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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

10/20/2023 12:20 PM

By: Gloria Portillo, DEPUTY

[Additional counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JUNE Y. MORENO, an individual; KRYSTLE SANTANA, and individual; and on behalf of all others similarly situated,

Plaintiff,

v.

INFINITI GROUP LLC, a California Limited Liability Company; HOPE BY THE SEA, INC. a California Corporation; HOWER LODGE, INC., a California Corporation; PILLARS RECOVERY, LLC, a California Limited liability Company; SERENE BEHAVIORAL HEALTH, LLC, a California Limited Liability Company and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: CIVSB2223551

[Assigned for all purposes to the Hon. Joseph T. Ortiz, in Dept. S-17]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

HEARING INFORMATION:

DATE: December 12, 2023
TIME: 8:30 a.m.
DEPT: S-17

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and all others similarly situated and aggrieved

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 12, 2023, at 8:30 a.m., or as soon thereafter as they may be heard in Department S-17 of the Superior Court of the State of California for the County of San Bernardino, Plaintiffs June Y. Moreno and Krystle Santana (collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated and aggrieved, will and hereby do move this Court for entry of an Order:

1. Preliminarily certifying the following settlement class ("Settlement Class," "Settlement Class Members" or "Class Members") for the purpose of settlement only: all non-exempt employees employed by defendants Infiniti Group, LLC, Hope By The Sea, Inc., Hower Lodge, Inc., Pillars Recovery, LLC and Serene Behavioral Health, LLC (collectively, "Defendants") at any time between December 30, 2018 through July 31, 2023 ("Class Period").

2. Preliminarily approving Plaintiffs as Class Representatives.

3. Preliminarily approving David D. Bibiyan, Jeffrey D. Klein and Vedang J. Patel of Bibiyan Law Group, P.C. and Ross E. Shanberg and Shane C. Stafford of Shanberg Stafford LLP, as Class Counsel.

4. Preliminarily approving the terms set forth in the Settlement Agreement.

5. Preliminarily approving payment of the Gross Settlement Amount of $650,000.00, which is subject to escalation pursuant to the Settlement Agreement.

6. Approving the form and content of the Class Notice submitted herewith.

7. Appointing XPand Legal ("XPand") to administer the Settlement, including distribution of the Class Notice, as set forth in the Settlement Agreement.

8. Preliminarily approving the payment of not to exceed $10,000.00 for settlement administration to XPand from the Gross Settlement Amount.

9. Preliminarily approving a service award of $10,000.00 to each Plaintiff in consideration for Plaintiffs' extensive efforts in prosecuting this case.

10. Preliminarily approving payment of reasonable attorneys' fees to Class Counsel in the amount of up to thirty-three and one third (33% and 1/3) of the Gross Settlement Amount which, unless increased, amounts to $216,666.67.

11. Preliminarily approving reimbursement of Class Counsel's costs in an amount, according to proof, not to exceed $20,000.00.

12. Preliminarily approving PAGA penalties in the amount of $32,500.00, seventy-five percent (75%) or $24,375.00 of which will be paid to the Labor and Workforce Development

Agency ("LWDA") out of the Gross Settlement Amount, and twenty-five percent (25%) or $8,125.00 of which will be distributed to PAGA Group Members, defined as all Class Members employed by Defendants at any time between March 31, 2022 through July 31, 2023 ("PAGA Period").

13. Entering an Order preliminarily approving the Settlement consistent with the terms of the Settlement Agreement.

Good cause exists for granting this Motion in that the proposed settlement is fair, reasonable, and adequate.

This Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the Declarations of Ross E. Shanberg, David D. Bibiyan, Plaintiff Krystle Santana, Plaintiff June Moreno, and Jonathan Paul, and exhibits attached thereto, arguments of counsel and upon such other materials contained in the file and pleadings of this action.

Dated: October 20, 2023

SHANBERG STAFFORD, LLP

___//Ross E. Shanberg//________________
ROSS E. SHANBERG
SHANE C. STAFFORD
Attorneys for Plaintiffs, on behalf of themselves and all others similarly situated and aggrieved

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND PROCEDURAL BACKGROUND

Plaintiffs June Y. Moreno ("Moreno") and Krystle Santana ("Santana" and together with Moreno, "Plaintiffs"), on behalf of themselves and all others similarly situated and aggrieved, hereby apply for preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement Agreement") upon the terms and conditions set forth therein. See Declaration of Ross E. Shanberg ("Decl. Shanberg") ¶ 2, Exh 1.

