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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ANA MARIA MENDOZA-HERNANDEZ, as an individual and on behalf of all others similarly situated, Plaintiff, vs. PACIFIC SNOW VALLEY RESORT, LLC, a California limited liability company; and DOES 1 through 100, inclusive, Defendants.	Case No.: CIVSB2314151 [*Assigned for all purposes to the Hon. Joseph T. Ortiz, Dept. S-17*] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: June 12, 2025 Time: 9:00 a.m. Dept.: S-17

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June 12, 2025 at 9:00 a.m. in Department S-17 of the above-entitled Court, located at 247 West Third Street, San Bernardino, California 92415, Plaintiff Ana Maria Mendoza-Hernandez ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

   > All current and former non-exempt employees employed by Defendant in California during the period of June 21, 2019 to February 24, 2025 or preliminary approval of the settlement, whichever is sooner.

3. Preliminary appointment of Plaintiff Ana Maria Mendoza-Hernandez as Class Representative;
4. Preliminary appointment of Scott M. Lidman, Milan Moore, and Tiara Gose-Hardy of Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a service award to Plaintiff, Settlement Administration costs, and attorneys' fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators ("Phoenix") as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of Class Action and Proposed Settlement) and an order that it be disseminated to the proposed Settlement Class Members as provided in the Settlement Agreement.

This Motion is based on this notice of motion, the memorandum of points and authorities, the declarations of Scott M. Lidman, Milan Moore, Tiara Gose-Hardy, Paul K. Haines, Plaintiff Ana Maria Mendoza-Hernandez, and Jodey Lawrence of Phoenix Settlement Administrators, 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.

Dated: April 8, 2025

Respectfully submitted,
LIDMAN LAW, APC

By: Milan Moore
Milan Moore

Attorneys for Plaintiff
ANA MARIA MENDOZA-HERNANDEZ

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Ana Maria Mendoza-Hernandez ("Plaintiff") brought this class action against Defendant Pacific Snow Valley Resort, LLC ("Defendant") alleging various wage and hour violations. Plaintiff's primary allegations are that Defendant: (1) failed to provide meal periods; (2) failed to authorize and permit rest periods; (3) failed to provide accurate, itemized wage statements; (4) failed to timely pay all wages upon termination; (5) failed to pay all vacation wages; (6) engaged in unfair competition; and (7) is liable for civil penalties under the Private Attorneys General Act.

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, class action settlement,[1] in which Defendant has agreed to pay $320,000.00 to the following Settlement Class:

> All current and former non-exempt employees employed by Defendant in California during the period of June 21, 2019 to February 24, 2025 or preliminary approval of the settlement, whichever is sooner.

Settlement Class members do not need to file a claim and will automatically receive a payment unless they affirmatively opt-out. After deducting administration costs, Plaintiff's service award, and attorneys' fees and costs, the remaining Net Settlement Amount ("NSA") of approximately $150,383.34 will be distributed to all Settlement Class members who do not opt-out. With approximately 185 Settlement Class members, the average payment to each Settlement Class member is currently expected to be approximately **$812**, not including PAGA penalties.

This proposed Settlement is well-within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

/ /

[1] The Stipulation of Settlement ("Settlement") is attached to the Declaration of Milan Moore as Exhibit 1. The proposed Notice Packet (which consists of the Notice of Pendency of Class Action and Proposed Settlement) is attached to the Settlement as Exhibits 2 and 3, respectively. All defined terms in this motion have the same definitions as used in the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH NEGOTIATIONS

1. The Parties

Defendant does business as a ski resort. *See* Declaration of Milan Moore ("Moore Decl."), ¶ 6. Plaintiff worked as a housekeeper for Defendant from approximately October 3, 2016 through approximately May 12, 2023. *See* Declaration of Ana Maria Mendoza-Hernandez ("Mendoza-Hernandez Decl."), ¶ 2.

