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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ALICIA ESQUIVEL GERLETTE, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

ALTMAN SPECIALTY PLANTS, LLC, a California Limited Liability Company; and DOES 1 through 100,

Defendants.

Case No. 30-2023-01324651-CU-OE-CXC

[*Case assigned for all purposes to the Hon. Layne H. Melzer, Dept. CX102*]

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT

Date: November 13, 2025
Time: 2:00 p.m.
Reservation No.: 74595924
Dept.: CX102

Action Filed: May 10, 2023
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on November 13, 2025, at 2:00 p.m., or as soon thereafter as the matter may be heard, in Department CX102 of the above-entitled Court, located at 751 W. Santa Ana Blvd, Santa Ana, California 92701, Plaintiff Alicia Esquivel Gerlette, 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 Stipulation of Settlement ("Settlement Agreement") in this lawsuit, entered into between Plaintiff and Defendant Altman Specialty Plants, LLC ("Defendant");
2. Pursuant to California Code of Civil Procedure § 382, provisional certification of the Settlement Class defined as follows:

> **Settlement Class** - all current and former non-exempt employees who worked for Defendant in California anytime between May 10, 2019 and February 28, 2025 ("Class Period") and who did not sign an arbitration agreement containing a class action waiver.

3. Preliminary appointment of Alicia Esquivel Gerlette as Class Representative;
4. Preliminary appointment of Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham, and Aden M. Khachadoorian 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 award amounts for the Class Representative Enhancement Award, Settlement Administrator costs, payment to the LWDA for its 75% share of Private Attorneys General Act civil penalties, as well as attorneys' fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Notice of Class Action Settlement (the "Class Notice") and entry of the Proposed Order instructing the Class Notice to be disseminated to the proposed Settlement Class as provided in the Settlement.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the declarations of Andrew J. Rowbotham, Paul K. Haines, Fletcher W. Schmidt, Aden M. Khachadoorian, Alicia Esquivel Gerlette, Jodey Lawrence, 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: June 26, 2025

Respectfully Submitted,
HAINES LAW GROUP, APC

By: ______________________________
Andrew J. Rowbotham
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Alicia Esquivel Gerlette ("Plaintiff") filed this putative class action (the "Action") on behalf of all current and former non-exempt employees who worked for Defendant Altman Specialty Plants, LLC ("Defendant") in California at any time between May 10, 2019 and February 28, 2025 (the "Class Period"), and who did not sign an arbitration agreement containing a class action waiver. Plaintiff and Defendant are referred to collectively herein as the "Parties."

Through this Motion, Plaintiff respectfully requests that the Court preliminarily approve this non-reversionary class and representative action settlement (the "Settlement")[1], which will fully resolve the Action.[2] Based on data provided by Defendant, there are approximately 246 potential Settlement Class Members. Defendant will pay a Maximum Settlement Amount ("MSA") of $500,000.00. This represents a significant result for Settlement Class Members, who will release only those claims that were actually asserted, or that could have been asserted based on the operative facts alleged in the Action.

After deductions for Plaintiff's Enhancement Award, Settlement Administrator costs, the Private Attorneys General Act ("PAGA") payment, and attorneys' fees and costs to Class Counsel, the remaining amount (the "Net Settlement Amount"), approximately $221,333.33, will be distributed to the Settlement Class. Significantly, Class Members are not required to file a claim form to receive their share of the Settlement. All Class Members who do not opt out will

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[1] The Stipulation of Settlement ("Settlement Agreement") is attached to the Declaration of Andrew J. Rowbotham as Exhibit A, and the proposed Notice of Class Action Settlement ("Class Notice") is attached as Exhibit B.

[2] The Settlement also includes a release of PAGA civil penalties on behalf of all current and former non-exempt employees who worked for Defendant in California at any time between June 14, 2022 and February 28, 2025 (the 'PAGA Period'). These 5,090 individuals are referred to as "PAGA Aggrieved Employees." *See* Settlement § 2.B. The PAGA release includes all claims for civil penalties under PAGA that are based on the violations alleged and facts identified in the Action and Plaintiff's LWDA letter dated June 14, 2023 and Plaintiff's amended letter to the LWDA dated March 10, 2025, or which reasonably could have been brought based on the factual allegations therein, that arose during the PAGA Period. *Id.*; *see also* Rowbotham Decl., Exhibit C (Plaintiff's LWDA Letters).

automatically receive an Individual Settlement Payment. The highest estimated Individual Settlement Payment is $1,993.50, and the average payment is estimated to be $899.73.

