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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

RENE LOPEZ, as an individual and on behalf of all others similarly situated, Plaintiff, vs. SUNNY DELIGHT BEVERAGES CO., a Florida corporation; and DOES 1 through 100, inclusive, Defendant.	Case No. 30-2022-01280502-CU-OE-CXC [*Assigned for all purposes to the Honorable Melissa R. McCormick, Dept. CX104*] **DECLARATION OF MILAN MOORE IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: April 4, 2024 Time: 2:00 p.m. Dept.: CX104 Reservation Number: 74183044 [FAC Filed: November 21, 2022] [Complaint Filed: September 14, 2022

I, MILAN MOORE, declare as follows:

1. I am an Associate with Lidman Law, APC, counsel for named Plaintiff Rene Lopez ("Plaintiff") and the proposed Settlement Class in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I am a 2015 graduate of UConn School of Law. I was admitted to the California State Bar in December 2015 after passing the bar exam on my first attempt. Since that time, I have practiced exclusively in the area of employment litigation. Prior to joining Lidman Law, APC, I worked for an employment litigation boutique, where I successfully represented employees in discrimination, harassment, retaliation and wrongful termination cases in both state and federal court. While non-exhaustive, the type of work I performed included: conducting client intakes, performing pre-filing research and analysis, drafting complaints, attending court hearings, corresponding with opposing counsel, drafting and responding to written discovery, preparing for and taking and defending depositions, drafting and opposing motions for remand, demurrers and motions to strike, motions to compel, drafting mediation briefs, and attending mediations.

3. Since June 11, 2018, I have worked as an associate at my current firm, Lidman Law, APC. I am currently staffed on approximately seventy (70) active wage and hour class action lawsuits in both state and federal court.

4. I have been appointed Class Counsel in *Hanke v. C&W Facility Services, Inc*., Case No. CIVDS1814412, California Superior Court, County of San Bernardino, Honorable Judge David Cohn presiding; *Molina v. Mader News, Inc*., Case No. BC685960, California Superior Court, County of Los Angeles, Honorable Judge Yvette M. Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc*., Case No. BC688326, California Superior Court, County of Los Angeles, Honorable Judge William F. Highberger presiding; *Fregoso v. Amerigas Propane, Inc*., Case No. BC697973, California Superior Court, County of Los Angeles, Honorable Rafael A. Ongkeko presiding; *Teran v. Western Plastics, Inc*., Case No. RIC1722619, California Superior Court, County of Riverside, Honorable Judge

Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc*., Case No. BC688477, California Superior Court, County of Los Angeles, Honorable Judge Daniel J. Buckley presiding; *Guzman v. Century Blinds,* Case No. RIC1723654, California Superior Court, County of Riverside, Honorable Judge Sunshine S. Sykes presiding; *George v. Convergence Marketing,* Case No. CIVDS1901039, California Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding*; Romero v. Fillmore Hospitality, LLC,* Case No. BC705667, California Superior Court, County of Los Angeles, Honorable Judge Maren E. Nelson presiding; *Davis v. WeDriveU*, Case No. 18CV322578, California Superior Court, County of Santa Clara, Honorable Judge Brian C. Walsh presiding; *Acuna v. Canton Food Co., Inc*., Case No. BC685001, California Superior Court, County of Los Angeles, Honorable Judge David S. Cunningham presiding; and *Contreras v. Worldwide Flight Services, Inc.*, Case No. 2:18-cv-06036-PSG-SS, United States District Court for the Central District of California, the Honorable Judge Philip S. Gutierrez presiding.

5. As co-counsel for Plaintiff and the proposed Settlement Class, I have been intimately involved in every aspect of this case from its inception through the present, and I believe that the proposed Settlement is a favorable result for the Settlement Class under the circumstances presented.

6. On September 14, 2022, Plaintiff filed a putative class action complaint against Sunny Delight in Orange County Superior Court. On November 21, 2022, Plaintiff filed a First Amended Complaint against Defendant. On January 4, 2024, to effectuate the terms of the Settlement, the Parties filed a joint stipulation for Plaintiff to file a Second Amended Class and Representative Action Complaint. Once Plaintiff receives a Court order granting Plaintiff leave to amend, he will file the Second Amended Complaint. Therefore, Plaintiff alleges that Sunny Delight: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to reimburse necessary business expenses; (6) failed to provide accurate, itemized wage statements; (7) failed to pay all wages owed upon termination; (8) engaged in unlawful business practices; (9) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"); and (10)

failed to pay sick pay wages at the correct rate of pay. A true and correct copy of Plaintiff's letters to the LWDA and Sunny Delight are attached hereto as **Exhibit 1**.