2. Procedural History

On June 21, 2023, Plaintiff filed a class action Complaint against Defendant in San Bernardino County Superior Court, in the matter entitled *Ana Maria Mendoza-Hernandez v. Pacific Snow Valley Resort, LLC*, Case No. CIVSB2314151 (the "Action") alleging the following class action claims: (1) failure to provide meal periods; (2) failure to authorize and permit rest periods; (3) failure to provide accurate, itemized wage statements; (4) failure to timely pay all wages upon termination; (5) failure to pay all vacation wages; and (6) unfair competition. Moore Decl., ¶ 6. On March 25, 2025, to effectuate the terms of the Settlement, Plaintiff filed a First Amended Complaint adding a claim for civil penalties under the Private Attorneys General Act ("PAGA"). *Id.*

3. Discovery

After agreeing to participate in mediation, Defendant informally produced documents and information relevant to the claims alleged in advance of mediation, including without limitation timekeeping and payroll data for the putative class, as well as written wage and hour policies. Moore Decl., ¶ 7. Additionally, Defendant produced information and data points needed for a productive mediation, including without limitation, the number of putative class members, workweeks at issue, pay periods at issue, and compensation policies. *Id.* After a review and analysis of the documents and information produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could not be reached. *Id.*

4. Arms-Length Negotiations

On November 26, 2024, a mediation was held with Jeffrey Fuchsman, Esq., a well-respected mediator. Moore Decl., ¶ 8. 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. *Id*. Ultimately, the Parties accepted the mediator's proposal and agreed in principle on a class-wide resolution. *Id*.

In the months that followed, the Parties finalized the terms of settlement and executed the Stipulation of Settlement ("Settlement"). *Id*., Exh. 1.

III. ARGUMENT

A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. (*See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, requires trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"; *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable").

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

1. Numerosity is Satisfied.

Here, there are approximately 185 Settlement Class Members. Moore Decl., ¶ 10. Therefore, numerosity is satisfied. *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

Further, a class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is defined as "All current and former non-exempt employees employed by Defendant in California during the period of June 21, 2019 to February 24, 2025 or preliminary approval of the settlement, whichever is sooner." Moore Decl., ¶ 10.

2. Commonality is Satisfied.

The focus in a certification dispute is not the merits, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 327. Here, Settlement Class Members' claims arise from Defendant's common, uniform policies and practices that applied to Plaintiff and Settlement Class Members during the class period. Moore Decl., ¶ 11. As a result of the common and uniform policies and practices that applied to all Settlement Class Members, their claims involve common questions of law and fact, including but not limited to:

1. Whether Defendant provided all legally compliant meal periods;
2. Whether Defendant authorized and permitted all legally compliant rest periods;
3. Whether Defendant timely furnished legally compliant wage statements;
4. Whether Defendant paid all vested vacation pay and/or PTO at termination of employment;
5. Whether Defendant paid all wages owed to its terminated/separated employees at the time of said termination/separation; and
6. Whether Defendant engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through its wage and hour policies and practices and whether as a result Defendant owes restitution.

These alleged practices result in common questions as to the affected Settlement Class Members. *See e.g.*, *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

3. Typicality is Satisfied.

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action).

Here, Plaintiff's claims are typical of those held by the Settlement Class. First, Plaintiff was employed by Defendant during the Class Period (June 21, 2019 through February 24, 2025 or preliminary approval) as a housekeeper and was subject to Defendant's wage and hour policies at issue in this case. *See* Mendoza-Hernandez Decl., ¶ 2. Second, Plaintiff was injured by the same challenged policies that injured the Settlement Class as a whole. For example, Plaintiff asserts that she, like the Settlement Class, was not provided all meal and rest periods, was not provided accurate wage statements, was not paid all earned vacation wages, and was not paid all wages upon the end of her employment. *See* Mendoza-Hernandez Decl., ¶¶ 2-6. Given that Defendant's policies and practices applied to all of its non-exempt employees, Settlement Class Members possess a similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, because Plaintiff's claims and those of the Settlement Class all arise from the same conduct, typicality is satisfied.

