC

6
7 By:



8 Milan Moore
9 Attorney for Plaintiff
10 CHRISTINA WILLIAMS
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Christina Williams (“Plaintiff”) brought this class and representative action against
4 Defendant AvalonBay Communities, Inc. (hereinafter “AvalonBay” or “Defendant”) alleging various
5 wage and hour and related violations. Plaintiff’s primary allegations are that AvalonBay: (1) failed to pay
6 all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally
7 required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to
8 reimburse necessary business expenses; (6) failed to provide accurate itemized wage statements; (7) failed
9 to pay all final wages upon separation of employment; (8) engaged in unlawful business practices; and (9)
10 failed to pay sick pay wages at the correct rate of pay; and (10) is liable for civil penalties under the Labor
11 Code Private Attorneys General Act of 2004 (“PAGA”).

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
13 class action settlement,¹ in which AvalonBay has agreed to pay One Million Eighty-Five Thousand
14 Dollars and Zero Cents (\$1,085,000) on behalf of the following Settlement Class:

15 All current and former non-exempt, hourly employees of AvalonBay who worked in
16 California at any time during the Class Period. Class Period means the period
17 between May 2, 2018 and either (i) April 10, 2023 (*i.e.*, 90 days after the January
18 12, 2023) mediation, or (ii) the latest date when there are no more than 193,551
total Workweeks collectively worked by the Class Members, whichever of these
two dates occurs later.

19 Significantly, Settlement Class members do not need to file a claim. All Settlement Class members
20 will automatically receive a payment unless they affirmatively opt-out. After deducting (a) the Individual
21 PAGA Payments, (b) the LWDA PAGA Payment, (c) the Class Representative Service Payments, (d) the
22 Fee Award, (e) the Class Counsel Litigation Expenses Payment, and (f) the Administration Expenses
23 Payment, the remaining Net Settlement Amount (“NSA”) of approximately \$559,833.34 will be
24 distributed to all Settlement Class members who do not opt-out of the Settlement. There are
25 approximately 1,945 Settlement Class members, which means the average payment to each Settlement
26 Class member is currently expected to be approximately **\$287.83**. There are approximately 1,099

27 _____
28 ¹ The Class Action and PAGA Settlement Agreement and Notice (“Settlement”) is attached to the Declaration of Elizabeth
Nguyen as Exhibit 1. The proposed Class Notice is attached to the Settlement as Exhibit A. All defined terms in this motion
have the same definitions as used in the Settlement.

Aggrieved Employees, which means the average individual PAGA Amount is \$24.68.

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, and the tangible monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES

AvalonBay does business as developers, redevelopers, and managers of apartment homes. Plaintiff, a former non-exempt employee, worked for AvalonBay from approximately September 2018 through on or about December 1, 2021. *See* Declaration of Christina Williams (“Williams Decl.”), ¶ 2. During her employment, Plaintiff worked as a Sales and Service Supervisor and her responsibilities, included without limitation, leasing and addressing resident concerns. *Id.*

B. BRIEF PROCEDURAL HISTORY

On May 2, 2022, Plaintiff filed a putative class action against AvalonBay in this Court captioned *Christina Williams v. AvalonBay Communities, Inc.*, Case No. 22STCV14614. *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 10. On May 2, 2022, pursuant to California Labor Code § 2699.3(a), Plaintiff gave written notice to AvalonBay and the LWDA by sending the PAGA Notice. *Id.*, at Exhibit 1. On June 8, 2022, AvalonBay filed a Notice of Removal under the Class Action Fairness Act of 2005 to the Central District of California of United States District Court, Case No. 22-CV-03933 (“Federal Action”). *Id.* On October 5, 2022, Plaintiff filed a First Amended Complaint in the Federal Action alleging the following putative class action and representative claim against AvalonBay: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to reimburse necessary business expenses; (6) failure to provide accurate, itemized wage statements; (7) failure to timely pay all wages due upon separation; (8) unfair competition under California Business & Professions Code §§ 17200 *et seq.*; and (9) civil penalties under California Private Attorneys General Act of 2004. *Id.*

On April 10, 2023, pursuant to the Parties’ joint stipulation the District Court remanded the action back to State Court. *Id.*

1 **C. CLAIMS ASSERTED**

2 The Parties participated in a mediation session on January 12, 2023, with Philip Cook, Esq., and
3 reached a tentative settlement, subject to court approval, of Plaintiff's class-wide and PAGA
4 representative claims. *Id.* The inclusion of Plaintiff's supplemental PAGA claims was discussed and
5 mediated in the case, but are not yet pled. *Id.* In connection with effectuating the terms of the settlement,
6 on April 4, 2023, Plaintiff notified Defendant via certified mail, and the Labor Workforce Development
7 Agency ("LWDA") via e-mail, of Defendant's violations of the California Labor Code and Plaintiff's
8 intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to
9 additional violations of the California Labor Code (supplementing her May 2, 2022 LWDA letter) on the
10 basis that, in addition to the violations enumerated in Plaintiff's May 2, 2022 correspondence, Defendant;
11 (1) violated Labor Code § 2802 failing to reimburse Plaintiff and Aggrieved Employees for expenses
12 related to using their personal vehicles and/or purchasing tools and equipment to discharge their duties;
13 (2) violated Labor Code §§ 204, 510, 558 1194, 1194.2, and 1197, 1198 in that Defendant had a policy of
14 rounding non-exempt employees' hours to the detriment of Plaintiff and the Aggrieved Employees; and
15 (3) violated Labor Code Industrial Welfare Commission Wage Order (Wage Order 5-2001, Section 14(b))
16 by failing to provide suitable seating/break areas for Plaintiff and other Aggrieved Employees. *Id.*

