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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

MONA COPAS, an individual, ALICIA
SOTELO, an individual, MARIA
GUDINO, an individual and CLAUDIA
RUIZ, an individual, on behalf of
themselves and all persons similarly
situated, and as aggrieved employees in
representation of the State of California,

Plaintiffs,

vs.

SAN BERNARDINO CARE COMPANY,
INC., dba MEDICAL CENTER
CONVALESCENT HOSPITAL, a
California corporation;

Defendants.

Case No. CIVDS1705324
Complaint filed: March 24, 2017

CLASS ACTION

**DECLARATION OF JAMES M.
TREGLIO IN SUPPORT OF MOTION
FOR ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: February 22, 2024
Time: 1:30 p.m
Dept.: S17
Judge: Hon. Judge Joseph T. Ortiz

DECLARATION OF JAMES M. TREGLIO

INTRODUCTION

1. I am an attorney at law duly authorized to practice law in the State of California. I am
over 18 years of age. I have personal knowledge of the facts set forth in this declaration and could and

1 would testify competently to them.

2 2. I am the lead attorney of the class action division for the law firm of Potter Handy, LLP,
3 (“PH,” or “Plaintiffs’ Counsel”), attorneys of record for Plaintiffs Mona Copas, Alicia Sotelo, Maria
4 Gudino and Claudia Ruiz (“Plaintiffs”) and the proposed settlement class (the “Class”) in the above-
5 captioned matter. I have no knowledge of the existence of any conflicting interests between my firm and
6 any of its attorneys, on the one hand, and Plaintiffs or any other Class Member, on the other.

7 3. After engaging in productive settlement discussions at a full-day mediation, Plaintiffs
8 and San Bernardino Care Company, Inc. (“SBCC” or “Defendants”) entered into a Joint Stipulation of
9 Settlement and Release resolving the claims of the putative class (the “Settlement Agreement”). The
10 Settlement Agreement seeks to release and discharge Defendants from the claims brought against it in
11 the matter of *Mona Copas, et al v. San Bernardino Care Company, Inc., et al*. In exchange, Defendants
12 will pay the Gross Maximum Settlement Amount (“GMSA”) of \$300,000. The Net Settlement Amount
13 available for Class Members is approximately \$148,260 (after deductions for attorneys’ fees, litigation
14 costs, claims administration costs, the LWDA’s portion of PAGA penalties, and Plaintiffs’ Service
15 Awards). A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit A**. As
16 shown further below, the settlement is fair and reasonable to the Class based on the strength of the
17 claims and Defendants’ potential defenses, as well other comparable settlements for on-duty meal and
18 rest breaks that have received the approval of federal courts in California.

19 **ATTORNEY EXPERIENCE**

20 4. I was admitted to the California Bar in 2003. I received my Bachelor of Arts degree in
21 Government from College of William & Mary in 1998 and my Juris Doctor degree from the University
22 of San Diego in 2003. From 2003 through 2006, I was the staff attorney for the Fair Housing Council of
23 San Diego, where I specialized in housing discrimination enforcement. In 2007, I joined the law firm of
24 Clark & Markham, LLP, where I specialized in consumer and wage and hour class actions, which has
25 comprised my practice of law ever since. In 2012, the law firm of Clark & Markham, LLP into the Clark
26 Law Firm and the Markham Law Firm. I stayed with the Clark Law Firm, and in 2015, the firm became
27 Clark & Treglio after I was made partner. By 2013, my work with the Clark Law Firm, Clark &
28

1 Markham, LLP, and Clark & Treglio resulted in nearly 5% of all recoveries made by the LWDA up to
2 that point.

3 5. In 2017, I joined Keegan & Baker, LLP, which was also a class action firm. Whereas my
4 work at Clark & Markham, LLP and the Clark Law Firm was primarily focused on wage and hour class
5 actions, my work at Keegan & Baker, LLP involved more consumer actions, including data breach class
6 actions, and actions brought under the Fair Credit Reporting Act.

7 6. In 2018, I left Keegan & Baker, LLP and joined the Melmed Law Group, P.C. The
8 Melmed Law Group, P.C., is an employment law firm with a focus on class and PAGA representative
9 actions. I began my representation of the Plaintiff in this action when I was employed by the Melmed
10 Law Group, P.C.