4. Adequacy is Satisfied.

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

Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class she seeks to represent. *See* Mendoza-Hernandez Decl., ¶ 12. Indeed, Plaintiff's interests are aligned with those of the Settlement Class Members, as they all seek monetary relief under the same facts and legal theories. *See* Mendoza-Hernandez Decl., ¶¶ 2-6. Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. Moore Decl., ¶ 24; *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class).

Further, Class Counsel also have extensive experience in wage and hour class action litigation and have vigorously litigated this case. *See* Moore Decl., ¶¶ 2-4; Declaration of Scott M. Lidman ("Lidman Decl."), ¶¶ 2-8; Declaration of Tiara Gose-Hardy ("Gose-Hardy Decl."), ¶¶ 2-4; and Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8.

B. THE PROPOSED CLASS ACTION SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (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. *See e.g.*, *Hanlon*, *supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement agreement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

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

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 the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. The Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case for the following reasons.

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

Although Plaintiff maintains that her claims are meritorious, she acknowledges there were substantial risks and uncertainty in proceeding with litigation. As described below, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and class certification. Thus, while Plaintiff was prepared to litigate these claims through certification and trial, success was not certain.

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

Although the parties engaged in informal discovery throughout this action, the parties still had significant discovery to complete in formal litigation had the matter not settled. Moore Decl., ¶ 27. 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. *Id*. 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. *Id*. This Settlement avoids those risks and the accompanying expense. Thus, this factor supports preliminary approval.

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

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

d. **<u>Overview of the Settlement Agreement</u>**

If the Court approves this Settlement, Defendant will pay a Gross Settlement Amount ("GSA") of $320,000.00.[2] Moore Decl., ¶ 9, Exh. 1 (Settlement, ¶ 4). Significantly, this Settlement is **<u>non-reversionary</u>**, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.* (Settlement, ¶ 4.C). Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. Moore Decl., ¶ 9. The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	**$320,000.00**
Minus Court-approved attorneys' fees (1/3 of GSA):	$106,666.66
Minus Court-approved, verified costs (up to):	$15,000.00
Minus Court-approved Class Representative Service Award (up to):	$10,000.00
Minus Settlement Administration Costs:	$7,950.00
Minus PAGA Penalties to LWDA:	$22,500.00
Minus PAGA Penalties to Aggrieved Employees:	$7,500.00
Net Settlement Amount ("NSA"):	**$150,383.34**

Id.

The Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members. Moore Decl., ¶ 9. Defendant agrees to deposit the Gross Settlement Amount in nine (9) monthly equal installments of $35,555.56 each, with the first payment due within thirty (30) days of the Court entering an order granting preliminary approval. *Id*. Defendant agrees to deposit with the Settlement Administrator the employer's share of payroll taxes by no later than the deadline of the ninth installment payment. *Id*.; Exh. 1 Settlement ¶ 4.B.

After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and PAGA penalties, the Settlement requires Defendant to

[2] Defendant represents that there are an estimated 11,504 workweeks worked by the class members during the Class Period. If the number of pay periods worked during the Class Period is more than 10% greater than this figure (i.e., if there are 12,655 or more pay periods worked by the settlement Class Members during the Class Period), Defendant agrees to increase the Gross Settlement Amount on a proportional basis (i.e., if there was 2% increase in the number pay periods worked during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 2%). *See* Settlement ¶ 3.D.

pay a Net Settlement Amount ("NSA") of at least **$150,383.34** to all Settlement Class Members who do not timely opt out. Moore Decl., ¶ 9.

The Individual Settlement Awards shall be determined as follows:

> Each participating Settlement Class member shall receive a proportionate settlement share based upon the number of actual workweeks worked during the Class Period, the numerator of which is the Settlement Class member's total actual workweeks worked during the Class Period, and the denominator of which is the total actual workweeks worked by all Settlement Class members who worked during the Class Period. *See* Settlement, ¶ 5.B.i.

