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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

NART KHATIB, as an individual and on behalf of all others similarly situated, Plaintiff, vs. HMH ASSOCIATES, INC., a California Corporation; RDM MANAGEMENT, INC., a California Corporation; B2RE CORPORATION, a California Corporation; and DOES 1 through 100, inclusive, Defendants.	Case No.: 25STCV12178 [*Assigned for all purposes to the Hon. David S. Cunningham III, Dept. 11*] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA ACTION SETTLEMENT** Date: June 30, 2026 Time: 9:00 a.m. Dept.: 11 Action Filed: April 24, 2025 Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June 30, 2026, at 9:00 a.m. in Department 11 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, CA 90012, Plaintiff Nart Khatib ("Plaintiff"), as an individual and on behalf of a class of similarly situated individuals, will move, and hereby moves, this Court for:

1. Preliminary approval of the proposed Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement") in this lawsuit;
2. Pursuant to California Code of Civil Procedure § 382, and for settlement purposes only, provisional certification of the Settlement Class defined as follows:

> All current and former California non-exempt hourly employees of Defendant HMH Associates, Inc. who worked at any time between April 24, 2021 through March 5, 2026 (the "Class Period") as Resident Managers.

3. Preliminary appointment of Plaintiff Nart Khatib as Class Representative;
4. Preliminary appointment of Paul K. Haines, Fletcher W. Schmidt, and Matthew K. Moen of Haines Law Group, APC, as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement Agreement should be finally approved and to award amounts for the Class Representative Enhancement Payment, Settlement Administrator costs, payment to the LWDA for its 65% share of Private Attorneys General Act civil penalties, as well as attorneys' fees and costs to Class Counsel;
6. Appointment of Apex Class Action LLC as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval ("Class Notice"), and entry of the proposed Order instructing the Class Notice to be disseminated to the proposed Settlement Class in English only as provided in the Settlement.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the declarations of Matthew K. Moen, Fletcher W. Schmidt, Paul K. Haines, Plaintiff Nart Khatib, Sean Hartranft of Apex Class Action LLC, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Given the multiplicity of issues addressed herein, Plaintiff's memorandum of points and authorities necessitates exceeding the 20-page limit set forth in California Rule of Court 3.764(c)(2). As this Motion is unopposed, Plaintiff respectfully requests that the Court consider the entire memorandum, which is 21 pages in length.

Dated: June 5, 2026

Respectfully Submitted,
HAINES LAW GROUP, APC

By: ______________________________
Matthew K. Moen
Attorneys for Plaintiff

TABLE OF CONTENTS

TABLES OF AUTHORITIES

<u>State Statutes and Rules</u>

Unpublished Cases

Other Sources

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Nart Khatib ("Plaintiff") respectfully requests that this Court preliminarily approve this proposed Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement Agreement"),[1] entered into by Plaintiff and Defendants HMH Associates, Inc., RDM Management, Inc., and B2RE Corporation ("Defendants") (collectively, the "Parties"). Plaintiff respectfully requests that this Court preliminarily approve this non-reversionary, $290,000.00 class action and PAGA settlement on behalf of the following Settlement Class:

> All current and former California non-exempt hourly employees of Defendant HMH Associates, Inc. who worked at any time between April 24, 2021 through March 5, 2026 (the "Class Period") as Resident Managers.[2]

Based upon the data received from Defendants, there are approximately 37 potential Settlement Class members who worked approximately 5,048 aggregate workweeks during the Class Period.[3] *See* Settlement § 9. This represents a fair and reasonable result for Settlement Class members who will only release those claims that were actually asserted, or which could have been asserted based on the facts and claims alleged in the action that arose during the Class Period. After Court-approved deductions for the Class Representative Enhancement Payment, Settlement

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[1] The Settlement Agreement (based on this Court's model agreement) is attached as Exhibit 1 to the Declaration of Matthew K. Moen ("Moen Decl."), filed concurrently herewith, and the proposed Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval ("Class Notice") is attached to the Settlement Agreement as Exhibit A. *See* Moen Decl., ¶ 10, Exhibit 1.

[2] The Settlement also includes a release of PAGA civil penalties on behalf of all current and former California non-exempt employees of Defendant HMH Associates, Inc. who worked at any time between April 24, 2024 and March 5, 2026 (the "PAGA Period"), as Resident Managers. *See* Settlement § 1.4; 1.31. These individuals are referred to herein as "Aggrieved Employees." The "Released PAGA Claims" include all claims for civil penalties under PAGA that were alleged, or reasonably could have been alleged, based on the facts alleged in the operative First Amended Complaint and Plaintiff's April 24, 2025 PAGA Notice Letter to the LWDA, that accrued during the PAGA Period. *Id.*, § 1.39, 5.3; *see also* Moen Decl., ¶ 10, Exhibit 2 (Plaintiff's LWDA Letter).