11 7. In 2019, I joined my current firm, Potter Handy, LLP, to become head of its new class
12 action division. In that capacity, I litigate both consumer and employment class actions throughout the
13 State of California.

14 8. Since 2007, I have specialized in complex wage and hour and consumer class action
15 litigation. I have been involved in every stage of class action litigation as both a lead counsel, the lead
16 and primary associate, and as co-counsel. A summary of my experience, including representative class
17 action litigation is attached hereto at Exhibit B.

18 9. In connection with these prior class actions, I have conducted discovery, argued motions,
19 drafted pleadings, drafted class notices, drafted appellate briefs, examined witnesses, represented class
20 members at settlement conferences and mediations, deposed defendants and third party witnesses,
21 defended class representative depositions and participated in final disposition hearings. I have also tried
22 PAGA representative actions.

23 **FACTUAL AND PROCEDURAL HISTORY**

24 10. The attorneys I supervise, and I, have performed substantial work and diligently
25 investigated and prosecuted this case to a successful conclusion. Our work, in conjunction with the
26 work of our co-counsel, resulted in the creation of a significant settlement fund for the benefit of the
27 Class. We avoided protracted litigation by conducting considerable investigation before filing suit
28 related to the released class claims, and efficiently communicated and exchanged information with

1 Defense counsel such that the parties could successfully settle the case after informal discovery and a
2 full-day mediation. Because of the risks involved in litigating the case, particularly the contested legal
3 and factual issues, Plaintiffs' Counsel believe this settlement to be fair, reasonable, and adequate.

4 11. From Plaintiffs' investigation and analysis of information gathered both before and after
5 initiating this claim, including information provided by the Defendants through informal discovery and
6 conversations with Plaintiffs, Class Counsel learned the following information:

- 7 a. Defendant San Bernardino Care Company, dba Medical Center Convalescent Hospital
8 ("Defendants" or "SBCC") is a California corporation licensed to do business in the
9 State of California, County of San Bernardino. SBCC is a convalescent care and
10 medical center for elderly patients primarily receiving Medicaid/MediCal.
- 11 b. Plaintiffs are current or former California residents who worked for Defendants during
12 the relevant time period as non-exempt employees.
- 13 c. This complaint alleges that Defendant SBCC violated the Fair Employment & Housing
14 Act (Cal. Gov't Code § 12940, et seq. of "FEHA"), specifically, class-wide
15 discrimination based on an unlawful "English Only" policy and discrimination based on
16 national origin, including language and race/color. Plaintiffs also filed the class action
17 against Defendants for wage and hour violations of the California Labor Code,
18 including, §§ 226.7, 512, 510, 1194, 204, 216, 223, 226, 1182, 1194, 1197, 1198.5 and
19 432.5, and for damages, restitution, attorneys' fees and injunctive relief for violation of
20 Cal. Bus. & Prof. Code § 17200, et seq.
- 21 d. In order to ensure overtime hours were not accurately recorded or be paid, SBCC
22 undertook a scheme to prevent employees from recording overtime or doubletime hours
23 on their time cards. SBCC required Ms. Copas, Ms. Gudino and Ms. Sotelo as well as
24 other nonexempt employees to sign their names on time cards before overtime was
25 computed.
- 26 e. The paycheck details verify that any hours worked over 80 hours per pay period was
27 paid as straight time and not overtime or doubletime. In the event overtime was
28 recorded, they were never paid for the hours entered because SBCC management

1 removed and/or manipulated the entries to ensure that overtime was not paid or not paid
2 fully.

3 f. According to information supplied by Defendants, there are approximately 423
4 individuals in the Settlement Class.

5 g. According to information supplied by Defendants, there are approximately 19,122 pay
6 periods.

7 12. On May 13, 2016, Plaintiffs submitted their notification to the California Labor
8 Workforce and Development Agency ("LWDA") alleging that (i) Plaintiffs' and the other Class
9 members were discriminated against by Defendants based on their national origin, including their
10 language and race/color; (ii) Defendants failed and refused to pay Plaintiffs and Class Members timely
11 or accurately for overtime wages and meal and rest period premiums, among others; (iii) Defendants
12 actively prevented Plaintiffs and the Class Members from taking meal or rest periods; (iv) Plaintiffs and
13 the Class Members were denied minimum and straight time wages; (v) Plaintiffs and the Class Members
14 were denied holiday bonus; (vi) Plaintiffs were denied access to their personnel files and payroll records;
15 and (vii) Defendants failed and refused to pay all wages owed to Plaintiffs following demand. Pursuant
16 to Labor Code §2699.3, the notification was mailed to the Defendants in this action.