According to Defendant, there are approximately 185 total Settlement Class Members (who worked a total of approximately 11,504 workweeks during the relevant time period). Moore Decl., ¶10. Thus, the average Individual Settlement Awards (assuming there are no opt-outs) is projected to be approximately **$812.88**. *Id*.

Settlement Class Members will have sixty (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, ¶ 10.C. Those Settlement Class Members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant included within the Settlement, for the period between June 21, 2019 and February 24, 2025, or the date of preliminary approval of the settlement, whichever is sooner. *See* Settlement, ¶ 3.

As this is a non-reversionary Settlement, 100 percent of the NSA shall be consumed in that if a Settlement Class Member opts-out of the Settlement, the portion allocated to the individual who opts-out shall be added to the NSA and redistributed and allocated to the Settlement Class Members who did not opt-out.

e. **The Parties Engaged in Fair and Honest Negotiations**

This Settlement was a result of serious, informed, non-collusive negotiations with the assistance of a mediator. After the detailed review of the information, data and other documents and policies produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. Moore Decl., ¶ 7. This discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could not be reached. *Id*.

On November 26, 2024, the parties participated in mediation with Jeffrey Fuchsman, Esq. Moore

Decl., ¶ 8. 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. *Id*. Ultimately, the parties agreed in principle on a class-wide resolution. *Id*. In the months that followed, the parties finalized the terms of settlement and executed the Settlement. *Id*.; Exhibit 1.

Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result of factual investigation and data analysis; the exchange of substantial information and class data, including timekeeping and payroll records; wage and hour policies and practices; arm's length negotiations by counsel; and mediation before an experienced wage and hour class action mediator. *See* Moore Decl., ¶ 8; *See Kullar*, *supra*, 168 Cal.App.4th at 130. Thus, these factors support preliminary approval.

Further, there are no deficiencies in the Settlement. The Settlement does not grant preferential treatment to the class representative or segments of the class, and is within the range of possible approval, as discussed in detail below. The Settlement will provide monetary relief to Settlement Class Members. The amounts proposed for Class Counsel's attorneys' fees and costs, and service award are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

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

<u>Failure to Provide Meal Periods</u>: Plaintiff alleges that Defendant failed to provide its non-exempt employees all required meal periods. Moore Decl., ¶ 12. Specifically, Plaintiff alleges that Defendant failed to provide 30-minute meal periods before the end of the fifth hour of work and/or or failed to provide a meal period at all. *Id*. Plaintiff estimates an approximate 42 percent non-compliant rate, with non-exempt employees working five (5) days per week over 6.0 hours, and calculates Defendant's exposure at $406,103 (11,504 workweeks x 5 shifts over 6.0 hours/week x .42 violation rate x $16.82 average hourly rate). *Id*.

Conversely, Defendant contends 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 Defendant. Moore Decl., ¶ 13. Defendant points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. *Id.*; *Brinker*, *supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Finally, Defendant contends Plaintiff's meal period claim is not suited for class certification, since individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 30% for the risk of non-certification, and an additional 45% to account for Defendant's defenses on the merits to arrive at an estimated exposure of $156,349.66. *Id.*

Failure to Authorize and Permit Rest Periods: Plaintiff further alleges that Defendant failed to provide any rest periods on shifts worked in excess of 3.5 hours due to the work demands imposed. Moore Decl., ¶ 14. Based on an estimated one rest period violation per shift, Plaintiff estimates Defendant's liability at $966,911 (11,504 workweeks x 5 shifts over 3.5 hours/week x $16.81 average hourly rate). *Id.*

Defendant contends that its policies and procedures authorized and permitted Settlement Class Members to take all off-duty rest periods in compliance with California law. Moore Decl., ¶ 15. Defendant 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 evolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 20% for the risk of non-certification, and an additional 60% to account for Defendant's defenses on the merits to arrive at an estimated exposure of $309,411.52. *Id.*