[3] Defense counsel has confirmed that the escalator clause has not been triggered based on the workweek total during the Class Period. Defense counsel will submit a declaration stating the final workweek total prior to the hearing on this Motion. *See* Settlement, § 8.

Administrator costs, the PAGA Penalties to the LWDA and PAGA Aggrieved Employees, and attorneys' fees and costs to Class Counsel, the remaining amount (the "Net Settlement Amount") of no less than approximately $129,610.00 will be distributed to the participating Settlement Class members. This results in the highest possible Individual Class Payment of approximately $6,521.58 (in the event a Settlement Class member performed work in every workweek during the Class Period), average Individual Class Payments of approximately $3,502.97, and the lowest possible Individual Class Payment of approximately $25.67 (in the event a Settlement Class member performed work in only one workweek during the Class Period). Moen Decl., ¶ 11. Further, an additional $8,750.00 will be paid to each of the approximately 25 PAGA Aggrieved Employees who worked an aggregate 862 PAGA Pay Periods during the PAGA Period, resulting in additional average Individual PAGA Payments of approximately $350.00, with the highest possible Individual PAGA Payment of approximately $472.01, and the lowest possible Individual PAGA Payment of approximately $10.15. *Id.*; Settlement, § 8. Significantly, Class Members do not need to file a claim form in order to receive their share of the Settlement, and all Class Members who do not opt-out will automatically receive an Individual Class Payment. Further, given the tenet that aggrieved employees do not have the ability to opt-out of a representative PAGA claim, all PAGA Aggrieved Employees, regardless of whether they elect to opt out from participating in the class action portion of the Settlement or not, shall receive a portion of the settlement monies designated as the PAGA Penalties payable to the PAGA Aggrieved Employees. *See Robinson v. Southern Counties Oil Company* (2020) 53 Cal.App.5th 476, 482 (holding that there is no opt–out mechanism for PAGA claims).

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 monetary benefits to 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

Defendants provide property management services. Moen Decl., ¶ 12. Plaintiff was employed by Defendants as a non-exempt "Resident Manager" from approximately 2003 until approximately December 10, 2024. Declaration of Nart Khatib ("Khatib Decl."), ¶ 2. Like all Settlement Class members, Plaintiff was subject to Defendants' wage and hour policies and practices. *Id.*, ¶¶ 2-3.

On April 24, 2025, Plaintiff Khatib filed the initial Complaint in this action, alleging Defendants failed to: (i) pay all minimum wages; (ii) pay all overtime wages; (iii) provide all lawful meal periods; (iv) authorize and permit all lawful rest periods; (v) timely pay all wages; (vi) issue accurate, itemized wage statements; (vii) timely pay all final wages; (viii) reimburse all necessary business expenditures; and (ix) comply with California's Unfair Competition law. Moen Decl., ¶ 13. On June 30, 2025, Plaintiff filed the operative First Amended Complaint, adding a cause of action for civil penalties under the PAGA. *Id.*

A. PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES

1. Off-the-Clock Wage Violations

Plaintiff asserts that Defendants failed to compensate Plaintiff and other non-exempt employees for all hours actually worked, including all hours subject to the control of Defendants and/or suffered or permitted to work. Moen Decl., ¶ 14. Specifically, Plaintiff alleges Defendants did not require Plaintiff and other non-exempt employees to accurately track their hours worked. *Id*. Instead, Defendants required Plaintiff and other non-exempt employees to only record four hours of work per workday, six days per workweek, regardless of the actual number of hours and days Plaintiff and other non-exempt employees worked. *Id*. As a result, Defendants required Plaintiff and other non-exempt employees to work hours for which they were not properly compensated. *Id*.; *see also* Labor Code §§ 1182.12 and 1197.

Defendants maintain their timekeeping policies/practices comply with California law, and that they properly compensate Settlement Class members for all hours worked, and in fact overcompensate many employees. Moen Decl., ¶ 15. Further, Defendants assert that this claim is not suitable for class treatment, as it requires individualized inquiries into whether any employee was required to work while off the clock, and exactly how much time each employee purportedly spent off the clock on any given day, which is increasingly difficult since off-the-clock time is inherently not recorded, resulting in an unmanageable series of mini-trials. *Id*.