17 13. Plaintiffs filed their complaint on March 24, 2017. In their complaint, Plaintiffs allege
18 the following causes of action: (1) discrimination based on unlawful "English Only" policy (Cal. Gov't.
19 Code § 12951(a); (2) discrimination based on national origin, including language, race and color (Cal
20 Gov't Code §12940(a); (3) failure to pay overtime and doubletime compensation (Cal. Labor Code
21 §§510, 1194); (4) failure to pay minimum wages (Cal. Labor Code §§1194, 1197); (5) failure to provide
22 meal and rest periods (Cal. Labor Code §§226.7, 512); (6) waiting time penalties for failure to pay all
23 wages due on discharge or quit (Labor Code §§201-2013); (7) failure to timely pay all wages earned
24 (Cal. Labor Code §204); (8) unlawfully withholding wages due following demand (Cal. Labor Code
25 §216); (9) failure to pay wages pursuant to statute or contract (Cal. Labor Code §223); (10) illegal terms
26 and conditions (Cal. Labor Code §432.5); (11) failure to provide accurate wage statements (Cal. Labor
27 Code §§226(a) and (b), 226.3); (12) failure to permit inspection of wage statements within 21 days of
28 request (Cal. Labor Code §§226(c) and (f); (13) failure to provide personnel files (Cal. Labor Code

§1198.5); (14) conversion and theft of labor (Cal. Civil Code §§3294 and 3336); (15) unfair competition (Cal. Bus. & Prof. Code §17200, et seq.; and (16) penalties under the Private Attorneys General Act of 2004 (PAGA; Labor Code 2698, et seq.

14. On February 27 and 28, 2017, Plaintiffs and Defendant participated in their first mediation under the guidance of the Hon. Michael D. Marcus (Ret.). The Action did not settle.

15. On May 14, 2020, Plaintiffs and Defendant participated in full day of mediation under the guidance of an experienced wage and hour neutral, Gig Kyriacou, Esq. After the mediation, the Parties continued to work with Mr. Kyriacou, and through further discussions under the guidance of Mr. Kyriacou eventually reached an agreement to resolve all claims in this Action.

16. In the weeks that followed the Parties executed the long form Settlement Agreement now before the Court for preliminary approval.

Plaintiffs' Allegations and Estimated Damages

17. In the Complaint, Plaintiffs alleged Defendants were liable for class wide damages and PAGA penalties as a result of Defendants' violations of the California Labor Code pertaining to wages, overtime, split shift premiums, minimum wage, off-the-clock work, meal periods, rest periods, and pay stubs.

18. Plaintiffs' estimated damages are based on the following facts and figures discussed below.

19. Based on the foregoing, Plaintiffs estimated Defendants' maximum liability for unpaid time/doubletime as follows:

a. Class Period = June 6, 2020 – February 6, 2020 (when policy manual was changed)

Total Pay Periods = 19,122.37 (from documents provided by Defendants)

Average Pay = 13.78

Average due per class member = \$137.80

PAGA Violations = \$100 x 9,772.79 violations = \$977,279.00

Member Claims = \$2,635,062.59.

20. Based on the foregoing, Plaintiffs estimated Defendants' maximum liability for on-duty rest periods as follows:

- 1 a. Labor Code § 226.7 provides "an employer shall not require an employee to work during
2 a meal or rest or recovery period mandated pursuant to an applicable statute, or
3 applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC").
4 Under IWC Wage Order 4-2001 an employer must authorize and permit all employees to
5 take ten (10) minute duty free rest periods for every major fraction of four (4) hours
6 worked. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269
7 (concluding that "during rest periods employers must relieve employees of all duties and
8 relinquish control over how employees spend their time."). In *Augustus*, the court
9 expressly rejected the employer's assertion that it could provide an on-duty rest period to
10 employees who worked as security guards and further explained "that employers [must]
11 relinquish any control over how employees spend their break time, and relieve their
12 employees of all duties." *Id.* at 273.
- 13 b. California Labor Code Section 226.7 requires an employer to pay an additional hour of
14 compensation for each rest period the employer fails to provide in accordance with the
15 applicable Industrial Welfare Commission Wage Order.
- 16 c. $\$27.56 \text{ per missed rest period} * 5 \text{ missed meal period/week} * 19,122 \text{ workweeks} =$
17 $\$2,635,062.59$