17 Therefore, in connection with the effectuating the terms of the settlement, the Parties submitted a
18 stipulation seeking leave from the Court to file a Second Amended Complaint concurrently herewith.
19 Thus, Plaintiff's primary allegations are that AvalonBay: (1) failed to pay all minimum wages owed; (2)
20 failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to
21 authorize and permit all legally required rest periods; (5) failed to reimburse necessary business expenses;
22 (6) failed to provide accurate, itemized wage statements; (7) failed to timely pay all wages upon separation
23 of employment; (8) engaged in unlawful business practices; (9) liable for civil penalties under PAGA; and
24 (10) failed to pay sick pay wages at the correct rate of pay. *Id.*

25 Plaintiff will also serve the instant Motion and proposed Settlement Agreement on the LWDA on
26 the same date she files this Motion and will submit a supplemental declaration showing the submission.
27 Nguyen Decl., ¶ 36.
28

1 **III. DUNK/KULLAR ANALYSIS**

2 Settlement is the preferred means of dispute resolution, particularly in complex class action
3 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in
4 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See*
5 *e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the
6 Settlement agreement was negotiated at arm’s-length by class counsel and with the assistance of an
7 experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168
8 Cal.App.4th 116, 130.

9 **A. INVESTIGATION AND DISCOVERY**

10 The Parties exchanged Initial Disclosures and Defendant served discovery responses the Plaintiff’s
11 Interrogatories and Requests for Production of Documents as well a document production in the Federal
12 Action. Shortly thereafter, the Parties agreed to participate in early mediation and AvalonBay produced
13 additional documents relating to its policies, practices, and procedures regarding its wage and hour
14 practices, paying non-exempt employees for all hours worked, meal and rest period policies, meal
15 premiums paid, and other operational policies. As part of AvalonBay’s production, Class Counsel represent
16 they also reviewed time records, pay records, and information relating to the size and scope of the Class,
17 as well as data permitting Class Counsel to understand the number of workweeks and pay periods in the
18 Class Period and the PAGA Period. Nguyen Decl., ¶ 11. Specifically, in connection with private
19 mediation, AvalonBay produced a 13% sampling of timekeeping and payroll data for the putative class.
20 *Id.* Plaintiff received a list of 1,945 unique Employee ID numbers. The Parties agreed that Plaintiff’s
21 sample shall represent 13% of the total Employee ID numbers – 253 employees. *Id.* Using Excel’s
22 “RAND” function which randomly generates a value between 0 and 1, each of the 1,945 Employee ID
23 numbers was randomly assigned such a value. After the random assignment, the list of Employee ID
24 numbers was sorted in ascending order according to the values randomly assigned. After the list was
25 sorted, Plaintiff selected the first 253 Employee ID numbers to represent the agreed upon 13% sampling.
26 *Id.*

27 Accordingly, a sample of this group is representative of the entire Settlement Class and is
28 statistically significant and reliable for purposes of evaluating a potential settlement. *See e.g., Tyson*
Foods, Inc. v. Bouaphakeo, 136 S. Ct. 1036 (2016) (The Supreme Court held that statistical evidence was

admissible to prove liability and damages across a class, thereby allowing it to support class action certification) In *Tyson*, a case involving a class of employees claiming that they did not receive statutorily mandated overtime pay for time spent “donning and doffing protective gear,” the court upheld the use of statistical evidence to calculate the additional time class members spent donning and doffing, even though differences in the type of gear worn meant that plaintiffs may have taken different amounts of time to don and doff. *Id.* at pp. 1042, 1048–1409.

Here, the statistical analysis of the time punch and payroll data was used for the limited purpose of determining the predominance of meal period violations in support of Plaintiff’s claims that AvalonBay maintained policies and practices during the relevant time period of not providing all legally compliant meal periods. Indeed, based on the time punch data produced Plaintiff was able to analyze the meal records and find an approximate 17.6% potential first meal period violation rate and an 81% potential second meal period violation rate. *Id.* The Settlement Class members were hourly employees and were paid under the same wage and hour policies and procedures. Given these circumstances, the data analysis for the subset of employees, *i.e.* the 13% sampling, can be probative as to the experiences of the Settlement Class. *Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 938 (As in *Tyson*, under these circumstances the percentage of the subset of employees who signed meal agreements lacking the required revocation language during a given time period is probative as to the percentage of the class that signed meal agreements lacking the required revocation language.) Further, if all Settlement Class members brought lawsuits for meal period violations, they would rely on timekeeping records similar to the ones in this sampling which also supports a finding that the sampling is statistically reliable.

In addition to the representative sampling, AvalonBay produced key data points and all relevant written wage and hour policies in effect during the relevant time periods. Specifically, Plaintiff was provided with the following:

- Plaintiff’s personnel files and timekeeping and payroll documents;
- Key data points, including total number of employees, workweeks, and pay periods during the relevant time period;
- Exemplars of the wage statements provided during the relevant time period; and
- Job descriptions of the positions held by the putative class members.

This information coupled with the representative data sampling, enabled Plaintiff to extrapolate to

1 the entire class and aided in Plaintiff's creation of a class-wide exposure model for all the claims at issue,
2 including unpaid wages and penalties potentially owed. Therefore, after the detailed review of the payroll
3 and time records and other documents and policies produced by AvalonBay, Class Counsel drew on their
4 extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This
5 discovery allowed the parties to assess the merits and value of Plaintiff's claims and AvalonBay's defenses
6 thereto, if a settlement could not be reached.