2. Meal Period Violations

Plaintiff asserts that Defendants failed to provide or record *any* uninterrupted, 30-minute meal periods commencing before the end of the fifth hour of work despite Plaintiff and other non-exempt employees frequently working shifts of over 6.0 hours. Moen Decl., ¶ 16; *see also* Labor Code § 512(a); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 ("We conclude that, absent waiver, section 512 requires a first meal period no later than the end of an employee's fifth hour of work…"); *see also Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 77 (holding that when timekeeping records do not reflect legally compliant meal periods, the employer bears the burden of rebutting the presumption that compliant meal periods were not provided). Moreover, Plaintiff alleges Defendants require Plaintiff and other non-exempt employees to carry and be responsive to their cellular phones at all times, rendering *every* purported meal period taken by Plaintiff or other non-exempt employees unlawful, as this practice fails to relinquish all control over how Plaintiff and other non-exempt employees spent their meal periods. Moen Decl., ¶ 16.

Defendants argue they maintain a legally-compliant written meal period policy, that they have always provided meal periods consistent with that policy. Moen Decl., ¶ 17; *see also Brinker, supra,* 53 Cal.4th at 1038 (rejecting "ensure" standard and holding employers only have to "provide" employees the opportunity to take meal periods). Defendants also argue individualized inquiries will be required to determine why meal periods are late, short, or missed, and whether there was a valid waiver, thereby precluding class certification of this claim. *Id*.

3. Rest Period Violations

Plaintiff asserts that Defendants failed to authorize and permit *any* 10-minute rest periods, in violation of California law. Moen Decl., ¶ 18. Specifically, Plaintiff asserts Defendants have imposed work demands on Plaintiff and other non-exempt employees that must be completed in a short, stringent timeframe, and therefore Plaintiff and other non-exempt employees are prevented from taking any rest periods during their respective work shifts, even when the shifts exceed 3.5 hours in length. Further, similar to meal periods, Plaintiff alleges Defendants require Plaintiff and other non-exempt employees to carry and be responsive to their cellular phones at all times while on duty in violation of *Augustus v. ABM Security Svcs., Inc.*, (2016) 2 Cal.5th 257, 269 ("[O]ne cannot square the practice of compelling employees to remain at the ready, ***tethered by time and policy to particular…communications devices***, with the requirement to relieve employees of all work duties and employer control.") (emphasis added).

In response, Defendants argue they maintain a lawful rest period policy/practice that authorizes and permits the Settlement Class Members to take all lawful rest periods to which they are entitled. Moen Decl., ¶ 19. As a result, Defendants argue the rest period claim will fail on the merits, and further assert that this claim is not amenable to class treatment, as individual inquiries would be required to determine whether the employee was authorized to take lawful rest periods on each particular shift, resulting in an unmanageable series of mini-trials. *Id*. This manageability concern is especially present as rest periods are not recorded. *Id*.

4. **<u>Failure to Reimburse</u>**

Plaintiff alleges that Defendants failed to reimburse Plaintiff and the Settlement Class for all necessary business expenses incurred. Moen Decl., ¶ 20; *see also* Labor Code § 2802. Specifically, Plaintiff asserts that Defendants required employees to use their personal cell phones to communicate with supervisors during their workday for necessary, work-related, purposes. *Id*. However, Defendants did not reimburse employees for a reasonable portion of their monthly cell phone bills. *Id*.; *see also Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144 ("If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802.").

Defendants argue that they maintain a policy to reimburse all reasonable and necessary business expenditures and that, to the extent that any expenses were not reimbursed, they were not reasonably incurred. Moen Decl., ¶ 21. Defendants further assert that any use of the Settlement Class members' personal phones was individualized and the result of employee choice, not Defendants' policies. *Id*. Defendants also maintain that this claim would require a series of mini-trials to determine which employees were actually required to use their cell phone for business purposes and in which pay periods such expenses were allegedly incurred. *Id*.

5. **<u>Wage Statement, Waiting Time, and PAGA Penalties</u>**

As a result of these alleged substantive violations, Plaintiff contends that Defendants are liable for derivative wage statement violations, waiting time penalties, and civil penalties under the PAGA. Moen Decl., ¶ 22. Defendants argue that the alleged wage statement violations were not "knowing and intentional," and that Plaintiff could not show Plaintiff "suffer[ed] injury," as required by Labor Code § 226(e) for imposition of penalties. *Id.*; *see Amaral v. Cintas Corp.* (2008) 163 Cal. App. 4th 1157, 1201. Defendants further contend that they possess strong, good faith defenses to Plaintiffs' underlying claims, thus precluding recovery of waiting time penalties (which are only available for the "willful" failure to pay wages). Moen Decl., ¶ 22; *see* 8 Cal. Code Regs. § 13520 ("[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203."). Defendants also maintain that, given their good-faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendants liable for any of Plaintiffs' underlying claims. Moen Decl., ¶ 22.

B. DISCOVERY AND MEDIATION

In connection with mediation, Defendants provided Plaintiff with payroll and timekeeping records for an approximately 60% random and representative sampling of the Settlement Class spanning the putative class period, along with additional key data points and policy documents. Moen Decl., ¶ 23. Plaintiff conducted an analysis of this data and created a comprehensive damages model to calculate the likely exposure that Defendants faced on each claim. *Id*.