Failure to Provide Accurate, Itemized Wage Statements: Plaintiff alleges that Defendant issued inaccurate wage statements in violation of Labor Code section 226 as a result of the alleged unpaid meal and rest period premium wages described above. Moore Decl., ¶ 16. Plaintiff's data analysis reflected that there were approximately 2,626 wage statements issued during the relevant time period. *Id.* Therefore, Plaintiff calculated Defendant's maximum exposure for wage statement violations at approximately $260,650 (($50.00 x 39 current employees) + ($100.00 x 2,587 subsequent wage statements)). *Id.*

Defendant 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. Moore Decl., ¶ 17. As such, Plaintiff discounted the calculated exposure by 20% for a risk of non-certification and an additional 20% for a risk of being unsuccessful on the merits, to arrive at an estimated total of $166,816.00. *Id*.

<u>Failure to Timely Pay All Wages Upon Termination</u>: Plaintiff alleges that Defendant is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages, i.e., meal and rest period premiums, upon the separation of employment. Moore Decl., ¶ 18. There are approximately 100 Settlement Class Members who have separated their employment during the relevant time period. *Id*. Therefore, Plaintiff calculated Defendant's maximum exposure for waiting time penalties at approximately $403,440 (8 hours x $16.81 average hourly rate x 30 days x 100 former employees). *Id*.

Defendant 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. Moore Decl., ¶ 19. *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by 40% for the risk of non-certification, and an additional 45% to account for Defendant's defenses on the merits, to arrive at an estimated exposure of $133,135.20. *Id*.

<u>Civil Penalties Under The PAGA</u>: Plaintiff seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Moore Decl., ¶ 20. Plaintiff calculated Defendant's maximum exposure at $262,600 (2,626 pay periods x $100 initial violation rate). *Id*.; *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision).

Defendant argues that Plaintiff's PAGA claim will fail for the same reasons that her underlying claims will fail. Moore Decl., ¶ 21; *see Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant 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 Defendant liable for any of Plaintiff's claims.

Id.; *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc*. (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiff discounted the maximum exposure figure by 40% for a risk of being unsuccessful on the merits, and an additional 55% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of $70,902.00. *Id*.

g. <u>The Settlement Is Within the Range of Possible Approval</u>

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately $836,614.38. Moore Decl., ¶ 23. The proposed settlement of $320,000.00 therefore represents approximately 38.2% of the reasonably forecasted recovery for the Settlement Class. *Id*. 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>*over $812*</u>. *Id*.

The proposed settlement reflects approximately 38.2% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks and will provide tangible monetary compensation for disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Thus, Plaintiff submits the settlement is within the range of possible approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

h. <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, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Moore Decl., ¶¶ 2-4; Lidman Decl., ¶¶ 2-8;; Gose-Hardy Decl., ¶¶ 2-4; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth review of Defendant's policies and timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* Moore Decl., ¶ 7. The Settlement was also reached with the assistance of an experienced and respected wage and hour class action mediator. Moore Decl., ¶ 8. This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

i. <u>Attorneys' Fees and Costs</u>

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

Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which is currently estimated to be $106,666.66, and up to $15,000 in verified costs reimbursement. *See* Settlement, ¶ 4.C(4); Moore Decl., ¶ 23.

Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Moore Decl., ¶ 23. Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Moore Decl., ¶ 25. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Defendant's documents and policies, analyzing Settlement Class Members' timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. Moore Decl.,

¶ 23. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class Members, preparing the final approval papers and attending the Final Approval hearing. *Id*.