This proposed Settlement falls well within the range of possible approval in light of the substantial legal and factual challenges Plaintiff faced, the risks and costs of continued litigation, and the meaningful monetary relief provided to the Settlement Class. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

Defendant is the self-described largest horticultural grower in the United States, with operations in nine states, including California. Rowbotham Decl., ¶ 13. Plaintiff was employed by Defendant as a non-exempt "Merchandiser" from approximately February 7, 2019, until approximately February 21, 2022. Declaration of Alicia Esquivel Gerlette ("Gerlette Decl."), ¶ 2. Plaintiff's primary job duties included ordering, monitoring, and stocking inventory for Defendant's various Southern California nursery locations. *Id*. Like all Settlement Class Members, Plaintiff was subject to Defendant's wage-and-hour policies and practices.

Plaintiff filed her original class action complaint on July 29, 2022. Rowbotham Decl., ¶ 14. Defendant's counsel then notified Plaintiff's counsel that Plaintiff had signed an arbitration agreement with a class action waiver during her employment and requested that she dismiss her complaint and pursue her claims in individual arbitration. *Id*. On October 20, 2022, Plaintiff submitted her demand for individual arbitration to the American Arbitration Association ("AAA"). *Id.* On October 24, 2022, Plaintiff's request for dismissal of her class action complaint without prejudice was granted. *Id*.

On March 27, 2023, the AAA issued an initial arbitration invoice to Defendant. Rowbotham Decl., ¶ 15. On April 17, 2023, the AAA advised Defendant that if the outstanding invoice was not paid by April 26, 2023, the matter would be administratively closed pursuant to California Code of Civil Procedure § 1281.98(a)(1). *Id*. Defendant did not wire payment of the invoice until May 5, 2023 and Plaintiff withdrew her individual arbitration from the AAA. *Id.*

On May 10, 2023, Plaintiff refiled her original class action complaint on behalf of all individuals who did not have an arbitration agreement containing a class action waiver, alleging that Defendant: (i) failed to pay all minimum wages; (ii) failed to pay all overtime wages; (iii) failed to provide all meal periods; (iv) failed to authorize and permit all lawful rest periods; (v) failed to pay all wages owed upon separation of employment; (vi) failed to reimburse necessary business expenses; and (vii) violated California's Unfair Competition Law. Rowbotham Decl., ¶ 16. On October 23, 2023, Plaintiff filed a First Amended Complaint, adding a cause of action for civil penalties under PAGA. *Id*. On June 25, 2025, Plaintiff filed the operative Second Amended Complaint. These theories of liability, along with Defendant's defenses, are discussed below.

A. PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES

1. Meal Period Violations

Plaintiff asserts that Defendant failed to provide Settlement Class Members with all timely, duty-free, and uninterrupted 30-minute meal periods to which they were entitled. Rowbotham Decl., ¶ 17; *see* Labor Code § 512(a); *see also Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1041 ("We conclude that, absent waiver, section 512 requires a first meal period no later than the end of an employee's fifth hour of work…"). Specifically, Plaintiff alleges that Defendant failed to provide compliant second meal periods for shifts worked in excess of 10 hours. Rowbotham Decl., ¶ 17. Plaintiff further alleges that Defendant maintained a policy and/or practice of automatically deducting 30 minutes from Settlement Class Members' daily shift times to account for a meal period, regardless of whether a meal period was actually provided. *Id.*

In response, Defendant contends that it maintained lawful meal period policies and practices throughout the Class Period. Rowbotham Decl., ¶ 18. Defendant asserts that, in addition to the compliant written policies, managers are trained to instruct employees to take meal periods in accordance with California law. *Id.* Defendant also contends that, to the extent any second meal periods are not recorded, employees validly waived their second meal period for shifts shorter than 12 hours. *Id.* Finally, Defendant asserts that its timekeeping and payroll records reflect substantial meal period compliance throughout the relevant time period, including the payment of meal period premiums. *Id*.

2. Rest Period Violations

Plaintiff asserts that Defendant failed to authorize and permit Settlement Class Members to take a "net" 10-minute rest period for every four hours worked or major fraction thereof. Rowbotham Decl., ¶ 19; *see* Wage Order No. 7, § 12(A). Specifically, Plaintiff alleges that Defendant's written policy provides that "rest periods are held at specific scheduled times" and that employees "must return to work immediately following the 10-minute rest break." Rowbotham Decl., ¶ 19. Plaintiff contends this policy effectively denied a full 10-minute uninterrupted rest period, as employees who left their work area were required to return before the 10 minutes elapsed to resume work on time. *Id*.