On December 30, 2022, Moreno filed with the LWDA and served on defendants Infiniti Group, LLC, Hope By The Sea, Inc., Hower Lodge, Inc., Pillars Recovery, LLC and Serene Behavioral Health, LLC (collectively, "Defendants") a notice under Labor Code section 2699.3, stating she intended to serve as a proxy of the LWDA to recover civil penalties on behalf of other non-exempt, hourly-paid employees for various Labor Code violations ("Moreno PAGA Notice"). See Declaration of David Bibiyan ¶ 2, Exh 1; Decl. Shanberg ¶ 3.

On December 30, 2022, Moreno filed this putative wage-and-hour class action alleging that Defendant: (1) failed to pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or compensation in lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof; (5) failed to pay all wages due upon separation from employment; (6) failed to provide accurate and compliant wage statements; (7) failed to indemnify for business expenses; and (8) engaged in unfair competition (the "Moreno Class Action"). Decl. Shanberg ¶ 4.

On March 30, 2023, Santana filed a separate putative wage-and-hour class action alleging that Defendant: (1) failed to pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or compensation in lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof; (5) failed to pay all wages due upon separation from employment; (6) failed to provide accurate and compliant wage statements; (7) failed to indemnify for business expenses; and (8) engaged in unfair competition. That action is in Orange County Superior Court, case No. 30-2023-01316157 (the "Santana Class Action"). Decl. Shanberg ¶ 5.

On March 31, 2023, Santana filed with the LWDA and served on Defendants a notice under Labor Code section 2699.3, stating she also intended to serve as a proxy of the LWDA to recover civil penalties on behalf of other non-exempt, hourly-paid employees for various Labor Code violations ("Santana PAGA Notice"). Decl. Shanberg ¶ 6, Exh. 2.

On June 14, 2023, Santana filed a first amended complaint ("FAC") in the Santana Action to add PAGA civil penalties against Defendants for the Labor Code violations alleged in the

PAGA Notice. Similarly, on June 14, 2023, after sixty-five (65) days had passed since Moreno filed and served the PAGA Notice, without any action by the LWDA with respect to the alleged Labor Code violations, Moreno filed in the county of San Bernardino, case No. CIVSB2311188, a separate complaint alleging PAGA civil penalties against Defendants for the Labor Code violations alleged in the PAGA Notice ("Moreno PAGA Action"). Decl. Shanberg ¶ 7.

Thereafter, Plaintiffs and Defendants (collectively, the "Parties") agreed to exchange informal discovery and attend an early mediation, in which Plaintiffs were provided with, among other things: (1) time and payroll records for approximately 20% of the estimated 256 putative class members; (2) putative class data points, including the total number of workweeks worked by putative class members during the Class Period, the number of separated putative class members in the waiting time penalty period and the dates of separation, the number of aggrieved employees, the number of hours worked, and the number of pay periods in the wage statement period and the statutory period for PAGA penalties; and (3) Defendants' relevant wage and hour policy documents and employee handbooks. Decl. Shanberg ¶ 8

On July 7, 2023, the Parties participated in a full-day mediation before Michael J. Loeb, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties reached a Settlement to resolve the Action. As part and parcel to the Settlement, the Parties agreed to combine the Moreno Class Action, the Moreno PAGA Action, and the Santana Class Action in one consolidated complaint in the San Bernadino County Superior Court. Accordingly, on September 19, 2023, Plaintiffs filed a First Amended Consolidated Class Action Complaint in the San Bernadino County Superior Court, combining claims from all three cases. Decl. Shanberg ¶ 9, 10, Exh 3. As part of the settlement, the parties have agreed to dismiss the Santana Class Action and Moreno PAGA action without prejudice. Decl. Shanberg ¶ 10.