7 **B. ARMS-LENGTH NEGOTIATIONS**

8 On January 12, 2023, after research and analysis, a mediation was held with Philip E. Cook, Esq.,
9 a well-respected wage and hour class action mediator. Nguyen Decl., ¶ 12. During mediation, the parties
10 vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and
11 the legal basis for the claims and defenses. *Id.* Ultimately, the parties agreed in principle on a class-wide
12 resolution. *Id.* In the weeks that followed, the parties finalized the terms of settlement and executed the
13 Class Action and PAGA Settlement Agreement and Class Notice ("Settlement").

14 **C. THE EXPERIENCE AND VIEWS OF COUNSEL**

15 "Parties represented by competent counsel are better positioned than courts to produce a settlement
16 that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities*
17 *Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent, experienced
18 counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and
19 who have been appointed as class counsel in numerous cases alleging similar claims. *See* Declaration of
20 Scott M. Lidman ("Lidman Decl."), ¶¶ 2-8; Nguyen Decl., ¶¶ 2-8; Declaration of Paul K. Haines ("Haines
21 Decl."), ¶¶ 2-8. Class Counsel conducted an in-depth review of AvalonBay's policies and timekeeping
22 and payroll records, and drew on their extensive experience in similar cases to assess the strengths and
23 weaknesses of Plaintiff's case. *See* Nguyen Decl., ¶¶ 10-30. The Settlement was also reached with the
24 assistance of an experienced and respected wage and hour class action mediator. *Id.* This factor strongly
25 supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

26 **D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF CLAIMS**

27 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in the
28 face of disputed claims. Plaintiff's analysis of the maximum and realistic expected recoveries for each of

the theories of liability pled is set forth below:

AvalonBay Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that she and Settlement Class members were not provided with all legally-compliant first meal periods beginning before the end of the sixth hour of work. Nguyen Decl., ¶ 16. Specifically, due to the work demands imposed by AvalonBay, Plaintiff alleges that the meal periods were either late, short, or missed. *Id.* Based on Plaintiff's review of the time data produced in connection with mediation, AvalonBay's violation rate for first meal periods was approximately 17.6% and 81% for second meal periods. Therefore, Plaintiff calculated AvalonBay's maximum exposure on the alleged meal period violations at approximately **\$3,608,793**, which is offset by the amount paid in meal period premiums and based on the following violations: (1) late first lunch; (2) missed first meal period; (3) short first meal break; and (4) missed second meal break on shifts over 10 hours. *Id.*

AvalonBay counters that it has always provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of AvalonBay. Nguyen Decl., ¶ 17. AvalonBay also points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). AvalonBay also contends it paid meal period premiums—a total of 3,199—when employees were unable to take a compliant meal period. Finally, AvalonBay contends Plaintiff's meal period claim is not suited for class certification because it paid meal period premiums, a 17.6% violation rate for first meal periods supports its defenses and individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 85% for the risk of non-certification, and an additional 80% to account for AvalonBay defenses on the merits to arrive at an estimated exposure of \$108,263.79. *Id.*

AvalonBay Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that she and Settlement Class members were also not authorized and permitted to take all required rest periods due to

1 AvalonBay's rest period policies and practices that fail to authorize and permit all rest periods for every
2 four hours worked, *or major fraction thereof*. Nguyen Decl., ¶ 18. Specifically, Plaintiff alleges that due
3 to work demands imposed by AvalonBay, it failed to authorize and permit Plaintiff and other non-exempt
4 employees to take compliant rest periods when they worked shifts in excess of 3.5 hours. *Id.* Based on
5 the data, 773,190 shifts worked were in excess of 3.5 hours. *Id.* Accordingly, Plaintiff calculated
6 AvalonBay's maximum exposure for rest period violations at **\$19,859,811**. *Id.*

7 AvalonBay contends it has always maintained and enforced lawful rest period policies and
8 practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
9 periods in compliance with California law. Nguyen Decl., ¶ 19. Further, AvalonBay argues that the
10 maximum exposure incorrectly assumes a 100% rest period violation rate, Plaintiff's rest period claim is
11 inherently unsuited for class treatment as it requires an individualized inquiry into whether each
12 Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which
13 would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff discounted the
14 maximum exposure by 85% for the risk of non-certification, and an additional 70% to account for
15 AvalonBay defenses on the merits to arrive at an estimated exposure of \$893,692. *Id.*

16 AvalonBay Failed to Reimburse Necessary Business Expenses: Plaintiff alleges that AvalonBay
17 failed to reimburse her and Settlement Class members for necessary business expenditures, including the
18 use of their personal cellular phones for work activities, as required under Labor Code section 2802 and
19 by *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137. Nguyen Decl., ¶ 20. Plaintiff
20 contends that AvalonBay required its non-exempt employees to use their personal cellular phones and/or
21 computers with internet access for work-related purposes to complete the daily COVID-19 screening
22 survey but AvalonBay did not reimburse the putative class members for the cell phones and/or the data
23 usage. *Id.* Based on the sample, approximately 97% of the putative class members did not receive a cell
24 phone stipend. Plaintiff estimates employees should have been reimbursed approximately \$25.00/month
25 or about \$6.25/week for reasonable cellular phone related expenses since March 2020. *Id.* Accordingly,
26 Plaintiff calculates AvalonBay's maximum exposure for this claim at approximately **\$1,051,565** (173,454
27 workweeks x \$6.25/workweek = \$1,084,088 * .97). *Id.*