In response, Defendant maintains that it authorized and permitted all required rest periods. Rowbotham Decl., ¶ 20. Defendant asserts that rest periods begin upon arrival at the designated rest area, and that state and federal audits, along with time-and-motion studies, confirm compliance with applicable rest break requirements. Defendant further notes that its bell system for field employees provides more than 10 minutes of rest. Finally, Defendant argues that the claim is unmanageable and unsuitable for class certification, as it would require individualized inquiries into whether each employee was authorized and permitted to take a rest period on any given day. Because rest periods are not required to be recorded, Defendant contends that Plaintiff lacks common, documentary evidence to support her claim, resulting in an unmanageable series of mini-trials.

3. Failure to Reimburse Business Expenditures

Plaintiff further alleges that Defendant required Plaintiff and Settlement Class Members to use their personal cell phones to communicate with supervisors and track their time during the workweek. Rowbotham Decl., ¶ 21. Plaintiff's review of Defendant's payroll records indicated that cell phone reimbursements were expressly limited to employees in a "Driver" position. *Id.* As a result, Plaintiff and other non-driver employees were not reimbursed for any portion of their personal cell phone bills, despite being required to bear this necessary business expense. *See* Labor Code § 2802.

In response, Defendant asserts that its policy and practice is to reimburse all reasonable expenses incurred by employees in performing their job duties, including work-related personal cell phone use. Rowbotham Decl., ¶ 22. Defendant contends that Plaintiff's paystubs reflect reimbursement for her personal cell phone and, to the extent Plaintiff or any other Settlement Class Member failed to follow company policy for submitting reimbursement requests, Defendant lacked knowledge of any alleged unreimbursed expense. *Id*. Lastly, Defendant argues that this claim is not suitable for class certification because individual issues would predominate, namely, whether each employee was in fact required to use their personal cell phone for work, resulting in an unmanageable series of mini-trials. *Id.*

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

As a result of these alleged substantive violations, Plaintiff contends that Defendant is liable for derivative wage statement violations, waiting time penalties and civil penalties under the PAGA. Rowbotham Decl., ¶ 23. Defendant argues that the alleged wage statement violations were not "knowing and intentional," and that Plaintiff could not show she "suffer[ed] injury," as required by Labor Code § 226(e) for imposition of penalties. *See Amaral v. Cintas Corp*. (2008) 163 Cal. App. 4th 1157, 1201. Defendant further contends that it possesses strong, good-faith defenses to Plaintiff's underlying claims, thereby precluding recovery of waiting time penalties, which are available only for the "willful" failure to pay wages. *See* 8 Cal. Code Regs. § 13520 ("[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203… A good-faith dispute that any wages are due occurs when an employer presents a defense, based in law or fact, which, if successful, would preclude any recovery on the part of the employee.") Finally, Defendant asserts that, in light of its good-faith defenses, the Court would exercise its discretion to substantially reduce any PAGA penalties, even if Defendant were found liable for one or more of Plaintiff's underlying claims. Rowbotham Decl., ¶ 23.

B. <u>DISCOVERY AND MEDIATION</u>

Prior to engaging in protracted formal discovery, the Parties agreed to an informal exchange of documents and data in advance of private mediation. Rowbotham Decl., ¶ 24.

Specifically, Defendant provided Plaintiff with timekeeping and payroll records for an approximate 15% sampling of individuals who did not sign arbitration agreements, as well as an approximate 10% sampling of timekeeping and payroll records for employees in the PAGA Group. *Id.* Defendant also produced class-wide data points, employee handbooks, and other applicable policies in effect during the relevant time period. *Id*. Plaintiff's counsel and her retained expert analyzed these records to construct a comprehensive damages model estimating Defendant's likely exposure on each claim. *Id.*

On May 23, 2024, the Parties participated in a mediation session with the Hon. Glenda Sanders (Ret.). Rowbotham Decl., ¶ 25. During mediation, the Parties exchanged divergent views regarding Defendant's potential liability, exposure valuations, legal positions, and the likelihood of class certification. *Id*. With the assistance of Judge Sanders, the Parties ultimately reached a class-wide resolution of all claims, which was later memorialized in the Settlement Agreement.[3] *Id*.

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves this settlement, Defendant will pay a Maximum Settlement Amount of $500,000.00. *See* Settlement § 3. This Settlement is non-reversionary and Settlement Class members will automatically receive their Individual Settlement Payment unless they affirmatively opt-out of the Settlement. *Id*., § 3.C, 4.