On December 5, 2025, the Parties participated in a full day mediation with Jason Marsili, Esq., an experienced wage and hour class action mediator. Moen Decl., ¶ 24. During mediation, the Parties exchanged divergent views on Defendants' liability and exposure, their legal positions, and the likelihood of certification of Plaintiff's claims. *Id*. Ultimately, the Parties accepted a mediator's proposal to resolve all class and representative claims at issue in this action. *Id*. After executing a binding Memorandum of Understanding, the Parties negotiated and executed the Settlement now before the Court for preliminary approval. *Id*.[4]

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves this settlement, Defendants will pay a Gross

[4] Plaintiff provided the Settlement Agreement and all moving papers filed in support of this Motion to the LWDA. *See* Moen Decl., ¶ 10, Exhibit 3 (LWDA Submission Confirmation); Proof of Service.

Settlement Amount ("GSA") of $290,000.00. *See* Settlement § 3.1. This Settlement is non-reversionary and Settlement Class members will automatically receive their Individual Class Payment unless they affirmatively opt-out of the Settlement. *Id.,* §§ 1.22, 3.1. Defendants will fund the GSA within thirty (30) days after the Effective Date[5] or March 1, 2027, whichever occurs first. *Id.*, § 4.2. The monetary terms of the Settlement are further broken down as follows:

Gross Settlement Amount:	**$290,000.00**
Minus attorneys' fees (35%):	$101,500.00
Minus attorneys' costs (up to):	$20,000.00
Minus Class Representative Enhancement Payment:	$10,000.00
Minus PAGA Settlement Amount:	$25,000.00
Minus Settlement Administrator costs:	$3,890.00
Net Settlement Amount:	**$129,610.00**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for court-approved attorneys' fees and costs, the Class Representative Enhancement Payment, costs of settlement administration, the PAGA Amount, the remaining Net Settlement Amount of approximately $129,610.00 will be distributed to the participating Settlement Class members. *See* Settlement § 3.2. Class Member payments will be calculated by dividing each Participating Class Member's Individual Workweeks by the aggregate Total Class Workweeks; and multiplying the result by the Net Settlement Amount to determine each Estimated Individual Settlement Payment. *Id.*, § 3.2.4. Further, 35% of the PAGA Amount will be paid to all PAGA Aggrieved Employees, regardless of their election to opt-out from participating in the class action portion of the Settlement, by: (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties ($8,750.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the total number of PAGA Pay Periods worked by each Aggrieved Employee. *Id.,* §§ 3.2.5.1, 5.3, 7.5.4. Twenty percent (20%) of each Individual Class Payment will be classified

[5] [5] The "Effective Date" is defined as the later of the following: (i) the sixty-first (61) calendar day after Final Approval, provided no appeal has been initiated, whether by an absent Class Member who has timely intervened or moved to vacate the judgment or by a Party or Class Counsel [regarding limited appeal of attorney fee reductions]; or (ii) if such an appeal is timely initiated, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Settlement. *See* Settlement, § 1.19. The Releases of Claims shall not be effective until all of the above conditions are met and Defendants have fully funded the GSA. *Id.*

as wages and eighty percent (80%) will be classified as interest and penalties. *Id.*, § 3.2.4.1. 100% of payments to PAGA Aggrieved Employees for PAGA civil penalties will be classified as penalties. *Id.*, § 3.2.5.2. Further, Defendants will pay the employer's share of payroll taxes separate and apart from, and in addition to, the GSA. *Id.*, § 4.2.

Defendants' records indicate that there are approximately 37 Settlement Class members who worked during the Class Period. Settlement, § 8. Based on the allocations of the Net Settlement Amount, participating employees will receive average class payments of approximately $3,502.97. Moen Decl., ¶ 25. Settlement Class members will have 60 calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement §§ 1.42, 7.5, 7.7. Those individuals who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendants as detailed in the Settlement. *Id.*, §§ 1.35, 5.2. Settlement Class members will have 180 days from the date the Individual Class Payments are mailed to cash their checks. *Id.*, § 4.3.1. In the event that there are any uncashed checks remaining after 180 days, any remaining funds will be transferred to the California State Controller's Unclaimed Property Fund in the name of the Class Member to whom the check was issued. *Id.*, § 4.3.3.