1 AvalonBay contends that it provided employees with alternatives to complete the daily COVID-
2 19 screening that did not require the use of a cellular phone or internet access. AvalonBay further contends
3 that if the employees completed their COVID-19 screening by using their personal cell phone or a home
4 computer, they did so on a voluntary basis. Nguyen Decl., ¶ 21. Further, AvalonBay argues that any
5 expenses incurred were minimal given the affordability of cellular usage plans. *Id.* AvalonBay also argues
6 that this claim is not suitable for class treatment because it would require individualized determinations
7 as to whether each employee used a personal cellular phone and how often. *Id.* Accordingly, Plaintiff
8 discounted the maximum exposure by 75% for the risk of non-certification, and an additional 70% to
9 account for AvalonBay’s defenses on the merits, to arrive at an estimated exposure of \$78,867.38. *Id.*

10 AvalonBay Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that AvalonBay
11 issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid
12 minimum wages, overtime wages, and meal and rest period premium wages described above. Nguyen
13 Decl., ¶ 22. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because the
14 wage statements issued to Settlement Class Members did not include all hours worked and the rate at which
15 they were being paid. *Id.* Plaintiff’s data analysis reflected that there were approximately 28,500 wage
16 statements issued during the relevant time period. *Id.* Therefore, Plaintiff calculated AvalonBay’s
17 maximum exposure for wage statement violations based on and applying \$50 for the first violation and
18 \$100 for each subsequent violation, AvalonBay’s exposure is **\$2,795,050**. *Id.*

19 AvalonBay argues that meal and rest period claims cannot support a claim for wage statement
20 penalties. Nguyen Decl., ¶ 23. AvalonBay further argues that its alleged wage statement violations could
21 not be shown to be “knowing and intentional,” and that Plaintiff cannot show that he or any other employee
22 “suffer[ed] injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e)
23 for imposition of penalties. *Id.* As such, Plaintiff discounted the calculated exposure by 60% for a risk of
24 non-certification and an additional 65% for a risk of being unsuccessful on the merits, to arrive at an
25 estimated total of \$391,307.00. *Id.*

26 AvalonBay is Liable for Waiting Time Penalties: Plaintiff alleges that AvalonBay is also liable for
27 waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages. Nguyen
28 Decl., ¶ 24. Based on the data provided by AvalonBay, there were approximately 1,157 Settlement Class

1 members who have separated their employment with AvalonBay during the relevant time period who could
2 be entitled to waiting time penalties. *Id.* Therefore, Plaintiff calculated AvalonBay’s maximum exposure
3 for waiting time penalties at approximately **\$6,225,566**. *Id.*

4 AvalonBay asserts it has strong defenses to the waiting time claim because there exist good-faith
5 disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Nguyen Decl., ¶ 25. *See*
6 *also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of
7 waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good faith
8 dispute” over whether employee was exempt precluded imposition of waiting time penalties over
9 contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by 60% for the risk of
10 non-certification, and an additional 70% to account for AvalonBay’s defenses on the merits, to arrive at
11 an estimated exposure of \$747,067.92. *Id.*

12 AvalonBay is Liable for Unpaid Sick Pay and Underpaid Meal Period Premiums: Plaintiff
13 alleges that AvalonBay is also liable for failing to pay sick pay and meal period premiums at the regular
14 rate. Nguyen Decl., ¶ 26. From the data produced, it appears AvalonBay paid 3,199 meal period premiums
15 during the relevant time. However, the meal period premiums were paid at the base rate of pay and not
16 at the regular rate of pay. *See Jessica Ferra v. Loews Hollywood Hotel, LLC* (2019) 40 Cal.App.5th 1239,
17 1252 (The Court held that "regular rate of compensation" under Cal. Lab. Code 226.7(c), like "regular rate
18 of pay" under Cal. Lab. Code 510(a), encompasses all nondiscretionary payments, such that the calculation
19 of premium pay for a noncompliant meal, rest, or recovery period, like the calculation of overtime pay,
20 must account for not only hourly wages but also for nondiscretionary payments for work performed by the
21 employee.) Therefore, AvalonBay’s liability is not extinguished because it failed to meal period premiums
22 at the correct regular rate of pay, which should have included non-discretionary bonuses in the calculation.
23 *Id.* Further, Labor Code section 246(l) states that “... paid sick time for nonexempt employees shall be
24 calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid
25 sick time, whether or not the employee actually works overtime in that workweek.” Here, Plaintiff alleges
26 that AvalonBay failed to pay Plaintiff and other former non-exempt employees their sick pay in a manner
27 that fully complies with Labor Code section 246(l) as the bonuses were not included in the rate of pay.
28 Therefore, Plaintiff calculated AvalonBay’s maximum exposure at approximately **\$748,615**, which is

1 inclusive of interest. *Id.*

2 AvalonBay asserts it paid meal period premiums and sick pay at the appropriate rate of pay.
3 Nguyen Decl., ¶ 27. AvalonBay also argues that this claim is not suitable for class treatment because it
4 would require individualized determinations. Accordingly, Plaintiff discounted the maximum exposure
5 by 60% for the risk of non-certification, and an additional 60% to account for AvalonBay's defenses on
6 the merits, to arrive at an estimated exposure of \$119,778.40. *Id.*

7 AvalonBay is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA
8 as a result of the foregoing alleged Labor Code violations. Nguyen Decl., ¶ 28. Plaintiff calculated
9 AvalonBay's maximum exposure at **\$2,850,000** (28,500 pay periods x \$100 initial violation rate). *Id.*; see
10 *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies
11 until employer is notified that it is violating a Labor Code provision).