Defendant will fund the MSA within 30 days of the Effective Date, which means the date upon which the Court signs and makes accessible to Defendant (whether via mailed notice or electronically on the Court's docket) an order granting final approval of the Settlement Agreement. *See* Settlement § § 2.C, 3.B.

The monetary terms of the Settlement are further broken down as follows:

[3] Plaintiff provided the LWDA with a copy of the Settlement Agreement, along with all moving papers associated with this Motion. *See* Rowbotham Decl., Exhibit D (LWDA Submission Confirmation).

Maximum Settlement Amount:	**$500,000.00**
Minus attorneys' fees (one-third):	$166,666.67
Minus attorneys' costs (up to):	$30,000.00
Minus Class Representative Enhancement Award:	$10,000.00
Minus LWDA PAGA Payment:	$37,500.00
Minus Settlement Administrator costs:	$34,500.00
Net Settlement Amount:	**$221,333.33**

1. <u>The Settlement Provides for Reasonable Monetary Payments</u>

After deducting amounts for court-approved attorneys' fees and costs, the Class Representative Enhancement Award, settlement administration costs[4], and the LWDA's 75% share of PAGA penalties, the remaining Net Settlement Amount of approximately $221,333.33 will be distributed to the Settlement Class Members. *See* Settlement § § 4.A-B. Twenty percent (20%) of each Individual Settlement Payment will be classified as wages, and eighty percent (80%) will be classified as interest and penalties. *Id.*, § 4.D. One hundred percent (100%) of payments to PAGA Aggrieved Employees for civil penalties will be classified as penalties. *Id*.

Defendant's records indicate that there are approximately 246 Settlement Class Members who worked during the Class Period. Rowbotham Decl., ¶ 26. Based on the allocation of the Net Settlement Amount, participating employees will receive, on average, an Individual Settlement Payment of approximately $899.73. *Id.* Settlement Class Members will have 60 calendar days from the mailing of the Class Notice to opt out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying settlement administration. *See* Settlement § 9.D. Individuals who do not opt out of the Settlement will be bound by its terms and will release any and all claims that were asserted, or that could have been asserted, based on the facts alleged in the Action or in Plaintiff's letter to the LWDA. *Id.*, § 2.A.

2. <u>Attorneys' Fees, Costs, and Enhancement Award</u>

As part of the Settlement, Plaintiff will apply for an enhancement award at the time of seeking final approval of the Settlement in the total amount of $10,000.00 for her service to the Settlement Class and her general release of all claims (known or unknown) against Defendant.

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[4] The Settlement Administrator's bid assumed notice would be sent to a maximum of 5,400 individuals, including all Settlement Class Members and PAGA Aggrieved Employees.

See Settlement § § 2.C, 3.C.3. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Plaintiff's requested enhancement award is intended to recognize the significant benefits conferred upon the Settlement Class due to the time and effort that Plaintiff expended on behalf of the Settlement Class. Some of the activities Plaintiff undertook to help procure the Settlement included providing factual information and documents to her attorneys, identifying potential witnesses, participating in multiple meetings with her attorneys to discuss the claims and legal theories at issue in the litigation, and making herself available for the entire day of mediation. Gerlette Decl., ¶ 5. Additionally, Plaintiff assumed significant personal risk by agreeing to serve as the named plaintiff in this case, including the possibility that prospective employers may search her name and discover that she previously initiated litigation against an employer. Plaintiff also agreed to a general release of all claims, including a waiver of the protections of California Civil Code § 1542. Rowbotham Decl., ¶ 27.

Additionally, although Plaintiff signed an arbitration agreement containing a class action waiver, Defendant breached that agreement by failing to timely pay arbitration fees. Rowbotham Decl., ¶ 28. As a result, Plaintiff was permitted to pursue her claims in court. *Id.* This allowed her to represent Settlement Class Members who had not signed arbitration agreements, giving them a practical opportunity to obtain relief on their non-PAGA claims through this class action, without having to retain individual counsel or initiate arbitration on their own. *Id*.

Class Counsel will also apply for an attorneys' fee award of $166,666.67 (one-third of the Maximum Settlement Amount), and up to $30,000.00 in verified litigation costs. *See* Settlement, § 3.C. Plaintiff submits that the requested fee represents fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel incurred substantial attorneys' fees in this matter, including: conducting a pre-filing investigation; retaining an expert and analyzing Plaintiff's claims; conducting legal research and analysis; reviewing documents and data produced by Defendant; building a comprehensive damages model; preparing for and attending mediation; negotiating and drafting the long-form Settlement Agreement; preparing this Motion for Preliminary Approval; and otherwise litigating the case. Rowbotham Decl., ¶ 29. Class Counsel will also expend additional time and resources in connection with finalizing the Settlement, including appearing at the hearing on this Motion, overseeing the notice and administration process, drafting the Motion for Final Approval and supporting materials, and attending the Final Approval Hearing, among other post-approval responsibilities. *Id*.