II. THE SETTLEMENT

Subject to Court approval pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.679, *et seq*., the Parties have agreed to settle the Action upon the terms and conditions and for the consideration set forth in the Settlement Agreement. Decl. Shanberg ¶ 2, Exh 1. A summary of the terms of the settlement are as follows:

Defendants will stipulate, for purpose of this settlement only, as follows:

- Certification of a class ("Settlement Class," "Settlement Class Members" or "Class Members") defined as: all non-exempt employees employed by defendants Infiniti

Group, LLC, Hope By The Sea, Inc., Hower Lodge, Inc., Pillars Recovery, LLC and Serene Behavioral Health, LLC (collectively, "Defendants") at any time between December 30, 2018 through July 31, 2023 ("Class Period").

- Defendants will pay $650,000.00 ("Gross Settlement Amount") to resolve the matter.
- Defendants represented that here are 256 Class Members as of July 14, 2023, with 8,214 total workweeks. In the event that the actual final number of Class Members and/or total workweeks is exceeded by more than 5%, the Gross Settlement Amount will increase pro rata per additional class member and/or additional workweek. Thus, for example, if the total number of workweeks during the Class Period increases by 6%, or 493 workweeks, then the Gross Settlement Amount shall be increased by 1%, or $6,500.00.
- Defendants will pay the employer's share of taxes separate and apart from the Gross Settlement Amount.
- This is a non-reversionary settlement.
- Class Members will be paid their *pro rata* share of the class action settlement based on the total number of Workweeks[1] worked during the Class Period.
- The Settlement Administration costs, estimated not to exceed $10,000.00 will be paid out of the Gross Settlement Amount. See Declaration of Jonathan Paul, ¶ 1-10, Exhs. A, B.
- Class Counsel, David D. Bibiyan, Jeffrey D. Klein and Vedang J. Patel of Bibiyan Law Group, P.C., as well as Ross E. Shanberg and Shane C. Stafford, will apply for, and Defendants will not oppose, attorneys' fees of up to thirty-three and one-third percent (33 and 1/3%) of the Gross Settlement Amount, which, unless escalated pursuant to the Settlement Agreement, amounts to $216,666.67, and actual costs, not to exceed $20,000.00, all of which will be paid out of the Gross Settlement Amount.
- Class Counsel will apply for, and Defendants will not oppose, a service award of $10,000.00 for each the class representatives, which will be paid out of the Gross Settlement Amount.

[1] "Workweek" means the estimated number of workweeks that a Settlement Class Member was employed by and worked for the Defendant in a non-exempt, hourly-paid position during the Class Period in California, based on paycheck data.

- "PAGA Group Members" means Class Members working for Defendants during the period from March 30, 2022, through the end of the Class Period ("PAGA Period") as non-exempt, hourly-paid employees in California.
- Defendants have agreed to pay $32,500.00 as PAGA penalties, seventy-five percent (75%) or $24,375.00 of which will be paid to the LWDA out of the Gross Settlement Amount, and twenty-five percent (25%) or $8,125.00 of which will be distributed to the PAGA Group Members.
- Checks to Class Members shall remain valid for 180 days to cash their checks. Any checks that are not cashed upon the expiration of that 180-day period will be void, and the uncashed funds shall be paid to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.
- In exchange for their payment, the participating Class Members will agree to the following release: "Upon the date Defendants transfer the Gross Settlement Amount to the Settlement Administrator, Named Plaintiffs and Participating Class Members who do not opt out of the Settlement release the Released Parties of all claims alleged or could have been alleged based on the theories and facts alleged in the operative complaints in the Actions, which arose during the Class Period, including but not limited to (1) Failure to pay minimum wages; (2) Failure to pay overtime wages;(3) Failure to provide meal periods or provide premiums in lieu thereof; (4) Failure to provide rest periods or provide premiums in lieu thereof; (5) Failure to pay timely wages upon separation of employment; (6) Failure to provide accurate itemized wage statements; (7) Failure to Reimburse Business Expenses; (8) Violation of Business and Professions Code § 17200, et seq.; and (9) Violation of the California Private Attorneys General Act of 2004 (Labor Code §§ 2698,et seq.), for violations of Labor Code sections 201-203, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, and 2802.

Decl. Shanberg ¶ 11-19, 20, 23-26.