12 AvalonBay argues that Plaintiff's PAGA claim will fail for the same reasons that her underlying
13 claims will fail. Nguyen Decl., ¶ 29; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147
14 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.").
15 AvalonBay also maintains that, given its good faith defenses, this Court would exercise its discretion to
16 substantially reduce any PAGA penalties if it were to find AvalonBay liable for any of Plaintiff's claims.
17 See Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135
18 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-
19 01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000).
20 *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 70% for a risk of being unsuccessful
21 on the merits, and an additional 60% to account for the possibility of this Court reducing penalties, to arrive
22 at an estimated exposure of \$342,000.00. *Id.*

23 **E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL**

24 Using these estimated figures for each of the claims described above, Plaintiff predicted the
25 realistic total recovery for the Settlement Class would be approximately \$2,680,975.98. Nguyen Decl., ¶
26 30. The proposed settlement of \$1,085,000.00 therefore represents approximately 40% of the reasonably
27 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement
28 will provide tangible monetary relief to Settlement Class members, and will still provide an average

1 recovery to Settlement Class members of approximately \$287.83.

2 The proposed settlement reflects approximately 40% of the estimated recovery the Settlement
3 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
4 monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure
5 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan.*
6 *Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement
7 representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459
8 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop.*
9 *v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement
10 may be acceptable even though it amounts to only a fraction of the potential recovery that might be
11 available to the Settlement Class members at trial”). Thus, Plaintiff submits that the proposed settlement
12 is within the range of possible approval, such that notice should be provided to the Settlement Class so
13 that they can consider the Settlement. The Court will have the opportunity to again assess the
14 reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

15 **F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER
16 LITIGATION**

17 Although the parties engaged in some formal and informal discovery, the parties still had
18 significant discovery to complete in formal litigation had the matter not settled. *Nguyen Decl.*, ¶ 34.
19 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of
20 a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.* Even if
21 the classes sought to be certified by Plaintiff were in fact certified, the parties would incur considerably
22 more attorneys’ fees and costs through a possible decertification motion, trial, and possible appeal. *Id.*
23 This Settlement avoids those risks and the accompanying expense. Thus, this factor supports preliminary
24 approval.

25 **G. RISK OF MAINTAINING CLASS ACTION STATUS**

26 Plaintiff had not yet filed her motion for class certification and as such, the extent to which
27 Plaintiff’s proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk
28 that there would not be a certified class at the time of trial.

IV. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

California Rule of Court 3.769 conditions 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 requires 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 requires the trial court to determine “whether a proposed settlement is fundamentally fair, adequate, and reasonable”).

As explained below, the Settlement Class satisfies the criteria for certification of a settlement class because: (1) the Settlement Class is 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 absent Settlement Class members; and (4) Plaintiff and her counsel will fairly and adequately represent Settlement Class members’ interest. *See* Cal. Civ. Proc. § 382.

A. NUMEROSITY IS SATISFIED.

Here, the proposed Settlement Class consists of approximately 1,945 members, and is therefore sufficiently numerous as to make joinder impracticable. *See* Nguyen Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous). Thus, numerosity is satisfied.

Further, 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, 916 (alterations in original). Here, the proposed Settlement Class is ascertainable through AvalonBay’s personnel files and employee records maintained in the regular course of business.

B. COMMONALITY IS SATISFIED.

The focus in a certification dispute is not the merits, but rather on what types of questions, “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 327.

Here, Settlement Class members’ claims arise from AvalonBay’s common, uniform policies and practices that applied to Settlement Class members during the class period. Nguyen Decl., ¶ 15.

Specifically, Plaintiff alleged that AvalonBay's common and uniform policies and practices resulted in the following violations, involving common questions of law and fact: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide all legally required meal periods; (4) failure to authorize and permit all legally required rest periods; (5) failure to reimburse necessary business expenses; (6) failure to provide accurate, itemized wage statements; (7) failure to timely pay all wages upon separation of employment; (8) engagement in unlawful business practices; (9) liable for civil penalties under PAGA; and (10) failure to pay sick pay wages at the correct rate of pay. *See e.g., Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

C. TYPICALITY IS SATISFIED.

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 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action).

Here, Plaintiff's claims are typical of those held by the members of the proposed Settlement Class. First, Plaintiff was employed by AvalonBay during the Class Period as a non-exempt employee and was subject to AvalonBay's wage and hour policies at issue in this case. *See Williams Decl.*, ¶ 2. Second, Plaintiff was allegedly injured by the same challenged policies that allegedly injured the Settlement Class as a whole. For example, Plaintiff asserts that she was not paid all minimum and/or overtime wages, was not provided all meal periods, was not authorized and permitted all rest periods, was not reimbursed necessary business expenses, received inaccurate itemized wage statements, similar to those received by the Settlement Class members, was not paid all of her wages owed upon her separation of employment, and was not paid her sick wages at her regular rate of pay. *Id.* Given that AvalonBay's policies and practices applied to all non-exempt employees, Settlement Class members possess a similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, because Plaintiff's claims and those of the Settlement Class all arise from the same conduct, typicality is satisfied.

D. ADEQUACY IS SATISFIED.

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007) Cal.App.4th 676, 697.

1 Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class he
2 seeks to represent. Williams Decl., ¶ 10. Indeed, Plaintiff’s interests are aligned with those of the
3 Settlement Class members, as they all seek monetary relief under the same facts and legal theories.
4 Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. *See McGhee*
5 *v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication
6 that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the
7 proposed class). Further, Class Counsel also have extensive experience in wage and hour class action
8 litigation and have vigorously litigated this case. *See* Lidman Decl., ¶¶2-8; Nguyen Decl., ¶¶ 2-8; Haines
9 Decl., ¶¶ 2-8; Declaration of Milan Moore (“Moore Decl.”), ¶¶ 2-4.