Both California and federal courts have recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. *See Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506 ("the percentage of fund method survives in California class action cases…"); *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (recognizing both the "percentage of recovery" and "lodestar/multiplier" methods). Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 *Newberg on Class Actions* § 14.6 (4th Ed. 2013) ("No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.").

Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement (one-third) in light of the substantial risks and the 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.

IV. <u>ARGUMENT</u>

A. <u>PRELIMINARY APPROVAL IS WARRANTED</u>

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

1. <u>Standard for Preliminary Approval</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 factors depending on the circumstances of each case." *Wershba*, *supra*, 91 Cal.App.4th at 245. As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

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

Class Counsel, with the help of a retained expert carefully vetted the claims at issue, reviewed a significant number of timekeeping and payroll records as well as relevant policy documents, and conducted a detailed analysis of that data to create a comprehensive damages model for Defendant's liability. *See* Rowbotham Decl., ¶ 30. Although Plaintiff steadfastly maintains that her claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with class certification and trial. As explained in detail in Section II.A., *supra*, Defendant presented numerous defenses to Plaintiff's claims, both on the merits and with respect to class certification. Although Plaintiff was prepared to litigate these claims through class certification and, ultimately, through trial, given the amount offered in settlement, Plaintiff predicted that it was unlikely that further litigation would result in a substantially more beneficial result for the Settlement Class. Thus, this factor supports preliminary approval of the Settlement.

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

This Settlement was reached after a significant informal exchange of class-wide timekeeping and payroll records and other relevant information for mediation purposes. *See* Rowbotham Decl., ¶ 31. Absent settlement, the Parties would need to spend substantial time and resources to engage in formal written and deposition discovery and prepare the case for class certification, summary judgment or adjudication, and ultimately trial.

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

Prior to reaching the Settlement, Plaintiff had not yet filed her motion for class certification. Considering Defendant's arguments and defenses against certification, there was a legitimate risk that the Court may deny certification of one or more of Plaintiff's claims, preventing the matter from continuing on a class-wide basis. Thus, this factor supports preliminary approval of the Settlement.

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

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

<u>Meal Period Violations</u>: **$3,639**

Plaintiff contends that Defendant failed to provide second meal periods for shifts worked in excess of 10.0 hours. Rowbotham Decl., ¶ 32. Additionally, Plaintiff asserts that Defendant's automatic deduction policy resulted in employees not receiving full, uninterrupted 30-minute meal periods. *Id.* Based on her expert's analysis of Defendant's records, Plaintiff calculated

Defendant's potential exposure for meal period violations to be $4,492 (269 violations x $16.70 average rate of pay). *Id.*

Defendant, however, maintains that it consistently implemented lawful meal period policies and practices throughout the Class Period. Rowbotham Decl., ¶ 33. Defendant contends that all legally compliant meal periods were made available to employees, and that any late, short, or missed meal periods were the result of employee choice rather than company policy. *See Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1040. Defendant further asserts that second meal periods were validly waived on shifts over 10 hours, and that such shifts were rare, as the average employee shift was less than 7 hours. Rowbotham Decl., ¶ 33. Moreover, Defendant claims that it paid numerous meal period premiums during the relevant time period for any non-compliant meal periods. *Id*. Finally, Defendant argues that Plaintiff's meal period claim is not suitable for class certification because individualized inquiries would be required to determine why each meal period was missed, short, or late, whether a valid waiver was in place, and whether a premium was paid, thus precluding common proof. *Id.* In light of these potential defenses, Plaintiff applied a 10% reduction to account for the risk of non-certification and a separate 10% reduction to account for the risk of being unsuccessful on the merits or recovering reduced damages. This resulted in a discounted estimated exposure of $3,639. Rowbotham Decl., ¶ 33.