III. THE TWO-STEP APPROVAL PROCESS

Any settlement of class litigation must be approved by the Court. Cal. Rules of Court, rule 3.769. This is done in two steps: (1) a preliminary review by the trial court; and (2) a final review after notice has been sent to the class members for their comment or objections. Id.

IV. THE PRESUMPTION OF FAIRNESS

Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. There is a presumption the negotiations were conducted in good faith. Newberg on Class Actions, § 11.51; In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation (N.D. Cal. May 17, 2017) No. 16-cv-00295, 2017 WL 2214655 (quoting United States v. Oregon (9th Cir. 1990) 913 F.2d 576, 580).

V. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

A notice of settlement of a class action "must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." Cal. Rules of Court, rule 3.769, subd. (f). An appropriate notice is one which has a reasonable chance of reaching a substantial percentage of the class members. See Cartt v. Superior Court, 50 Cal. App. 3d 960, 974 (1975). The proposed notice satisfies each of these requirements. See Decl. Shanberg ¶ 2, Exh 1 (Exhibit A to the Joint Stip is the Proposed Notice).

The proposed Notice of Class Settlement is fair and reasonable in this case. It describes the nature of the lawsuit, the Settlement Class, the settlement amount, the proposed plan of allocation, and the attorneys' fees that Class Counsel may receive. The proposed notice also describes the Settlement Agreement in sufficient detail to allow the Settlement Class Members to make an informed choice whether to accept or reject it. The proposed Notice also contains information on opting out of the Class, objecting to the settlement, and sets forth the schedule for the final approval hearing. Decl. Shanberg ¶ 2, Exh 1.

Moreover, the parties propose that the Notice be mailed by the Settlement Administrator to all Class members at the last known address maintained by Defendant, and updated by the Settlement Administrator, if necessary, after accessing the National Change of Address database. In the event the Notice of Settlement is returned as undeliverable, the Settlement Administrator will perform a skip-trace procedure, and if such procedure reveals a new address, the Settlement Administrator will re-mail the Notice within five days. In summary, the proposed notice here describes the proposed settlement with enough specificity to permit class members to make an informed decision whether to participate in the settlement. Decl. Shanberg ¶ 21, 22, 42, 43.

VI. THE SETTLEMENT IS FAIR AND REASONABLE

A. The Settlement was Negotiated at Arm's-Length and is not Collusive

The Settlement is a product of substantial efforts by the Parties and their counsel. The Settlement was reached after extensive factual and legal investigation and research; substantial negotiation regarding the scope of informal discovery; an exchange of documents and information that included review of time and pay records and analysis thereof with the aid of Plaintiffs and expert consultants; an analysis of shifts and Workweeks worked by Class Members in the Class Period, analysis of the number of pay periods and number of PAGA Group Members in the PAGA Period for calculating PAGA penalties, number of Class Members eligible for wage statement penalties and waiting time penalties; an analysis of Plaintiffs' employment records; extensive correspondence and communication between counsel; a review of pleadings, evidence and rulings in similar actions litigated elsewhere in the state; a review of similar cases in the same industry elsewhere in the country; and preparation for and attendance at a full-day session of mediation, followed by further discussions and coordination to finalize the terms and conditions of the general settlement parameters agreed to by the Parties.

While Class Counsel believes in the chance of success of certifying the claims, Class Counsel recognized the potential risk, expense and complexity posed by further litigation. Moreover, litigating Plaintiffs' claims in this Litigation—claims that involve approximately 256 Class Members during the Class Period—would require substantial preparation and discovery, and ultimately would involve the deposition and presentation of numerous additional witnesses (including Class Members and expert witnesses), as well as the consideration, preparation, and analysis of expert reports. Should litigation have progressed any further, there would have been significant expense incurred by each side. Decl. Shanberg ¶ 28, 32-38.

B. The Settlement Amount is Well Within the Range of Reasonableness

The settlement amount reached in this case provides significant recovery to Class Members and PAGA Group Members, and easily falls within the range of reasonableness. Pursuant to Kullar v. Footlocker Retail Inc., 168 Cal.App.4th 116 (2008) and Dunk v. Ford Motor Co., 48 Cal.App.4th 1794 (1996), the following describes the settlement's reasonableness.