10 **V. SETTLEMENT AGREEMENT**

11 **A. THE BASICS**

12 **1. Class Definition and Release Period**

13 The proposed Settlement Class is defined as “all current and former non-exempt, hourly employees
14 of AvalonBay who worked in California at any time during the Class Period. Class Period means the period
15 between May 2, 2018 and either (i) April 10, 2023 (*i.e.*, 90 days after the January 12, 2023) mediation, or
16 (ii) the latest date when there are no more than 193,551 total Workweeks collectively worked by the Class
Members, whichever of these two dates occurs later.” Nguyen Decl., ¶ 14.

17 **2. Aggrieved Employees and PAGA Period**

18 The proposed Aggrieved Employees is defined as “all current and former non-exempt, hourly
19 employees of AvalonBay who worked in California at any time during the PAGA Period.” Nguyen Decl.,
20 ¶ 14. For purposes of this Settlement Agreement, the “PAGA Period” means the period between October
21 25, 2020 and either (i) April 10, 2023 (*i.e.*, 90 days after the January 12, 2023) mediation, or (ii) the latest
22 date when there are no more than 193,551 total Workweeks collectively worked by the Class Members,
whichever of these two dates occurs later. Nguyen Decl., ¶ 14.

23 **B. RELEASE OF CLAIMS**

24 **1. Scope of Settlement Class Members’ Release**

25 Settlement Class Members, except those who opt-out, and Plaintiff, on behalf of themselves and
26 their respective former and present representatives, agents, attorneys, heirs, administrators, successors,
27 and assigns, will release and forever discharge Defendant AvalonBay Communities, Inc. and any of its
28 past and present officers, directors, shareholders, managers, employees, agents, principals, heirs,

1 representatives, accountants, auditors, consultants, and their respective successors and predecessors in
2 interest, subsidiaries, affiliates, parents and attorneys, (“Released Parties”) from all claims, demands,
3 rights, liabilities and causes of action that have been and will be pled in the Complaints in the Action as
4 well as all claims, demands, rights, liabilities and causes of action that could have been alleged based on
5 the facts that have been and will be alleged in the Complaints in the Action, that arose during the Class
6 Period defined above with respect to the following claims: (a) failure to pay all minimum wages owed,
7 including but not limited to the alleged failure to pay for purported off-the-clock work; (b) failure to pay
8 all overtime wages owed, including but not limited to the alleged failures to (i) properly calculate the
9 regular rate of pay and (ii) pay for purported off-the-clock work; (c) failure to provide meal periods, or
10 premium pay for non-compliant meal periods, including but not limited to the alleged failure to properly
11 calculate the correct rate of pay when paying meal period premiums; (d) failure to authorize and permit
12 rest periods, or premium pay for non-compliant rest periods, including but not limited to the alleged failure
13 to properly calculate the correct rate of pay when paying rest period premiums; (e) failure to reimburse
14 necessary business expenses; (f) failure to issue accurate, itemized wage statements; and (g) failure to
15 timely pay all wages due upon separation of employment, including but not limited to the alleged failure
16 to pay all wages purportedly due as a result of the claims alleged in (a)–(e) above and based on the failure
17 to properly calculate the correct rate of pay when paying sick leave under the Healthy Workplace Healthy
18 Family Act (“HWHFA”); (i) all claims for unfair business practices that could have been premised on the
19 facts, claims, causes of action or legal theories described above or the failure to properly calculate the
20 correct rate of pay when paying sick leave under the HWHFA; and (j) all claims under the Fair Labor
21 Standards Act (“FLSA”) that could have been premised on the facts, claims, causes of action or legal
22 theories described above. Except as set forth in Paragraph 5.3 of this Agreement, Participating Class
23 Members do not release any other claims, including claims for vested benefits, wrongful termination,
24 violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security,
25 workers’ compensation, or claims based on facts occurring outside the Class Period. Settlement, ¶ 5.2.

26 The following language will be printed on the reverse of each Individual Class Payment check, or
27 words to this effect: “By endorsing or otherwise negotiating this check, I acknowledge that I read,
28 understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join

1 in the Fair Labor Standards Act (“FLSA”) portion of the Action, elect to participate in the settlement of
2 the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement.”

3 2. Scope of PAGA Release

4 All Aggrieved Employees are deemed to release, on behalf of themselves and their respective
5 former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
6 Released Parties from all claims, demands, rights, liabilities and causes of action under PAGA as asserted
7 in the Complaints in the Action, the letter sent to the LWDA dated May 2, 2022 (case no. LWDA-CM-
8 881669-22), and the supplemental letter sent to the LWDA dated April 4, 2023, that arose during the
9 PAGA Period premised on the facts, claims, causes of action or legal theories and causes of action under
10 PAGA that could have been alleged based on the facts that have been and will be alleged in the Complaints
11 in the Action and the PAGA Notices referenced herein (“Released PAGA Claims”). Settlement, ¶ 5.3.

12 3. Releases Effective Date

13 The releases described are effective on the date when AvalonBay fully funds the entire Gross
14 Settlement Amount, which includes all employer payroll taxes owed on the Wage Portion of the Individual
15 Class Payments. Settlement, ¶ 5.