18 21. Based on the foregoing, Plaintiffs estimated Defendants' maximum liability for on-duty
19 meal periods as follows:

- 20 a. Labor Code § 512 requires employers to provide employees with thirty (30)
21 minute uninterrupted and duty free meal period within the first five hours of work.
22 Moreover, an employee who works more than ten (10) hours per day is entitled to
23 receive a second thirty (30) minute uninterrupted and duty free meal period. "An
24 on-duty meal period is permitted only when the nature of the work prevents an
25 employee from being relieved of all duty and the parties agree in writing to an on-
26 duty paid meal break." (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926,
27 932.) The written agreement must include a provision allowing the employee to
28 revoke it at any time. *Id.*

b. California Labor Code Section 226.7 requires an employer to pay an additional hour of compensation for each meal period the employer fails to provide in accordance with the applicable statute or Industrial Welfare Commission Wage Order.

c. $\$27.56 \text{ per missed rest period} * 5 \text{ missed meal period/week} * 19,122 \text{ workweeks} = \$2,635,062.59$

22. Based on the foregoing, Plaintiffs estimated Defendants' maximum liability for failure to pay all wages due as follows:

a. The penalty for violation of Labor Code § 204 is \$100.00 for each initial violation and \$200.00 for each subsequent violation plus 25% of the amount owed. Here, the Defendant violated § 204 across the board, incurring PAGA penalties and § 210 penalties throughout the PAGA period. The PAGA period is split into two periods, the pre-notice period (June 6, 2015-June 6, 2016) and the post notification period, of June 6, 2016-April 20, 2020.

b. PAGA Total: \$3,140,610.40

23. Based on the foregoing, Plaintiffs estimated Defendants' maximum liability for inaccurate itemized wage statements as follows:

a. Labor Code Section 226 requires an employer to furnish its employees with an accurate itemized wage statement in writing, showing among other things, (1) gross wages earned, (2) total hours worked by each respective individual, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual.

b. Pursuant to Labor Code Section 226(e), Plaintiffs and the other current and former employees of Defendants are entitled to recover the greater of all actual damages or 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), and are entitled to an award of

costs and reasonable attorneys' fees.

c. Total Exposure: $9,772.79 \times \$100 = \$977,279.00$

24. Based on the foregoing, Plaintiffs estimated Defendants' maximum liability for failure to make payment as follows:

a. Labor Code § 216 makes it unlawful to willfully refuse to make payment, "having the ability to pay, ... wages due and payable after the demand has been made."

b. Respondents are liable for a violation of Labor Code § 216 on grounds that they refused to pay Plaintiffs for nonpayment of straight time and overtime wages and failure to provide meal and rest periods. The penalty for violation of Labor Code § 216 provides for a civil penalty in the amount of \$100.00 for first violation and \$200.00 for each subsequent willful violation plus 25% of the amount withheld. L.C § 2699.3.

c. PAGA Pay Period: 9722.79

Notice = $423 \times \$100 = \$42,300$

Post-Notice Period: $7069.88 \times \$200 = \$1,413,976$

Total PAGA Penalties = \$1,456,276

25. Based on the information provided by Defendants, Plaintiffs estimated Defendants' maximum liability for illegal contract under PAGA are as follows:

a. Cal. Labor Code § 432.5 provides that "[n]o employer, ... shall require any employee, ... to agree, in writing, to any term or condition which is known by such employer, ... to be prohibited by law." The penalty recoverable under PAGA for violation of this section is PAGA penalty of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 per employee per employee per pay period. L.C § 2699.3

b. PAGA Pay Period: 9722.79

Notice = $423 \times \$100 = \$42,300$

Post-Notice Period: $7069.88 \times \$200 = \$1,413,976$

Total Penalties = \$1,456,276

26. Based on the information provided by Defendants, Plaintiffs estimated PAGA penalties under Labor Code § 2699 as follows:

a. Under California Labor Code § 2699(f)(2) Defendants are subject to a civil penalty of \$100 for the initial violation of the aforementioned Labor Code violations, and \$200 for each subsequent pay period where the violation occurred for the last one year, however, since Plaintiff sent his PAGA Notice after Defendants had changed its policies, Plaintiff calculated PAGA penalties using the \$100 initial violation figure.

b. Total exposure: \$9,469,064.