2. <u>Attorneys' Fees, Costs, and Plaintiff's Enhancement Payment</u>

As part of the Settlement, Plaintiff will apply for an enhancement payment at the time of seeking final approval of the Settlement in the amount of up to $10,000.00 for Plaintiff's service to the Settlement Class and his general release of all claims (known or unknown) against Defendants. *See* Settlement §§ 3.2.1, 5.1. "[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. Plaintiff's requested enhancement payment is intended to recognize the significant benefits conferred upon the Settlement Class due to the time and effort that Plaintiff expended on behalf of the Settlement Class. Some of the activities Plaintiff completed in order to help procure the Settlement include providing factual information and documents to Plaintiff's attorneys, identifying potential witnesses, participating in multiple meetings with Plaintiff's attorneys to discuss the claims and theories at issue in the litigation, making himself available the entire day of mediation to assist and answer factual questions posed by the mediator, reviewing and providing input regarding the settlement in this case, and otherwise assisting Plaintiff's attorneys in moving this case towards resolution. Khatib Decl., ¶¶ 4-5. Plaintiff undertook significant risks by agreeing to serve as the named Plaintiff in this case (as potential employers can search Plaintiff's name and determine Plaintiff has previously sued an employer), as well as the fact that Plaintiff agreed to a general release of claims subject to a waiver of California Civil Code § 1542. Moen Decl., ¶ 26.

Class Counsel will also apply for an attorneys' fee award of up to $101,500.00 (35% of the GSA), and up to $20,000.00 in verified costs. Moen Decl., ¶ 27; *see* Settlement, § 3.2.2. Plaintiff submits that the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel incurred substantial attorneys' fees conducting pre-filing investigation, conducting legal research and analysis, reviewing documents and data produced by Defendants, building a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the Memorandum of Understanding and long-form Settlement Agreement, preparing this motion for preliminary approval, and otherwise litigating the case. *Id*. Class Counsel will also expend future attorney time attending the hearing on this Motion, overseeing the Notice process, drafting the final approval motion, and attending the final approval hearing, among other tasks. *Id*.

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

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

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

1. Standard for Preliminary Approval

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

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

Class Counsel carefully vetted the claims at issue, reviewed a statistically significant sampling of timekeeping and payroll records as well as relevant policy documents, and conducted a detailed analysis of that data to create a comprehensive damages model for Defendants' liability. Moen Decl., ¶ 28. Although Plaintiff steadfastly maintains that Plaintiff's claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with class certification and trial. As explained in detail in Section II.A., *supra*, Defendants presented numerous defenses to Plaintiff's claims, both on the merits and with respect to class certification. Although Plaintiff was prepared to litigate these claims through class certification and, ultimately, through trial, given the amount offered in settlement, Plaintiff predicted that it was unlikely that further litigation would result in a substantially more beneficial result for the Settlement Class. Thus, this factor supports preliminary approval of the Settlement.

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

Although this Settlement was reached after a significant informal exchange of timekeeping and payroll records and other relevant information for mediation purposes, the Parties had not yet initiated formal discovery and deposition efforts at the time the Parties reached the Settlement. Moen Decl., ¶ 29. Absent settlement, the Parties would need to spend substantial time and resources to complete formal written and deposition discovery and prepare the case for class certification, summary judgment or adjudication, and trial. *Id*. Moreover, Plaintiff has not yet filed for class certification, and thus, absent settlement, the Parties would face the prospect of appeals in the wake of a disputed class certification ruling and/or an adverse summary judgment ruling. *Id*. Even if Plaintiff succeeded in certifying one or more classes, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id*. This Settlement avoids these considerable costs, risks, and the accompanying burden of continued litigation on the Court.

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

Prior to reaching the Settlement, Plaintiff had not yet filed Plaintiff's motion for class certification. Moen Decl., ¶ 30. Considering Defendants' arguments against certification, there was a legitimate risk that the Court may deny certification of one or more claims, preventing the matter from continuing on a class-wide basis. Had the Court certified any claims, Plaintiff anticipated that Defendants would seek decertification. *Id*. There was also a risk that Defendants would engage in a *Pick-up-Stix* campaign that could either affect Plaintiff's ability to maintain the numerosity required to proceed as a class action, or significantly reduce the size of the putative class for a fraction of what Settlement Class members are receiving through this Settlement. *Id*.; *see Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796. Therefore, absent the Settlement, there was a serious risk that Plaintiff would be unable to move forward on a class-wide basis. Moen Decl., ¶ 30. Thus, this factor supports preliminary approval of the Settlement.

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

This proposed Settlement provides a fair and reasonable monetary recovery for the Settlement Class in the face of disputed claims. After analyzing the data provided by Defendants prior to mediation, Plaintiff prepared a class-wide exposure analysis and forecasted the Settlement Class expected recovery for each claim as follows:

<u>Off-the-Clock Violations</u>: **$91,808**

Plaintiff's data analysis determined that Settlement Class members worked an aggregate total of 12,271 shifts during the putative Class Period. Moen Decl., ¶ 31. Plaintiff estimated that employees spent approximately 30-minutes per shift performing uncompensated work. *Id*. Plaintiff therefore calculated Defendants' potential exposure for off-the-clock violations at $180,016 (30 minutes x 12,271 shifts x 14.67 avg. minimum wage x 2 (liquidated damages)). *Id*.