7. After agreeing to participate in early mediation, Sunny Delight informally produced documents and information relevant to the claims alleged in advance of mediation, including without limitation timekeeping and payroll data for a 25% sampling of the putative class. Additionally, Sunny Delight produced information and data points needed for a fruitful mediation, including without limitation, the number of employees, workweeks at issue, pay periods at issue, meal and rest period policies and procedures, and payroll policies. After a review and analysis of the documents and information produced by Sunny Delight, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. This discovery allowed the parties to assess the merits and value of Plaintiff's claims and Sunny Delight's defenses thereto, if a settlement could not be reached.

8. On October 20, 2023, after research and analysis, a mediation was held with Jeffrey Krivis, Esq. a well-respected wage and hour class action mediator. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. Ultimately, the parties agreed in principle on a class-wide resolution. In the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation of Class and PAGA Action Settlement ("Settlement"). A true and correct copy of the Settlement is attached hereto as **Exhibit 2**. The proposed Notice Packet documents, which consists of the Notice of Pendency of Class Action and Proposed Settlement, Notice of Individual Settlement Award, Request for Exclusion Form, and Objection Form, are attached as Exhibit A to the Settlement.

9. The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	**$850,000.00**[1]

[1] Defendant represents there are approximately 153 Class Members who worked 19,611 Workweeks between September 14, 2018 and October 10, 2023, the date of the Parties' mediation. If the actual number of Workweeks during the Class Period is more than 10% greater than this figure (i.e., there are 21,572 or more Workweeks worked by the Class Members, Defendant will either, at its option to either: (1) increase the Gross Settlement Amount by a proportional amount above the 10% figure (i.e., if there was 11% increase in the number Workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 1%); *or* (2) elect to shorten the Class Period, PAGA Period, and release

Minus Court-approved attorneys' fees (1/3 of GSA):	$283,333.33
Minus Court-approved, verified costs (up to):	$28,000.00
Minus Court-approved Class Representative Service Award (up to):	$7,500.00
Minus Settlement Administration Costs:	$8,500.00
Minus PAGA Civil Penalties:	$40,000.00
Net Settlement Amount ("NSA"):	**$482,666.67**

Defendant shall deposit the Gross Settlement Amount (including one-third of any increase to the Gross Settlement Amount pursuant to the Escalator Clause if such increase is triggered and elected by Defendant) and Defendant's share of all payroll taxes on the portion allocated as wages with the Settlement Administrator within (30) days after the Effective Date.[2] *See* Settlement, ¶ 5.C.

After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA Civil Penalties, the Settlement requires Sunny Delight to pay a Net Settlement Amount ("NSA") of at least $482,666.67 to all Settlement Class members who do not timely opt out. This amount does not include the $10,000.00 PAGA Amount to be paid to the Settlement Class members.

10. According to Sunny Delight, there are approximately 162 total Settlement Class members defined as: All current and former hourly-paid non-exempt employees who are or previously were employed by Defendant Sunny Delight Beverages Co. who worked at any time in California during the Class Period. For purposes of this Settlement Agreement, the "Class Period" is defined as of September 14, 2018 through December 31, 2023, or the date the Court enters an Order Granting Preliminary Approval, whichever is sooner, unless Defendant elects to close the Class Period earlier pursuant to the Escalator Clause. Thus, the average Individual Settlement Payment (assuming all

periods to end on the date on which the aggregate workweeks is closest to without exceeding 21,572 workweeks worked by the Class Members. *See* Settlement, ¶ 5.F.

[2] This Settlement shall become effective on the "Effective Date" which is defined as the latter of: (a) the Court's final approval of the Settlement if no objections by or on behalf of Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed. *See* Settlement, ¶ 5.B.

Settlement Class members worked the same length of time) is projected to be approximately **$2,979.42, which is exclusive of the PAGA Amount.** The estimated lowest settlement is approximately $24.61 for a Settlement Class member that workweek one (1) workweek and the highest estimated settlement is approximately $6,792.92 for a Settlement Class member that worked 276 workweeks, which is the entire relevant time period of September 14, 2018 through December 31, 2023 (assuming December 31, 2023 is the end date of the class period).

The proposed PAGA Employees is defined as "all current and former hourly-paid non-exempt employees of Defendant Sunny Delight Beverages Co., who worked at any time during the PAGA Period. For purposes of this Settlement Agreement, the "PAGA Period" shall mean the time period between September 14, 2021 and December 31, 2023, or the date the Court enters an Order Granting Preliminary Approval, whichever is sooner, unless Defendant elects to close the PAGA Period earlier pursuant to the Escalator Clause. There are approximately 190 PAGA Employees, which means the average PAGA payment is about **$84.03**.