27. Therefore, in an “everything goes right” scenario, Defendants’ liability amounts to \$13,361,398.17 for Class Action Wage and Hour Damages and \$9,469,064 for PAGA Penalties. However, Defendants presented a number of compelling defenses, and denied and continues to deny generally the claims and contentions alleged in the Complaint. Therefore, Plaintiffs have applied discounts accordingly on the maximum settlement value as calculated to come to Defendants’ realistic exposure.

Wage Statement Defense

28. Defendants can rely on a recent California Court of Appeal case, *Maldonado, et al. v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1334-37, 2018 Cal.App. LEXIS 413, *46-52 (April 18, 2018) where the Court reversed their award for penalties for inaccurate wage statements because the Court found that inaccurate wage statements alone based on derivative Labor Code violations do not justify penalties; the plaintiff must establish injury from the inaccuracy and independent inaccuracies different from underpayments or derivative claims. Therefore, Plaintiffs assessed an 80% discount on their claims for inaccurate wage statements. Thus $\$977,279 * 20\% = \$195,455$ remaining.

Risk of Prevailing on the Merits

29. Even if Plaintiffs successfully obtained certification, it was not a foregone conclusion that Plaintiffs would prevail on the merits and decertification also remained a possibility. In another recent case involving claims where punch data somewhat unusually existed for the rest periods at issue—which does not exist here—a federal jury found in favor of the defendant against 37,208 employees on a claim for failure to provide lawful rest periods despite the fact that the defendant’s policy was facially invalid because it “only provides one ten minute break for employees working between six and seven hours.” See *In re Taco Bell Wage & Hour Actions* No. 1:07-cv-01314-SAB)

2016 U.S. Dist. LEXIS 32690, at *4-5 (E.D. Cal. Mar. 14, 2016); *In re Taco Bell Wage & Hour Actions*, No. 1:07cv1314 LJO DLB, 2012 U.S. Dist. LEXIS 168219, at *12 (E.D. Cal. Nov. 26, 2012). Therefore, Plaintiffs assessed a 25% discount on the risk of losing on the merits. Defendants could argue, for instance, that on-premises breaks were not necessarily on-duty breaks.

Lack of Willfulness

30. Plaintiffs put no or negligible value on his claim for waiting time penalties under California Labor Code § 203. To establish liability for waiting time penalties under California Labor Code § 203, Plaintiffs must show that Defendants acted willfully. Here, because of the timing of the *Augustus* decision and Defendants' subsequent policy change, establishing Defendants' liability for waiting time penalties was a remote possibility at best due to difficulty proving Defendants' willful conduct. Moreover, all such claims would be subject to arbitration agreements, thus rendering them largely worthless in litigation.

Discounts on the PAGA Penalties

31. Under Labor Code section 2699(e)(2) a court may award a lesser amount than the maximum civil penalty specified under PAGA, 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. Courts often exercise their discretion to reduce the amount of PAGA penalties to as little as \$5.00 per pay period or 18% of the available PAGA penalties.¹ Additionally, the Labor Commissioner has specifically stated as recently as last year that the main purpose for assessing PAGA penalties by the Labor and Workforce Development Agency is to enforce California's Labor Code, and obtain compliance. Specifically, with regard to assessing the adequacy of settlements, the penalty amounts are resigned to "promote PAGA's compliance and deterrence goals." Amicus Curiae Brief submitted by the State Labor Commissioner, *Price v. Uber Technologies*, June 16, 2017. Therefore, Plaintiffs assessed a 50% discount on the maximum liability for PAGA penalties due to the discretionary nature of PAGA penalties.

¹ See e.g., *Kileigh Carrington v. Starbucks Corporation, et al.*, San Diego Superior Court Case No. 37-2014-00018637-CU-OE-CTL (Apr. 3, 2017) holding that the plaintiff was only entitled to collect the reduced penalty amount of \$5.00 for each pay period in which a meal period violation occurred or 5% of the PAGA penalties at issue); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties by 82%).