Defendants maintain their timekeeping policies/practices comply with California law, and that they properly compensate Settlement Class members for all hours worked. Moen Decl., ¶ 32. Further, Defendants assert that this claim is not suitable for class treatment, as it requires individualized inquiries into whether any employee was required to perform any work while off-the-clock, and exactly how much time each employee purportedly spent while off-the-clock on any given day. *Id*. Given these defenses, Plaintiff discounted Defendants' maximum exposure by

40% for the risk of non-certification and 15% for the risk of being unsuccessful on the merits or obtaining reduced damages, to arrive at an exposure of $91,808. *Id*.

<u>Meal Period Violations</u>: **$60,742**

Plaintiff's data analysis determined that Settlement Class members worked an aggregate total of 620 shifts during the Class Period that contained a facially unlawful first or second meal period. Moen Decl., ¶ 33. Further, given Plaintiff's assertion that employees never accurately recorded their work periods, Plaintiff asserts that a meal period violation occurred in approximately 50% of shifts due to Defendants' unlawful practice of requiring Plaintiff and other non-exempt employees to work in excess of 5.0 hours without being provided with a duty-free meal period. *Id*. Accordingly, Plaintiff calculated Defendants' maximum exposure for meal periods at $101,236 (12,271 shifts x 50% violation rate x $16.50 average premium wage). *Id.*

However, Defendants argue they maintain a legally-compliant written meal period policy, and that they have always provided meal periods consistent with that policy. *Brinker, supra,* 53 Cal.4th at 1038. Defendants also contend that individualized inquiries will be required to determine why meal periods are late, short, or missed, *if* employees worked more than 5.0 hours on days when time records did not reflect such shifts, and whether there was a valid waiver, thereby precluding certification. *Id*. Given these defenses, Plaintiff discounted Defendants' maximum exposure by 25% for the risk of non-certification and 20% for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of $60,742. Moen Decl., ¶ 34.

<u>Rest Period Violations</u>: **$97,186**

Plaintiff's data analysis determined that non-exempt employees worked an aggregate total of 12,271 shifts in excess of 3.5 hours during the Class Period. Moen Decl., ¶ 35. Plaintiff asserts that Class Members were not authorized and permitted to take lawful rest periods on *any* shifts, regardless of length. *Id.* Plaintiff therefore calculated Defendants' potential exposure for rest periods at $202,471 (12,271 aggregate shifts x $16.50 average premium wage). *Id.*

However, Defendants argue they maintain a facially compliant written rest period policy, and that they have always authorized and permitted rest periods in compliance with that policy. Moen Decl., ¶ 36. As a result, Defendants argue the rest period claim is not amenable to class treatment, as individual inquiries would be required to determine whether the employee took a rest period on every shift, resulting in an unmanageable series of mini-trials, particularly since rest periods are not recorded. *Id.* Based on these defenses, Plaintiff discounted Defendants' maximum exposure by 40% for risk of non-certification and 20% for risk of being unsuccessful on the merits, to arrive at an estimated exposure of $97,186. *Id*.

Unreimbursed Business Expenses: **$15,144**

Based on Plaintiff's counsel's research of J.D. Power and Consumer Reports' analyses of average cell phone plan costs among the leading cell phone carriers in America, Plaintiff alleges that the Class Members are owed approximately $20 each month as a reasonable portion of their cell phone bills covering work-related communications. Moen Decl., ¶ 37. Therefore, Plaintiff calculated Defendants' potential exposure on this claim at $25,240 (1,262 aggregate work-months x $20). *Id*. However, Defendants assert that any use of the Settlement Class members' personal phones was individualized and the result of employee choice, not Defendants' policies. *Id*. Defendants also argue that this claim would require a series of mini-trials to determine which employees were actually required to use their cell phone for business purposes and in which pay periods such expenses were allegedly incurred. *Id*. Given these potential defenses, Plaintiff discounted Defendants' maximum exposure by 20% for the risk of non-certification and 25% for the risk of being unsuccessful on the merits or obtaining reduced damages, to arrive at an estimated exposure of $15,144. *Id*.