11. Plaintiff contends that Settlement Class Members' claims arise from Sunny Delight's common, uniform policies and practices that applied to Settlement Class members during the class period. Specifically, Plaintiff alleged that Sunny Delight's common and uniform policies and practices resulted in the following violations: (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 provide accurate, itemized wage statements; (6) failure to reimburse necessary business expenses; (7) failure to pay all wages owed upon termination; (8) unlawful business practices; (9) liability for civil penalties under PAGA and (10) failure to pay sick pay at the correct rate of pay.

As described in the accompanying Motion for Preliminary Approval, Plaintiff alleges that Sunny Delight failed to compensate its non-exempt employees for all time worked. Specifically, Plaintiff alleges that Sunny Delight recorded its employees' hours to the quarter hour, which means the employees did not have the actual start and stop times recorded and/or paid for. Accordingly, based on 5 minutes of unpaid time each shift, Plaintiff estimates Defendant's exposure at a total of approximately $362,967.00.

12. Sunny Delight contends that it compensated Class Members for all of their time worked, and any unpaid time was *de minimis* and therefore non-compensable. Sunny Delight further asserts that Plaintiff would be unable to certify this class given the individualized inquiries that would be required. In light of these defenses, Plaintiff discounted the maximum exposure by 55% for the risk of non-certification, and an additional 40% to account for Defendant's defenses on the merits to arrive at an estimated exposure of approximately $98,001.09.

13. Plaintiff alleges that throughout the relevant time period, that he and the other non-exempt employees received bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate ("Incentive Pay"). Plaintiff alleges that Sunny Delight failed, however, to include the Incentive Pay when calculating the regular rate of pay for purposes of paying Plaintiff and the other Settlement Class Members' overtime wages. Accordingly, Plaintiff contends that Sunny Delight did not properly calculate the regular rate of pay for Plaintiff and the other Settlement Class Members, thereby causing them to be underpaid for all their required overtime wages. Plaintiff calculated Sunny Delight's exposure for miscalculation of regular rate at $75,716.00.

14. Sunny Delight contends that Settlement Class members received all overtime wages to which they were entitled. Accordingly, based on these risks, Plaintiff discounted the maximum exposure of by 65% for the risk of non-certification, and an additional 40% to account for Sunny Delight's defenses on the merits to arrive at an estimated exposure of $15,900.36.

15. Plaintiff alleges that Sunny Delight is also liable for failing to pay sick pay at the regular rate. Specifically, Labor Code section 246(l) states that "… paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek." Here, Plaintiff alleges that Sunny Delight failed to pay Plaintiff and other former non-exempt employees their sick pay in a manner that fully complies with Labor Code section 246(l) as the bonuses were not included in the rate of pay. Therefore, Plaintiff calculated Sunny Delight's maximum exposure at approximately $59,154.00.

16. Sunny Delight asserts it paid sick pay at the appropriate rate of pay. Sunny Delight also argues that this claim is not suitable for class treatment because it would require individualized determinations. Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification, and an additional 55% to account for Sunny Delight's defenses on the merits, to arrive at an estimated exposure of $14,640.62.

17. Plaintiff alleges that he and the Settlement Class Members were not provided with all legally-compliant first meal periods beginning before the end of the fifth hour of work. Specifically, Plaintiff alleges that Sunny Delight failed to meet its obligation of recording the start and stop time for meal periods in approximately 65% of meal enabling shifts. Additionally, Plaintiff contends that Sunny Delight failed to provide second meal periods and that the timekeeping records will support Plaintiff's contentions that meal periods were not provided during the relevant time period were over 10.0 hours. Accordingly, Plaintiff calculated Sunny Delight's liability on the meal period claim 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 is $2,889,312.00.

18. Sunny Delight counters that it has always maintained a lawful meal period policy and 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 Sunny Delight. Sunny Delight points out that 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. Accordingly, Plaintiff discounted the maximum exposure by 60% for the risk of non-certification, and an additional 65% to account for Sunny Delight's defenses on the merits to arrive at an estimated exposure of $405,903.68.

19. Plaintiff alleges that she and Settlement Class Members were also not authorized and permitted to take all required rest periods due to Sunny Delight's rest period policies and practices. Specifically, Plaintiff alleges that he and other non-exempt employees experienced at least one rest period violation on every shift worked in excess of 3.5 hours, which was majority of the shifts worked.

Therefore, Plaintiff calculated Sunny Delight's maximum exposure for the alleged rest period violations at approximately $2,995,488.00.

20. Sunny Delight contends it has always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Sunny Delight also argues that Plaintiff's rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. Accordingly, Plaintiff discounted the maximum exposure by 65% for the risk of non-certification, and an additional 70% to account for Sunny Delight's defenses on the merits to arrive at an estimated exposure of $314,526.24.