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, significant work undertaken, the extremely positive results obtained for the class, and the efficiency with which the Parties conducted the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar analysis.

j. <u>Administration Costs</u>

Phoenix Settlement Administrator's fees and expenses are estimated not to exceed $7,950.00. *See* Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed concurrently herewith ("Lawrence Decl."). This includes sending the Notice in both English and Spanish. Lawrence Decl., ¶ 16. This request is reasonable in light of the proposed class size of approximately 185 Settlement Class Members, the costs and expenses associated with administering the notices in both English and Spanish, and distributing the award and tax documents.

k. <u>Class Representative Service Award</u>

"[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of $10,000.00 for her services to the Settlement Class. Moore Decl., ¶ 26; Settlement, ¶ 4.C(3); Mendoza-Hernandez Decl., ¶ 13. As will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, participating in the mediation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Moore Decl., ¶ 26; Mendoza-Hernandez Decl., ¶¶ 2-13; Settlement ¶ 4.C(3).

l. **<u>Payroll Taxes</u>**

The Settlement provides that the employer's share of payroll taxes shall be paid separately from, and in addition to, the Gross Settlement Amount. Settlement ¶ 4.D. Defendant will deposit with the Settlement Administrator the employer's share of payroll taxes by no later than the deadline for the ninth installment payment. Settlement ¶ 4.B.

m. **<u>Uncashed Funds</u>**

The Settlement provides that Settlement Class Members with 180 days from the date the Settlement Administrator mails the checks and any funds remaining after 180 days be transferred to the California Secretary of State-Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class member. Settlement ¶ 4.E. As all settlement funds will be distributed to the Settlement Class Members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

C. **<u>SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES</u>**

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide monetary relief to participating Settlement Class Members. The amounts proposed for Class Counsel's attorneys' fees and costs, and service award are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

D. **<u>THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE TO SETTLEMENT CLASS MEMBERS</u>**

Before the final approval hearing, the Court requires adequate notice of the settlement be given to all class members. This Court should order distribution to the Settlement Class of the proposed Notice Packet (which is comprised of the Notice of Pendency of Class Action and Proposed Settlement) by first-class regular U.S. Mail, postage prepaid, using last known mailing address information provided by Defendant. *See* Settlement, ¶ 10.B, Exh. 2. The Notice Packet will be mailed in both English and Spanish due to the nature of Defendant's workforce.

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 & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff proposes that the Settlement be administered by Phoenix, an experienced class action settlement administrator. *See generally* Lawrence Decl. and attached exhibits. Class Data will be ascertainable through Defendant's personnel and payroll records, which Defendant will provide to Phoenix within 20 calendar days of preliminary approval of the Settlement. *See* Settlement ¶ 10.A. Within 10 business days of receipt of the Settlement Class Members' addresses, Phoenix will run the names of all Settlement Class Members through the United States Postal Service Notice of Change of Address database (which provides updated addresses for any individual who has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address), calculate the estimated Settlement Award for each Settlement Class member, and mail the notices to Settlement Class Members. *See* Settlement ¶ 10.B. To the extent that any notices are returned, Phoenix will perform a "skip trace" to track any Class Member's current mailing address. *See* Settlement ¶ 10.H.

The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because it advises Settlement Class Members of the nature of the claims, basic contentions and denials of the parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class member, provides them the opportunity to contest their total workweeks included in the notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Moore Decl., Exh. 1 (Settlement, Exh. 2). The proposed Notice Packet will also notify Settlement Class Members of the final approval hearing date, provide Settlement Class Members the contact information for Class Counsel, and advise Settlement Class Members that they may enter an appearance through counsel if they wish to.

Additionally, as stated in the proposed Notice Packet, any changes to the Final Approval hearing date, time, or location will be posted on the Settlement Administrator's website. *See* Moore Decl., Exh. 1 (Settlement, Exh. 2). Furthermore, the Settlement Administrator will post the notice of final judgment on its website. *Id*. 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.

E. 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.

IV. 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 Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

Respectfully submitted,

Dated: April 8, 2025 LIDMAN LAW, APC

By: Milan Moore

Milan Moore

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