1 ***Defendants' Realistic, Risk-Adjusted Exposure***

2 32. Therefore, considering Defendants' maximum damages as calculated and applying the
3 discounts, Defendants' realistic exposure is as follows:

- 4 a. Defendants' maximum liability for on-duty rest periods: \$3,612,341.59
5 b. Defendants' maximum liability for on-duty meal periods: \$3,612,341.59
6 c. Defendants' liability for inaccurate itemized wage statements: \$977,279* 80% discount
7 for *Maldonado* = \$195,455
8 d. \$3,612,341.59 + \$3,612,341.59 + \$195,455 = \$3,612,341.59
9 e. \$3,612,341.59 * 85% discount for risk of Defendants prevailing on its motion to compel
10 individual arbitration = \$3,070,490.35
11 f. \$3,070,490.35* 25% discount for possibility of losing on the merits = \$767,622
12 g. \$9,469,064 PAGA penalties * 50% discount for discretionary nature = \$4,734,532
13 h. Because PAGA penalties are not subject to the same risks and discounts as the other
14 claims the \$553,150 is added on top of the realistic recovery of the other claims,
15 \$4,734,532+ \$767,622= **\$5,502,154** (without attorneys' fees)

16 33. Therefore, the Gross Maximum Settlement Amount obtained represents **50.3%**
17 (\$2,767,583 / \$5,502,154 = 50.3%) of Defendants' realistic exposure on Plaintiffs' claims and
18 reasonable compromise of the claims. It also represents almost 97.22% of the amount that Defendant
19 could pay without causing Defendant to lose its credit line.

20 **FAIRNESS AND ADEQUACY OF THE PROPOSED SETTLEMENT**

21 34. As described further below, I believe that the Settlement Amount is reasonable given the
22 risk, expense, complexity, and likely duration of litigation. The Net Settlement Amount shall be divided
23 up and paid to Class Members who submit claims based on the pro rata number of eligible workweeks
24 that each Class Member worked during the Class Period² divided by the total number of eligible
25 workweeks worked by all Class Members during the Class Period. The formula relies upon objective
26 evidence of each Class Member's employment history, which Class Members can easily review and
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28 ² The "Class Period" is defined as the period from March 24, 2013 through the date the Court enters a preliminary approval order for this settlement.

confirm for themselves and challenge in the event they disagree with the pre-printed data. This information is readily available from Defendants' records, and the Claims Administrator can apply the formula in a fair and transparent manner.

35. The Settlement is fair and reasonable, and was negotiated at arm's length between counsel. Counsel for both parties were thoroughly familiar with the complex legal and factual questions at issue in this litigation. The Settlement is a product of intensive negotiations, supported by investigation and direct exchanges of information through formal and informal discovery, and during the course of settlement negotiations, including a full-day mediation.

36. Another factor supporting the reasonableness and adequacy of the overall settlement amount is that settlement payments will be made much sooner than could possibly have been the case if the case were litigated through the class certification stage, much less through trial, before it is resolved. The advantage to Class Members of avoiding delay in payment justifies accepting a lower percentage of the maximum realistically likely recovery through an early settlement.

37. Given my experience as a wage and hour litigator, and based on my own investigation and evaluation and consultation with my co-counsel, I believe the proposed Settlement addresses all of the allegations of violations of California state law by Defendant, and provides adequate monetary relief to Plaintiffs and Class Members. The estimated 423 Class Members will enjoy substantial monetary relief and injunctive relief from the settlement. If the Court approves this settlement, the estimated average recovery for each Class Member will be approximately \$350.49 on a net basis.³ In my experience, this amount is substantial for class members in a class action involving on duty meal and rest breaks.

38. Whereas proceeding with litigation would impose significant risk of no recovery as well as ongoing, substantial additional expenditures of time and resources, the settlement confers a benefit on Plaintiffs and Class Members. If settlement were not achieved, continued litigation of the claims would take substantial time and possibly confer no benefit on Class Members. By contrast, the settlement will yield a prompt, certain, and substantial recovery for Class Members, which also benefits the parties and the Court. Counsel on both sides share the view that this is a fair and reasonable

³ Net Settlement Amount of \$148,260 / 423 Settlement Class Members = \$350.49.