<u>Rest Period Violations</u>: **$168,336**

Plaintiff's data analysis determined that non-exempt employees worked an aggregate total of 40,320 shifts in excess of 3.5 hours during the relevant time period. Rowbotham Decl., ¶ 34. Plaintiff attributed a rest period violation to each of these shifts based on Defendant's allegedly unlawful rest period policy and practice, which failed to authorize and permit full "net" ten-minute rest periods.[5] *Id*. Accordingly, Plaintiff calculated Defendant's maximum potential

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[5] Plaintiff's operative complaint includes allegations that Defendant failed to separately compensate rest periods for piece-rate employees. Plaintiff also alleged claims for unpaid minimum and overtime wages based on Defendant's rounding practices. Following a review of the class data produced in connection with mediation, Plaintiff determined that Defendant's records reflected separate compensation for rest periods during the relevant time period and that rounding practices did not result in any material underpayment of minimum or overtime wages.

exposure on this claim to be $673,344 (40,320 rest period violations x $16.70 average rate of pay). *Id*.

Defendant maintains that it consistently authorized and permitted Settlement Class Members to take all rest periods to which they were entitled under California law. Rowbotham Decl., ¶ 35. Defendant asserts that employees were not required to begin their rest periods until they reached their designated rest areas, and further contends that its facilities were regularly audited by state and federal authorities to ensure compliance with rest break requirements. *Id*. Defendant also states that it conducted time-and-motion studies confirming employees received at least the minimum rest period time required by law, and that it implemented a bell system for field employees that provided more than 10 minutes of rest. *Id*. In light of these asserted defenses, Plaintiff applied a 50% reduction to account for the risk of non-certification, and an additional 50% reduction for the risk of losing on the merits or recovering reduced damages. This results in a discounted estimated exposure of $168,336. Rowbotham Decl., ¶ 35.

Failure to Reimburse Violations: **$16,956**

Plaintiff asserts that she and other Settlement Class Members were required to use their personal cell phones for work-related purposes, including communication with supervisors and timekeeping. Rowbotham Decl., ¶ 36. Based on this usage, Plaintiff contends that $25 per month represents a reasonable approximation of the unreimbursed portion of an employee's monthly cell phone bill. *Id*. Accordingly, Plaintiff calculated Defendant's potential exposure on this claim to be $67,825 (2,713 work months x $25 monthly reimbursement). *Id.* Defendant argues that its policies and practices provide for the reimbursement of all reasonable business expenses incurred by employees in the performance of their job duties, including personal cell phone use. Rowbotham Decl., ¶ 37. Defendant further contends that Plaintiff's paystubs reflect reimbursement for such use, and that to the extent Plaintiff or any other Settlement Class Member failed to follow Defendant's reimbursement policy, the company lacked knowledge of any unpaid

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Accordingly, these theories were determined to contribute only nominal value to the overall settlement, and the *Kullar* analysis focuses on the claims that provided meaningful settlement value.

expenses. *Id*. Defendant also maintains that this claim is not appropriate for class certification because it would require individualized inquiries into whether each employee was in fact required to use their personal cell phone for work, resulting in an unmanageable series of mini-trials. *Id*. In light of these asserted defenses, Plaintiff applied a 50% reduction to account for the risk of non-certification and an additional 50% reduction for the risk of losing on the merits or recovering reduced damages. This resulted in a discounted estimated exposure of $16,956. Rowbotham Decl., ¶ 37.

<u>Wage Statement Violations</u>: **$102,425**

Based on the data provided by Defendant for mediation, 126 employees received a total of 4,160 wage statements during the one-year statutory period applicable to wage statement penalties. Rowbotham Decl., ¶ 38. Plaintiff calculated Defendant's maximum potential exposure on this claim to be $409,700, (126 initial violations x $50 per violation + 4,034 subsequent violations x $100 per violation). *Id*. Defendant contends that employees cannot establish that they "suffer[ed] injury" as required by Labor Code § 226(e), and that even if a technical violation occurred, Plaintiff cannot demonstrate that any such violations were "knowing and intentional." Rowbotham Decl., ¶ 39. Defendant also argues that any wage statement penalties would be derivative of the underlying claims and therefore fail if those claims are not certified or succeed only in part. *Id.* In light of these arguments, and the risk that this claim may not be certified or may be unsuccessful on the merits, Plaintiff applied a 50% reduction for the risk of non-certification and an additional 50% reduction for the risk of prevailing only partially or not at all. This results in a discounted estimated exposure of $102,425. Rowbotham Decl., ¶ 39.