1. Unpaid Wages for Failure to Pay Off-the-Clock Work

Based on documents and information provided by Defendants, there were approximately 8,214 Workweeks in the Class Period. Plaintiffs allege that Defendants failed to pay all wages due to Class Members because Defendants required Class Members to work off the clock responding to patient text messages and phone calls, attending to patients during their meal periods, and responding to text messages and phone calls after their scheduled hours. Also, Defendants misclassified some salaried employees as hourly paid employees.

Plaintiffs further alleged that Class Members performed unpaid off-the-clock work for approximately 33.1 minutes each shift, which totals approximately 20,230.17 total hours of unpaid time during the Class Period. Based on time and payroll records produced by Defendants the average weighted overtime rate was $30.80, and the total interest owed for the relevant time period would amount to $55,496.40. Thus, Defendants' exposure for unpaid off-the-clock work is approximately **$678,585.** (20,230.17 unpaid hours x $30.80 + $55,496.40 in interest)

2. Damages for Non-Compliant Meal Periods

Plaintiffs allege that Defendants' meal period practices throughout the Class Period were non-compliant because Class Members' workload prevented them from taking timely, compliant meal periods and Class Members were interrupted by supervisors or had to respond to patients.

Defendants' documents showed there were 27,772 (84.1%) meal period violations during the Class Period (late, short, and missed meal periods). Notably, no meal period premiums were ever issued throughout the Class Period. As such, Defendants' exposure for non-compliant meal periods is approximately **$620,154.28** (27,772 meal period violations x $20.90/hour + $39,719.48 in interest).

Defendants argued that they had compliant meal period policies and practices, and that Class Members took timely and full meal periods. Defendants contend that their policy requires their employees to take timely and full meal periods. Defendants further contend that any instance of a Class Member failing to take a compliant meal period was voluntary, in violation of its meal period policy, would necessitate an individualized inquiry, and would not lend itself to a manageable trial. Thus, Defendants contend that *no* monies are owed for this claim but, even if any amounts were due, the amount calculated by Class Counsel is excessive.

3. Damages for Non-Compliant Rest Periods

Plaintiffs allege that Defendants had no written policies for rest periods throughout the Class Period and that Class Members were not permitted to take proper rest periods. Notably, no rest period premiums were ever issued throughout the Class Period.

Assuming a 100% violation rate for rest-eligible shifts, Defendants' exposure for failure to provide compliant rest periods is approximately **$803,307** (35,974 shifts x $20.90/hour + $51,450.40 in interest).

Defendantsargues that it had compliant rest period policies and practices, and that Class Members took timely and full rest periods. Defendants contend that its policy requires their employees to take timely and full rest periods. Defendants further contend that any instance of a Class Member failing to take a compliant rest period was voluntary, in violation of its rest period policy, would necessitate an individualized inquiry, and would not lend itself to a manageable trial. Thus, Defendants contend that *no* monies are owed for this claim but, even if any amounts were due, the amount calculated by Class Counsel is excessive.

4. Wage Statement Violations

Plaintiffs allege that Class Members are entitled to recover penalties for Defendants' alleged failure to issue compliant wage statements under Labor Code section 226, subdivision (e), for the derivative impact of the failure to pay all wages owed on providing accurate information on wage statements. Specifically, penalties are owed under Labor Code section 226 due to, at minimum, Defendants' failure to pay premium wages. A non-exempt employee suffering injury due to a knowing and intentional failure by an employer to comply with Labor Code section 226, subdivision (a), is 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. The data provided by Defendants shows there were 214 initial pay periods and a 3,196 subsequent pay periods. Defendants' exposure for wage statement violations is **$330,300** [(214 pay periods x $50/pay period) + 3,196 subsequent pay periods x $100/pay period.)].

Defendants contend that the wage statements issued to the employees fully complied with Labor Code § 226. Because it believes no wages are unpaid there can be no derivative penalties. However, Class Counsel also understands the risks inherent in this claim if the above claims were not certified. Class Counsel also considered the risk that a Court would find there was no injury to Class Members even if the wage statements were inaccurate or that Defendants' conduct was not intentional.