Wage Statement Violations: **$44,599**

According to Plaintiff's data analysis, approximately 25 employees received a total of 862 wage statements during the 1-year time period associated with wage statement penalties. Moen Decl., ¶ 38. Plaintiff therefore calculated Defendants' maximum wage statement exposure at $84,950 (25 violations x $50 "initial" violation penalty + 837 subsequent violations x $100 violation penalty). *Id*. However, Defendants raised numerous defenses, including that the alleged violations, if any, were not "knowing and intentional," and that Plaintiff could not show that the Class Members "suffer[ed] injury" as a result of any alleged violations. *Id*. Defendants further argued that Plaintiff's underlying claims would fail, and, therefore, his derivative wage statement claim would also fail. *Id*.; *see also Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065 (holding that a reasonable, good faith belief that employer was in compliance with wage and hour laws precludes imposition of wage statement penalties). Therefore, Plaintiff discounted the maximum exposure by 25% for the risk of non-certification of the underlying claims and 30% for a risk of being unsuccessful on the merits, including failing to prove the violations were "knowing and intentional," that the Class Members "suffer[ed] injury," or that the Court would find that Defendant had a reasonable, good faith belief of its compliance with wage and hour laws precluding the imposition of wage statement penalties, for a reasonable recovery of $44,599. *Id*.

Waiting Time Penalties: **$19,305**

Based on the data provided by Defendant, 10 employees separated their employment with Defendant during the 3-year time period associated with waiting time penalties. Moen Decl., ¶ 39. Plaintiff therefore calculated Defendant's maximum waiting time penalty exposure at $39,600 (10 former employees x $16.50 average hourly rate x 8 hours per day x 30 days). *Id*.

Defendant contends it attempted to pay its employees all final wages owed in good faith upon their separation, thereby precluding a finding of willfulness. Moen Decl., ¶ 40. Given these potential defenses, Plaintiff discounted the maximum exposure by 25% for the risk of non-certification and by 35% for the risk of being unsuccessful on the merits or failing to prove "willfulness," resulting in an estimated exposure of $19,305. *Id*.

PAGA Penalties: **$29,093**

Plaintiff alleges that PAGA civil penalties would be recoverable for each pay period in which Plaintiff could prove an underlying Labor Code violation. Moen Decl., ¶ 41. According to Plaintiff's data analysis, the Settlement Class members worked a combined total of 862 pay periods during the PAGA liability period in which at least one of Plaintiff's alleged Labor Code violations occurred. *Id*. Plaintiff therefore calculated Defendants' maximum PAGA exposure at $86,200 (862 pay periods at $100 per violation). *Id*.; *see also Amaral, supra,* 163 Cal.App.4th at 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derived from the underlying wage and hour violations discussed above, which Defendants dispute. *See e.g.*, *Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Plaintiff also recognizes that the Court has discretion to reduce any award of PAGA penalties where it views them as duplicative. *See Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 529 (affirming reduction of PAGA penalties to $5 per initial violation); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047 at *4 (reducing PAGA penalties from $2.8 million to $500,000). Plaintiff discounted the maximum figure by 25% for the risk of losing on the merits of all underlying claims or that the scope of the PAGA claim could be narrowed due to manageability, and an additional 55% to account for the likelihood of this Court reducing PAGA penalties awarded, to arrive at an estimated exposure of $29,093. Moen Decl., ¶ 41.

Using these estimated figures, Plaintiff projected a reasonable recovery for the Settlement Class would be approximately $357,876. Moen Decl., ¶ 42. The GSA of $290,000.00 represents approximately 81.03% of Plaintiff's projected reasonable class-wide recovery, while avoiding the further expense and risk of proceeding towards class certification and trial. *Id*. Considering the risk of non-certification, failure to prevail on the merits, and the Court's power to reduce civil penalties, the proposed Settlement falls well within the realm of being fair, reasonable, and adequate. *See e.g.*, *Altamirano v. Shaw Industries, Inc*, (N.D. Cal. 2015) 2015 WL 4512372, at *9 ("Although 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff's claims."); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement of "roughly one-sixth of the potential recovery"). Preliminary approval is appropriate since the Settlement will provide significant monetary relief to Settlement Class members without the uncertainty, delay, and expense of further litigation.

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

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent and experienced counsel who possess extensive experience litigating wage and hour class actions from both the plaintiff and defense sides, and have been appointed as class counsel in numerous cases alleging similar claims. *See* Moen Decl., ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-14; Declaration of Fletcher W. Schmidt ("Schmidt Decl."), ¶¶ 2-9. Class Counsel conducted an extensive review of Defendants' records produced for mediation as well as relevant policies in effect during the Class Period, and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. Moen Decl., ¶ 43. The Settlement was also reached with the input and assistance of Jason Marsili, Esq., an experienced neutral wage and hour class action mediator, whose mediator's proposal the Parties ultimately accepted. *Id*. This factor strongly supports approval. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

2. <u>The Preliminary Approval Standard is Met</u>

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

a. <u>The Settlement is Within the Range of Possible Approval</u>

The proposed Settlement reflects a fair and reasonable recovery for the Settlement Class members in light of the significant risks of litigation. The proposed Settlement will provide substantial compensation for contested claims and derivative penalties, including an estimated average Individual Class Payment of approximately $3,502.97 in addition to the Individual PAGA Payments. Plaintiff submits the proposed Settlement is within the range of possible approval, such that notice should be provided to the Settlement Class members. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

b. <u>The Settlement Resulted from Serious, Informed, and Non-Collusive Negotiations</u>