<u>Waiting Time Penalties</u>: **$196,392**

Based on data provided by Defendant in connection with mediation, 196 employees separated from employment with Defendant during the three-year statutory period applicable to waiting time penalties. Rowbotham Decl., ¶ 40. Plaintiff calculated Defendant's maximum potential exposure on this claim to be $785,568 (196 employees x $16.70 average hourly rate x 8 hours per day x 30 days). *Id*. Defendant contends that it made good-faith efforts to pay all final wages due at the time of separation, thereby precluding a finding of "willfulness" as required to impose penalties under Labor Code § 203 and 8 Cal. Code Regs. § 13520. Rowbotham Decl., ¶ 41. Defendant further argues that because waiting time penalties are entirely derivative, this claim cannot succeed if Plaintiff's underlying claims are not certified or are unsuccessful on the merits. *Id*. In light of these arguments, Plaintiff applied a 50% reduction to account for the risk of non-certification and an additional 50% reduction to account for the risk of being unsuccessful on the merits, including failure to establish willfulness. This results in a discounted estimated exposure of $196,392. Rowbotham Decl., ¶ 41.

<u>PAGA Penalties</u>: **$157,181**

Assuming that Plaintiff could prove at least one underlying Labor Code violation in each pay period within the PAGA Period, Plaintiff calculates Defendant's maximum potential exposure for civil penalties under the PAGA to be $15,718,100 (157,181 pay periods x $100 per pay period). Rowbotham Decl., ¶ 42; *see Amaral, supra*, 163 Cal.App.4th at 1207 (holding that the "initial" penalty rate continues to apply until the employer is on notice of the violation). However, Plaintiff acknowledges that PAGA penalties are entirely derivative of the underlying violations, which Defendant disputes both factually and legally. *See e.g.*, *Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5. Defendant further asserts that its payroll and timekeeping records reflect substantial compliance, particularly within the PAGA group, and notes that it was regularly audited by state agencies in the latter portion of the relevant period, during which Defendant maintained almost perfect compliance. Rowbotham Decl., ¶ 43.

Even if liability were established, Plaintiff recognizes that the Court has discretion under Labor Code § 2699(e)(2) to reduce any penalty award deemed excessive, duplicative, or unjust. *See Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 529 (penalties reduced to $5 per violation); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047 at *4 (penalties reduced from $2.8 million to $500,000); *Kennedy v. Arm Strong Towing Services, Inc*., 2017 WL 9486773, at *3 (Cal.Super.) (reducing penalties by over 70%). In light of these risks, Plaintiff applied a 90% discount for the likelihood that the scope of the PAGA claim would be narrowed due to manageability concerns, and another 90% discount for the likelihood that penalties would be substantially reduced. This results in a discounted estimated exposure of $157,181. Rowbotham Decl., ¶ 44.

Using these estimates for all claims, Plaintiff projects a total potential recovery of approximately $644,929. Rowbotham Decl., ¶ 45. The $500,000 Maximum Settlement Amount thus represents approximately 77.5% of projected recovery, a strong result that avoids the delay, cost, and risk of continued litigation. *Id*. Given the risks of non-certification, adverse merits rulings, and judicial penalty reductions, the proposed Settlement is fair, reasonable, and adequate. *See e.g.*, *Altamirano v. Shaw Industries, Inc.*, (N.D. Cal. 2015) 2015 WL 4512372, at *9 ("[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient… to grant preliminary approval…") Preliminary approval is appropriate here, as the Settlement provides significant monetary relief to Settlement Class Members without the uncertainty, delay, and burden of further litigation.

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

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent and experienced counsel who possess extensive experience litigating wage and hour class actions from both the plaintiff and defense side and have been appointed as class counsel in numerous cases alleging similar claims. *See* Rowbotham Decl., ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-11; Declaration of Fletcher W. Schmidt ("Schmidt Decl."), ¶¶ 2-9; Declaration of Aden M. Khachadoorian ("Khachadoorian Decl."), ¶¶ 2-6. Class Counsel, with the help of their retained expert, conducted an extensive review of Defendant's records produced for mediation as well as relevant policies in effect during the relevant time period. Rowbotham Decl., ¶ 46. Class Counsel also drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id*. The Settlement was also reached with the input and assistance of the Hon. Glenda Sanders (Ret.), an experienced and highly respected wage and hour class action mediator, and a former judge of the Orange County Superior Court. *Id*. This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