5. Waiting Time Penalties

Pursuant to Labor Code §§ 201, 202 and 203, each employee in the relevant statutory period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of wages as waiting time penalty for not being paid all wages due upon separation from employment. Under Labor Code § 203, Defendants are liable to pay each Class Member, who was terminated during the relevant statutory period, 30-days wages as a waiting time penalty for failure to pay compensation in lieu of compliant meal and rest periods, and failure to timely pay all wages due at the time of termination or resignation. There were approximately 132 Class Members who were terminated or resigned during the relevant statutory period. Thus, Defendants' potential exposure for waiting time penalties is approximately **$662,112** (132 separated Class Members x $20.90/hour x 8 hours x 30 days.).

Defendants contend that there is no credence to Plaintiff's off-the-clock theory and that no waiting time penalties are owed. Finally, Defendants contend that its actions were not "willful" and therefore waiting time penalties cannot be awarded. Thus, Defendants argued that no waiting time penalties are owed.

6. Failure to Reimburse for Business Expenses

Plaintiffs allege that Defendants failed to indemnify Class Members for necessary business expenses because Defendants required Class Members to incur cell phone charges, use personal computers, incur mileage, clean uniforms, and incur related expenses. Plaintiffs estimated each Class Member is owed $100 per month for these expenses. Thus, Defendants' exposure for failure to indemnify for business expenses is approximately **$202,770.85** (1,874 months during the Class Period through mediation x $100 expenses per month + $15,370.85 in interest).

Defendants argued that it reimbursed employees for all expenses incurred in furtherance of work. Defendants also argued that Class Members were using their cellphones for personal use, and Defendants have no obligation to reimburse Class Members for such use. Defendants argued that, to the extent any Class Members' claims that their uniforms were so spoiled as to require separate launder their uniforms, would necessitate an individualized inquiry, thereby precluding certification and making any trial thereon unmanageable. Thus, Defendants contend there is little to no exposure under this claim.

7. PAGA Penalties

The time and payroll data provided by Defendants show that there were 2,849 pay periods in the PAGA Period. Plaintiffs' PAGA claims are substantially similar to those described herein. PAGA penalties include penalties for initial violations and subsequent violations. Class Counsel believes it is reasonable to calculate Defendants' maximum exposure in PAGA penalties as follows:

a. <u>Overtime Violations</u>: This claim amounts to a maximum exposure of $284,900 (2,849 pay periods x $100).

b. Minimum Wage Violations: This claim amounts to a maximum exposure of $284,900 (2,849 pay periods x $100).

c. Meal Period Violations: This claim amounts to a maximum exposure of $284,900 (2,849 pay periods x $50).

d. Rest Period Violations: This claim amounts to a maximum exposure of $284,900 (2,849 pay periods x $50).

e. Waiting Time Penalties: This claim amounts to a maximum exposure of $184,498 (approximately $5,426.40 penalty per PAGA Member x 34 PAGA Members)

f. Wage Statement Violations: This claim amounts to a maximum exposure of $284,900 (2,849 pay periods x $100).

g. Failure to Reimburse Work Expenses: This claim amounts to a maximum exposure of $284,900 (2,849 pay periods x $100).

i. Conclusion: In sum, Defendants' potential exposure for PAGA violations is $1,893,898. Defendants contend that no PAGA penalties are likely to be awarded and, even if they were, the maximum exposure calculated by Class Counsel is vastly overstated. First, Defendants claims that PAGA penalties should not be stacked. Second, Defendants asserts that individualized issues predominate the PAGA claims, making the claims unmanageable for trial. Third, Defendants denies that a violation for each pay period can be established. Fourth, Defendants contend that a Court is unlikely to exercise its discretion to award civil penalties under PAGA where, as here, there is no conduct shown by Plaintiffs that would show any Labor Code violation by Defendants is knowing and intentional. Defendants insists that this is especially true in this Action where class action damages are available to Class Members, rendering an award of PAGA penalties in addition to class action damages to be double recovery.

Class Counsel maintains that it is possible to recover the subsequent violation rate for penalties, that stacking is permissible, and that there is no manageability requirement under PAGA. As such, Class Counsel believes a 90% discount of this claim to be reasonable, resulting in a valuation of **$189,390** as a reasonable estimate of the likelihood of what Plaintiff may recover at trial for PAGA penalties ($1,893,898 x .10).