1 settlement in light of the complexities of the case, Defendants' arbitration agreements with Class
2 Members, the state of the law, class certification and litigation. Given the risks inherent in litigation and
3 the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of Class
4 Members, and should be preliminarily approved.

5 **FAIRNESS OF THE PROPOSED SERVICE AWARDS**

6 39. The proposed Service Awards of \$2,500 to each of the Named Plaintiffs are fair and
7 reasonable. Plaintiffs were instrumental in prosecuting this lawsuit and were an important source of
8 information during the course of litigation this. Moreover, Plaintiffs have no interests antagonistic to
9 the interests of the Class.

10 40. Plaintiffs provided invaluable assistance to Class Counsel and the Class in this case,
11 including providing factual background for the proposed mediation and the Class Complaint;
12 participating in phone calls to discuss litigation and settlement strategy; and reviewing the settlement
13 documents. Plaintiffs were also available during the duration of the all-day mediation which
14 demonstrated their commitment to the Class. Plaintiffs agreed to participate in this case with no
15 guarantee of personal benefit. Further, Plaintiffs agreed to undertake the financial risk of serving as
16 Class Representatives and exposed themselves to the risk of negative publicity by anyone who opposed
17 this case. Moreover, the requested 2,500 Service Awards for each of the Named Plaintiffs fall within the
18 range of incentive payments typically awarded to Class Representatives in similar class actions.

19 41. The Settlement Class would have received no benefit had it not been for the
20 contributions of Plaintiffs. Moreover, Plaintiffs faced and accepted the significant risk in bringing this
21 litigation—namely, that had they lost, Plaintiffs could have been ordered to pay Defendants' costs. In
22 contrast to the more limited class release, Plaintiffs also agreed to more robust general releases of all
23 their claims.

24 42. I believe the requested Service Awards of \$2,500 for each of the Named Plaintiffs are
25 reasonable and well within precedent for Preliminary and Final Approval.

26 **ATTORNEYS' FEES AND COSTS**

27 43. Through my practice, I have gained significant experience regarding the obligations and
28 burdens of representing a class. This knowledge has allowed me and my firm, Potter Handy LLP, to

1 successfully represent plaintiffs in many class actions in the past years. As noted, numerous state and
2 federal courts in California have found that my firm is competent and capable of representing large
3 classes similar to the one here at issue.

4 44. Under the terms of the Settlement Agreement, Class Counsel is requesting \$99,990 in
5 attorneys' fees. This amount is equal to one third of the GSA agreed upon by the parties as the
6 Settlement Amount. This fee amount is fair, reasonable and consistent with awards obtained in similar
7 class action cases preliminary approved by courts in California. Moreover, if it becomes necessary to
8 litigate this matter further, my firm and our co-counsel have the financial resources and are prepared to
9 devote whatever time and effort are required to zealously advocate on behalf of Plaintiffs and the Class.
10 Significantly, the Retainer Agreement in this case provides fees up to 1/3 of the amount obtained.

11 45. Class Counsel Litigation Expenses Payment of up to \$20,000 is also reasonable, as will
12 be discussed again in detail in Plaintiffs' Motion for Final Approval.

13 46. If the Court grants preliminary approval to the settlement here and authorizes the
14 dissemination of the Class Notice, Plaintiffs' Counsel will file a request attorneys' fees and costs with
15 their motion for final approval that will be heard the same date as the final fairness hearing. Our firms
16 will need to expend additional hours and will incur additional costs preparing and filing the motion for
17 final approval and the motion for attorneys' fees and reimbursement of litigation costs, coordinating
18 with the claims administrator, and answering calls and questions from Class Members.

19 **CLAIMS ADMINISTRATOR**

20 47. The Settlement Agreement states that Phoenix Class Action Administration Solutions
21 will be responsible for administration of the Settlement and related matters, and that is appointed by the
22 Court to administer the Settlement. Phoenix has extensive experience in the claims administration of
23 wage and hour class actions like this one, having administered many class action settlements, and Class
24 counsel has retained them for the claims administration of other cases. See
25 <https://www.phoenixclassaction.com/>.

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

28 Executed on this January 4, 2024 in San Diego, California.

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/s/ James M. Treglio

By: _____

James M. Treglio, Esq.