21. Plaintiff alleges that Sunny Delight failed to reimburse him and Settlement Class members for necessary business expenditures, including the use of their personal cellular phones for work activities, as required under Labor Code section 2802 and by *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137. Plaintiff contends that Sunny Delight required its non-exempt employees to use their personal cellular phones for work-related purposes but Sunny Delight did not reimburse the putative class members for the cell phones and/or the data usage. Accordingly, Plaintiff calculates Sunny Delight's maximum exposure for this claim at approximately $146,206.00.

22. Sunny Delight argues that any expenses incurred were minimal given the affordability of cellular usage plans. Sunny Delight also argues that this claim is not suitable for class treatment because it would require individualized determinations as to whether each employee used a personal cellular phone and how often. Accordingly, Plaintiff discounted the maximum exposure by 55% for the risk of non-certification, and an additional 45% to account for Sunny Delight's defenses on the merits, to arrive at an estimated exposure of $36,185.99.

23. Plaintiff further alleges that Sunny Delight issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest period premium wages described above. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members did not include all hours worked and the rate

at which they were being paid. Therefore, Plaintiff calculated Sunny Delight's maximum exposure for wage statement violations at approximately $881,178.00.

24. Sunny Delight argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that she or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. As such, Plaintiff discounted the calculated exposure by 70% for a risk of non-certification and an additional 60% for a risk of being unsuccessful on the merits, to arrive at an estimated total of approximately $105,741.36.

25. Plaintiff alleges that Sunny Delight is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages. Based on the data provided by Sunny Delight, there were approximately 59 Settlement Class Members who have separated their employment with Sunny Delight during the relevant time period who could be entitled to waiting time penalties. Therefore, Plaintiff calculated Sunny Delight's maximum exposure for waiting time penalties at approximately $544,796.00.

26. Sunny Delight asserts it has strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Accordingly, Plaintiff discounted the maximum exposure by 50% for the risk of non-certification, and an additional 55% to account for Sunny Delight's defenses on the merits, to arrive at an estimated exposure of approximately $122,579.10.

27. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Plaintiff calculated Sunny Delight's maximum exposure at $2,579,847.00 based on the civil penalties for each underlying labor code violation.

28. Sunny Delight argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims will fail. Sunny Delight also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Sunny Delight liable for any of Plaintiff's claims. Therefore, Plaintiff discounted the maximum exposure figure by 60% for a risk of being unsuccessful on the merits, and an additional 45% to account for the possibility

of this Court reducing penalties, to arrive at an estimated exposure of $567,566.34.

29. Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately $1,681,044.77. The proposed settlement of $850,000.00 therefore represents approximately 51% of the reasonably forecasted recovery for the Settlement Class. Preliminary approval is appropriate as the settlement will provide tangible monetary relief to Settlement Class members, and will still provide an average recovery to Settlement Class members of <u>*nearly $3,000.00.*</u>

30. Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which is estimated to be $283,333.33, and up to $28,000.00 in verified costs reimbursement. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. My office has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Sunny Delight's documents and policies, analyzing Plaintiff's 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. I also anticipate my office incurring future attorneys' fees in overseeing the Notice process and fielding questions from Settlement Class members, preparing the final approval papers and attending the Final Approval hearing.

31. Plaintiff has provided written approval of the split of attorneys' fees in this action.

32. Plaintiff will seek a service award of $7,500.00 at the time of seeking final approval, and 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, multiple conferences with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case. Moreover, Plaintiff has agreed to a general release of all claims and waiver of Civil Code § 1542.

33. Although the parties engaged in formal and informal discovery throughout this action, the parties still had significant discovery to complete in formal litigation had the matter not settled.

Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. Even if the classes sought to be certified by Plaintiff were in fact certified, the parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. This Settlement avoids those risks and the accompanying expense. *Id*. Thus, this factor supports preliminary approval.

34. As of the date of the filing of the instant Motion, I am not aware of any class, representative or other collective action in any other court in this or any other jurisdiction that asserts claims similar to those asserted in this action on behalf of a class or group of individuals some or all of whom would also be members of the defined settlement class. I have made reasonable inquiry of other members of my firm and my co-counsel's firm, Haines Law Group, APC, regarding whether they are aware of any class, representative or other collective action in any other court in this or any other jurisdiction that asserts claims similar to those asserted in this action on behalf of a class or group of individuals some or all of whom would also be members of the defined class.

35. After this Motion is filed, I will cause a copy of it to be submitted to the LWDA and will file a supplemental proof of service prior to the hearing.

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

Executed on January 4, 2024, at El Segundo, California.

Milan Moore

Milan Moore