8. Conclusion

Defendants' maximum exposure is approximately **$3,486,619**. Class Counsel obtained a Gross Settlement Amount of **$650,000.00, almost 20% of the total exposure**. Considering the risks involving obstacles to class certification, all issues and risks related to liability, the issues with manageability at trial, the discretionary nature of PAGA penalties, and considering the case law regarding fair, reasonable, and adequate settlements, Class Counsel believes that the settlement reached is fair, reasonable, and adequate, and in the best interest of Class Members.

Moreover, $32,500 of the Gross Settlement Amount was attributed to PAGA penalties. This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the fact that damages are available for the failure to pay wage claims while only penalties are available for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA penalties at all in light of the fact that damages are available for Class Members and it may find any further liability against Defendants unnecessarily punitive. Decl. Shanberg ¶ 29.

VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Class Counsel seeks an attorneys' fees award of *up to* thirty-three and 1/3 percent (33 1/3%) of the Gross Settlement Amount, or $216,666.67. The requested fees fall well within the historical range of attorney's fees awards under the common fund theory, which is generally from 25% to 50%. See, e.g., Laffitte v. Robert Half Int'l, Inc., 1 Cal. 5th 480 (2016) (affirming lower court's award of one-third of a class action wage and hour settlement); Romero v. Producers Dairy Foods, Inc., 2007 WL 3492841, *4 (E.D. Cal. Nov. 14, 2007) (approving attorneys' fee award of 33% of the settlement fund in a wage and hour case involving allegations of unpaid wages and missed meal and rest breaks). The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis. See Decl. Shanberg ¶ 40, 52; Decl. Bibiyan ¶ 17.

Class Counsel also seeks reimbursement of costs not to exceed $20,000.00, which is a reasonable amount for class actions. See Decl. Shanberg ¶ 41, 53; Decl. Bibiyan ¶ 17.

Thus, the Court should preliminarily approve the requested attorneys' fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case, and the great risks undertaken by Class Counsel. The requested attorneys' fees will not be opposed by Defendants and are within established guidelines.

VIII. THE REQUESTED ENHANCEMENT AWARDS ARE REASONABLE

Plaintiffs are entitled to an enhancement award for their services as class representatives, for actively participating in this litigation, for being available and answering questions during mediation, for the risks in being the named plaintiffs and for providing Defendants with a more expansive release of claims, including a waiver based upon California Civil Code section 1542, in exchange for the enhancement award. Plaintiffs risked intrusive discovery and the payment of employer costs. See Decl. Santana ¶ 4-12; Decl. Moreno ¶ 9-19; Decl. Shanberg ¶ 39.

In the experience of Class Counsel, the typical enhancement award in wage and hour class actions ranges from approximately $10,000.00 to $25,000.00, although some awards are higher. Here Plaintiffs seek a reasonable enhancement of $10,000 each for their service. Defendants do not oppose the requested enhancement to Plaintiffs.

IX. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES

A. The Class should be Preliminarily Certified

There are two certification prerequisites: (1) the existence of an "ascertainable class;" and (2) "a well-defined community of interest in the questions of law and fact." Sotelo v. MediaNews Group, Inc., 207 Cal. App. 4th 639, 647 (2012). To certify a class, the party advocating class treatment must show: (1) a numerous class; (2) predominant common questions of law or fact; (3) class representatives with claims or defenses typical of the class; and (4) class representatives who can adequately represent the class." Williams v. Sup. Ct., 221 Cal. App. 4th 1353 (2013) (citing Brinker Restaurant Corp. v. Sup. Ct, 53 Cal. 4th 1004, 1021 (2012)). Each of the criteria for class certification is satisfied in this instance:

1. Ascertainability – "Ascertainability" is a due process requirement that ensures it is possible to decide who will be bound by the judgment (*res judica* effect). The determination is made by examining the class definition and the size of the class. Here, the Class Member definition (*i.e.*, all individuals employed by Defendants in California as non-exempt employees during the Class Period) is derived from the operative complaint, which alleges violations of Labor Code sections that are applicable to non-exempt, hourly-paid employees. There is no difficulty ascertaining who is a Class Member based on the above-described definition as it is readily apparent to all involved who is a non-exempt employee who worked in California for Defendants during the Class Period based solely from Defendants' payroll records, which amounts to approximately 256 persons. Decl. Shanberg ¶ 30-31.