This proposed Settlement is entitled to an initial presumption of fairness (*see Kullar*, *supra*, 168 Cal.App.4th at 130) as it is the result of the exchange of substantial information, including all relevant policies, a representative sample of employee timekeeping and payroll data which was analyzed by Plaintiff's counsel; arm's length negotiations by counsel; mediation before an experienced wage and hour class action mediator; and months of negotiating until the terms of the Settlement Agreement were agreed upon and finalized. *See* Moen Decl., ¶ 44.

c. <u>The Settlement is Devoid of Obvious Deficiencies</u>

The Settlement provides substantial monetary relief to Settlement Class members. Further, the amounts for Plaintiff's Enhancement Payment, administration costs, attorneys' fees and costs to Class Counsel, and the LWDA's share of PAGA penalties are reasonable and appropriate. Since the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

B. <u>The Court Should Certify the Settlement Class for Settlement Purposes</u>

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

1. <u>The Proposed Class is Ascertainable and Numerous</u>

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement Class is defined as all individuals who are or previously were employed by Defendant HMH Associates, Inc. as non-exempt Resident Managers in California at any time during the Class Period. *See* Settlement, §§ 1.5, 1.13. Settlement Class members can be easily identified using Defendants' employment and payroll records. Moen Decl., ¶ 45. According to Defendants' records, the Settlement Class consists of approximately 37 individuals, rendering it impracticable to gather all the Settlement Class members and bring them before the Court. *See id.*; Settlement, § 8. Thus, the numerosity requirement is satisfied.

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiff's claims are predicated on uniform company policies, principally revolving around Defendant's overtime and minimum wage policies and practices, meal and rest period policies and practices, and reimbursement policies and practices. These types of claims are commonly held to be proper for class certification. *See, e.g., Brinker, supra*, 53 Cal.4th at 1032-34 ("The theory of liability—that Brinker has a uniform policy, and that that policy…allegedly violates the law—is by its nature a common question eminently suited for class treatment."); *Bradley v. Networkers Int'l, LLC* (2012) 211 Cal.App.4th 1129, 1150 (certifying meal and rest period claims); *Bluford v. Safeway Inc.* (2013) 216 Cal.App.4th 864, 871-873 (reversing denial for certification of rest period claim).

3. The Claims of the Named Plaintiff Are Typical

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

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

The adequacy of representation requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiff and the Settlement Class that Plaintiff seeks to represent, and Plaintiff possesses claims that are in line with those of the Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding adequacy where there was no indication that Plaintiffs' counsel were not qualified and the named

Plaintiffs had no interests antagonistic to those of the proposed class). Class Counsel also has extensive experience in wage and hour class action litigation. *See* Moen Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-14; Schmidt Decl., ¶¶ 2-9.

C. The Court Should Order Distribution Of The Proposed Class Notice

This Court should order distribution of the proposed Class Notice to the Settlement Class by first class mail, postage prepaid, using the last known mailing address information provided by Defendants. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff proposes that the settlement be administered by Apex Class Action LLC ("Apex"), an experienced class action settlement administrator. *See generally* Declaration of Sean Hartranft. Settlement Class members' addresses will be ascertainable through Defendants' personnel and payroll records, and Defendants will provide Class Members' full names, last-known mailing addresses, Social Security numbers, email addresses, and Workweek and PAGA Pay Period data to Apex within ten (10) business days after preliminary approval. *See* Settlement § 4.1. Prior to mailing the Class Notice packets, Apex will search for updated addresses using the National Change of Address database ("NCOA"). *Id.*, § 7.4.2. To the extent that any notices are returned, Apex will search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. *Id.*, § 7.4.3. The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises putative Settlement Class members of the nature of the claims, basic contentions and denials of the parties, the key terms of the Settlement, the uniform 60-day deadline to opt-out or object to the Settlement and the procedure by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class Member, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Settlement Agreement, Exhibit A (Class Notice). The proposed Class Notice will also notify Settlement Class Members of the final approval hearing date and provide the Settlement Class contact information for Class Counsel and advise Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.* Further, based upon Defendants' job criteria that Resident Managers are able to speak English, English-only Class Notices are sufficient. *See* Settlement, § 1.12. This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, this Court should set a hearing for final approval of the Settlement on a date appropriately scheduled to follow the deadline by which Settlement Class members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769. Should the Court grant final approval, the Parties will post the final judgment on the Settlement Administrator's website. *See* Settlement, § 7.8.1.

V. CONCLUSION

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

Dated: June 5, 2026

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