16 C. **MONETARY TERMS OF SETTLEMENT**

17 1. Gross Settlement Amount and Timing of Payment

18 If the Court approves this Settlement, AvalonBay will pay a Gross Settlement Amount (“GSA”)
19 of \$1,085,000.00. Nguyen Decl., ¶ 12, Exh. 2 (Settlement, ¶ 3.1). Significantly, this Settlement is **non-**
20 **reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement
21 Award. *Id.* Each Settlement Class member will automatically receive a Settlement Award unless he or
22 she affirmatively opts out of the Settlement. *Id.*

23 AvalonBay shall fully fund the Gross Settlement Amount, including all amounts necessary to fully
24 pay AvalonBay’s share of payroll taxes, by transmitting such funds to the Administrator within 30 days
25 after the Effective Date.² See Nguyen Decl., ¶ 13.

26 ² “**Effective Date**” means the earliest date by which both of the following have occurred: (a) the Court
27 enters a Judgment based on its Final Approval of the Settlement; and (b) the Judgment becomes “Final.”
28 “Final,” as used in the definition of Effective Date shall mean the latest of: (i) if there is an appeal of the
Court’s judgment, the date the judgment is affirmed on appeal, the date of dismissal of such appeal, or the
expiration of the time to file a petition for certiorari in the United States Supreme Court petition or a
petition for review in the California Supreme Court, as applicable; or (ii) if such a petition is filed, the
date of denial of the petition, or the date the judgment is affirmed pursuant to such petition; or (iii) if no

2. Deductions from Gross Settlement Amount

The monetary terms of the Settlement are summarized below:

Gross Settlement Amount (“GSA”):	\$1,085,000.00
Minus Court-approved attorneys’ fees (update to 1/3 of GSA):	\$361,666.66
Minus Court-approved, verified costs (up to 30,000):	\$30,000.00
Minus Court-approved Class Representative Service Award:	\$5,000.00
Minus Settlement Administration Costs:	\$20,000.00
Minus PAGA civil penalties to LWDA and PAGA Employees:	\$108,500.00
Net Settlement Amount (“NSA”):	\$559,833.34

“Net Settlement Amount” (“NSA”) means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: (a) the Individual PAGA Payments, (b) the LWDA PAGA Payment, (c) the Class Representative Service Payment, (d) the Class Counsel Fee Award, (e) the Class Counsel Litigation Expenses Payment, and (f) the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. Settlement, ¶ 1.29. The Settlement requires AvalonBay to pay a NSA of at least \$559,833.34 to all Settlement Class members who do not timely opt out. Nguyen Decl., ¶ 13 and Exh. 2.

3. Class Representative Service Award

“[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of \$5,000.00 for her services to the Settlement Class. Nguyen Decl., ¶ 33 and Exh. 3 (Settlement, ¶ 3.2.1); Williams Decl., ¶¶ 6-10. As will be fully briefed at the time of final approval, Plaintiff’s requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff

appeal is filed, the expiration date of the time for filing or noticing any appeal from the judgment. Settlement 1.19.

undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Nguyen Decl., ¶ 33; Williams Decl., ¶¶ 6-10; Settlement ¶ 3.2.1.

4. Attorneys' Fees and Costs

California courts recognize an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of one-third of the CSA is well within the range of reasonableness, and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which is estimated to be \$361,666.66, and up to \$30,000.00 in verified costs reimbursement. *See* Settlement, ¶ 3.2.2; Nguyen Decl., ¶ 31. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Nguyen Decl., ¶ 32. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, analyzing Settlement Class members' timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. Nguyen Decl., ¶ 31. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the final approval papers and attending the Final Approval hearing. *Id.*

The request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement in light of the substantial risks, significant work undertaken, the extremely positive results obtained for the class, and the efficiency with which the Parties conducted the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar analysis.

1 5. Payroll Taxes

2 The Settlement provides that AvalonBay's payroll taxes shall be paid separately from, and in
3 addition to, and the Gross Settlement Amount. Settlement ¶ 3.1. Defendant agrees to deposit it with the
4 Settlement Administrator on the same date the Gross Settlement Amount is due.

5 6. Payment Formula

6 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total
7 number of Workweeks worked by all Participating Class Members during the Class Period, and (b)
8 multiplying the result by the total Workweeks worked by each Participating Class Member during the
9 Class Period. Settlement, ¶ 3.2.4.

10 Thus, the average Individual Settlement Payment is projected to be approximately **\$287.83, which**
11 **is exclusive of the PAGA Amount.** Nguyen Decl., ¶ 14.

12 PAGA Amount: The Administrator will calculate each Individual PAGA Payment by (a) dividing
13 the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$27,125) by the total number of
14 PAGA Pay Periods worked by all Aggrieved Employees, and (b) multiplying the result by the total PAGA
15 Pay Periods worked by each Aggrieved Employee. Each Aggrieved Employee assumes full responsibility
16 and liability for any taxes owed on his or her Individual PAGA Payment. Settlement, ¶ 3.2.5.1. Thus, the
17 1,099 Aggrieved Employees will receive an additional average payment of **\$24.68**.

18 7. Tax Allocation

19 For purposes of calculating applicable taxes and withholdings, 30% of each Participating Class
20 Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion").
21 The Wage Portions are subject to tax withholding and will be reported on IRS Form W-2. The remaining
22 70% of each Participating Class Member's Individual Class Payment will be allocated to settlement of
23 claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to
24 wage withholdings and will be reported on IRS Forms 1099. Each Participating Class Member assumes
25 full responsibility and liability for any employee taxes owed on his or her Individual Class Payment.
26 Settlement, ¶ 3.2.4.1.