2. The Preliminary Approval Standard is Met

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

a. The Settlement is Within the Range of Possible Approval

The proposed Settlement reflects an excellent recovery for the Settlement Class members in light of the significant risks of litigation. The proposed Settlement will provide substantial compensation for contested claims and derivative penalties, and the estimated average payment of $899.73 greatly exceeds the average payment achieved in other wage and hour class action settlements. *See e.g., Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. June 11, 2012) ($198.70 gross recovery per class member considered substantial recovery). Plaintiff submits that the proposed Settlement is within the range of possible approval, such that notice should be provided to the Settlement Class members so they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

b. The Settlement Resulted from Serious, Informed Negotiations

This proposed Settlement is entitled to an initial presumption of fairness (*see Kullar*, *supra*, 168 Cal.App.4th at 130) as it is the result of the exchange of substantial information, including timekeeping and payroll data which was analyzed by Plaintiff's counsel and her expert, arm's length negotiations by counsel; mediation before an experienced wage and hour class action mediator; and additional months of negotiating and finalizing the terms of the long-form Settlement Agreement. *See* Rowbotham Decl., ¶ 47. Thus, the proposed settlement is entitled to an initial presumption of fairness. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

c. The Settlement is Devoid of Obvious Deficiencies

The Settlement will provide substantial monetary relief to Settlement Class members.

Moreover, the amounts proposed for Plaintiff's Enhancement Award, settlement administration costs, attorneys' fees and costs to Class Counsel, and the LWDA's share of PAGA penalties are all reasonable and appropriate. Because the Settlement is devoid of obvious deficiencies, this final factor supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS

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

1. The Proposed Class is Ascertainable and Numerous

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement Class is defined as all current and former nonexempt employees who worked for Defendant in California anytime between May 10, 2019, and February 28, 2025 and did not sign an arbitration agreement containing a class action waiver. According to Defendant's records, the Settlement Class consists of approximately 246 individuals, rendering it impracticable to gather all the Settlement Class Members and bring them before the Court. *See* Rowbotham Decl., ¶ 48. Thus, the proposed Settlement Class satisfies the numerosity requirement.

2. Common Issues of Law and Fact Predominate

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

3. <u>The Claims of the Named Plaintiff Are Typical</u>

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347. Here, Plaintiff's claims are typical of those held by the members of the proposed Settlement Class. Like other Settlement Class members, Plaintiff was employed by Defendant in California during the Class Period. Gerlette Decl., ¶ 2. Defendant regularly failed to provide Plaintiff all required meal periods, failed to authorize and permit "net" 10-minute rest periods, and did not reimburse Plaintiff for all of work expenses. *Id.*, ¶ 3. Plaintiff was therefore impacted by the same challenged policies that allegedly injured the Settlement Class and was subject to the same defenses forwarded by Defendant as to the Settlement Class.

4. <u>Plaintiff and Class Counsel Will Fairly Represent the Class</u>

The adequacy of representation requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capitol People First v. Department of Developmental Services* (2007)155 Cal.App.4th 676, 697. Here, Plaintiff and Class Counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiff and the Settlement Class Plaintiff seeks to represent, and Plaintiff possesses claims that are in line with those of the Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding adequacy satisfied where there was no indication that the plaintiff's counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also has extensive experience in wage and hour class action litigation. *See* Rowbotham Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-11; Schmidt Decl., ¶¶ 2-9; Khachadoorian Decl., ¶¶ 2-6.

C. <u>THE COURT SHOULD ORDER MAILING OF THE CLASS NOTICE</u>

This Court should order distribution of the proposed Class Notice by first-class mail, postage prepaid, using the last known mailing addresses provided by Defendant. This method is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Plaintiff proposes that the settlement be administered by Phoenix Settlement Administrators ("Phoenix"), a well-regarded class action settlement administrator. *See generally* Declaration of Jodey Lawrence. Defendant will provide Phoenix with Settlement Class Members' contact and workweek information within fifteen (15) court days of preliminary approval. *See* Settlement § 9.A. Prior to mailing, Phoenix will update addresses using the National Change of Address (NCOA) database. *Id.*, § 9.B. For any returned mail, Phoenix will conduct a skip trace and re-mail the Class Notice. *Id.*, § 9.C. The content of the proposed Class Notice satisfies California Rule of Court 3.766(d), as it explains the nature of the claims, the parties' basic positions, key settlement terms, the 60-day uniform deadline to opt out or object, and the procedures for doing so. It also discloses the recovery formula, the estimated individual payment, the binding effect of failing to opt out, the final approval hearing date, and the right to enter an appearance through counsel. *See* Rowbotham Decl., Exhibit B (Class Notice). This method of notice also satisfies Rule 3.766(e) as the most reliable and cost-effective means of reaching Settlement Class Members.

D. <u>THE COURT SHOULD SET A FINAL APPROVAL HEARING</u>

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.

V. <u>CONCLUSION</u>

Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, certify the Settlement Class, and enter the proposed order submitted herewith.

Dated: June 26, 2025

HAINES LAW GROUP, APC

By: ______________________________

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