2. Numerosity – According to the California Supreme Court, numerosity is met if joinder is impracticable and substantial benefits accrue both to litigants and the courts if the action proceeds as a class action. Linder v. Thrifty Oil Co., 23 Cal. 4th 429, 435, 446 (2000). Numerosity is presumed satisfied if there are forty (40) putative class members. Miri v. Dillon, 292 F.R.D. 454, 461 (E.D. MI 2013). However, as few as 10 class members may be sufficient. See, e.g., Bowles v. Sup. Ct. 44 Cal. 2d 574 (1955). Class Counsel understands from documents provided that Defendants identified at least 256 Class Members. That is sufficiently numerous to establish the numerosity requirement.

3. Commonality – California law also requires that "questions of law or fact common to the class [be] substantially similar and predominate over the questions affecting the individual members." In re Steroid Hormone Product Cases, 181 Cal. App. 4th 145, 153 (2010).

This Litigation is brought to resolve common issues that include whether Defendants failed to pay for all hours worked; whether Defendants provided full, timely, and un-interrupted meal and rest periods, whether Class Members are entitled to premium pay for incomplete, untimely or interrupted meal or rest periods, among other claims as set forth above. There are common questions of law or fact sufficient to support class treatment here.

4. Typicality – Typicality requires only that the named plaintiffs' interests in the action be significantly similar to those of other class members. Williams, 221 Cal. App. 4th 1353 (citing Brinker, 53 Cal. 4th at 1021.) Plaintiffs' claims are typical of those of other Class Members as each Plaintiff: (1) is a non-exempt, hourly-paid employee like other Class Members; (2) complains of not being paid for all time under Defendants' control or suffered and/or permitted to work for Defendant; (3) did not receive full premium pay for meal periods that were not compliant with the Labor Code; (4) did not receive premium pay for rest periods that were not provided, among other claims as set forth above. See Decl. Santana ¶ 3; Decl. Moreno ¶ 3-8.

5. Adequacy of Representation - To maintain a class action, the representative plaintiff must adequately protect the interests of the class. Williams, 221 Cal. App. 4th 1353; Brinker, 53 Cal. 4th at 1021. Adequacy of representation consists of two components. First, there must be no disabling conflicts of interest between the class representatives and the class. Second, the class representative must be represented by counsel who are competent and experienced in the kind of litigation to be undertaken. McGhee v. Bank of Am., 60 Cal. App. 3d 442, 450 (1976); In re Juniper Networks, Inc. Securities Litigation, 264 F.R.D. 584, 590 (N.D. Cal. 2009). Both criteria are met in this instance.

(i) **No Conflict of Interest Exists Between the Class Representative and the Class**

No conflicts exist between Plaintiffs and Class Members. Plaintiffs allege they were damaged by the same alleged conduct of Defendants (*i.e.*, Plaintiffs were not paid for off-the-clock work, not paid premium pay, etc.) and thus, have the incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery. See Decl. Santana ¶ 3; Decl. Moreno, ¶ xx.

(ii) **Class Counsel Are Experienced Class Action Attorneys**

As set forth in the Declaration of Class Counsel, Class Counsel in this matter are experienced class action attorneys, have been appointed as class counsel in other class actions and have a successful "track record" in litigating class actions. See Decl. Shanberg ¶ 44-51; Decl. Bibiyan ¶ 3-16,

6. Superiority of Class Action - Also relevant to the Court's certification decision is whether a class action is the superior method of adjudication. Brinker, 53 Cal. 4th at 1021. With at least 256 Class Members at issue in this case, pursuing individual claims before this Court would be problematic, impractical, and burdensome. On the contrary, a class action allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation.

X. CONCLUSION

Therefore, the Parties request the Court grant preliminary approval of the proposed settlement.

Dated: October 20, 2023

SHANBERG STAFFORD, LLP

_____//Ross E. Shanberg//____________________
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