27 8. PAGA Penalty

28 The parties have agreed to a PAGA award of \$108,500.00 and in accordance with California Labor
Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or
\$81,375. Settlement ¶ 3.2.5. The total amount allocated to PAGA represents approximately 32% of the

1 estimated PAGA exposure discussed above of \$342,000. In addition, the \$108,500 represents 10% of the
2 \$1,085,000 Gross Settlement Amount and is in line with the zero to two percent range for PAGA claims
3 approved by Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL
4 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Hopson*
5 *v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009)
6 (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom Comm’n Cases*, 186 Cal. App. 4th
7 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under
8 which no money was allocated to the PAGA claims).

9 **VI. NOTICE ADMINISTRATION**

10 **A. QUALIFICATIONS AND EXPERIENCE OF ADMINISTRATOR**

11 Phoenix Settlement Administrators (“PSA”) has extensive experience in class action matters,
12 having provided services in class action settlements involving antitrust, securities fraud, property damage,
13 employment discrimination, employment wage and hour, product liability, insurance and consumer issues.
14 Declaration of Jodey Lawrence in support of Plaintiff’s Motion for Preliminary Approval filed
15 concurrently herewith (“Lawrence Decl.”).

16 PSA’s fees and expenses are estimated not to exceed \$20,000.00. *See* Lawrence Decl., ¶ 14, Exh.
17 F. This request is reasonable in light of the proposed class size of approximately 1945 Settlement Class
18 members and the costs and expenses associated with administering the notices and distributing the awards.
19 Additionally, PSA will translate the Class Notice and will mail the Class Notices to Settlement Class
20 Members in both English and Spanish.

21 **B. CLASS DATA FROM DEFENDANT**

22 Within 20 days after the Order granting Preliminary Approval is entered and served, AvalonBay
23 will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. Settlement,
24 ¶ 4.2.

25 **C. CLASS DATA UPDATED PRIOR TO INITIAL MAILING**

26 Before mailing Class Notices, the Administrator shall update the Class Members’ addresses using
27 the National Change of Address database. Settlement, ¶ 7.4.2.

28 **D. DEADLINE FOR INITIAL ISSUANCE OF NOTICE TO CLASS MEMBERS**

Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving
the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-

1 class United States Postal Service (“USPS”) mail, the Class Notice, with Spanish translation, substantially
2 in the form attached to the Agreement as **Exhibit A**. The first page of the Class Notice shall prominently
3 estimate (1) the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment
4 payable to the Class Member, and (2) the number of Workweeks and/or PAGA Pay Periods used to
5 calculate these amounts. Settlement, ¶ 7.4.2.

6 **E. NOTICE COMPLIES WITH CAL. RULES OF COURT, RULE 3.766(D)**

7 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it
8 advises Settlement Class members of the nature of the claims, basic contentions and denials of the parties,
9 and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the
10 procedures by which to do so, explains the recovery formula and expected recovery amount for each
11 Settlement Class member, provides them the opportunity to contest their total workweeks included in the
12 notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out.
13 *See* Nguyen Decl., Exh. 3 (Settlement, Exh. A). The proposed Class Notice will also notify Settlement
14 Class members of the final approval hearing date and provides Settlement Class members the contact
15 information for Class Counsel, and advises Settlement Class members that they may enter an appearance
16 through counsel if they wish to. This manner of giving notice satisfies California Rule of Court 3.766(e)
17 as the most reliable and cost-effective method of reaching Settlement Class members.

18 **F. PROCESSING OF PAYMENTS**

19 Within 10 business days after AvalonBay funds the Gross Settlement Amount, the Administrator
20 will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA
21 Payment, the Administration Expenses Payment, the Class Counsel Fee Award, the Class Counsel
22 Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class
23 Counsel Fee Award, the Class Counsel Litigation Expenses Payment and the Class Representative Service
24 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
25 Settlement, ¶ 4.4.

26 **G. UNDELIVERABLE CLASS NOTICES**

27 No later than three (3) business days after the Administrator’s receipt of any Class Notice returned
28 by the USPS as undeliverable, the Administrator shall re-mail the Class Notice, via first-class USPS mail,
using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address,

the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. Settlement, ¶ 7.4.3.

VII. RESPONSES TO NOTICE

A. REQUESTS FOR EXCLUSION

Class Members who wish to exclude themselves from (or opt-out of) the Settlement's release of class action claims must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion no later than the Response Deadline – *i.e.*, 60 days after the Administrator mails the Class Notice (plus an additional 14 days for any Class Member whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's choice to be excluded from the Settlement and includes the Class Member's name, address, and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. Settlement, ¶ 7.5.1.

B. RE-MAILED NOTICES

The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notices are returned by the USPS a second time. Settlement, ¶ 7.4.3.

C. OBJECTION PROCEDURES

Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline – *i.e.* 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed after having been returned as undeliverable). Settlement, ¶ 7.6.2.

VIII. CY PRES DISTRIBUTION

For any Participating Class Member whose Individual Class Payment check is uncashed and cancelled after the void date of 180 days, and for any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the Controller's Unclaimed Property Fund, in the name of the Participating Class Member and/or Aggrieved Employee, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). Settlement ¶ 4.4.3. As all settlement funds

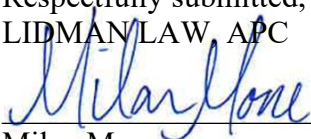
1 will be distributed to the Settlement Class members, there will be no residue and it is unnecessary to
2 designate *cy pres* recipients.

3 **IX. CONCLUSION**

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

7 Therefore, for the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
8 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order
9 Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

10
11 Dated: September 1, 2023

Respectfully submitted,
LIDMAN LAW, APC
By: 
Milan Moore
Attorney for Plaintiff
CHRISTINA WILLIAMS