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and on behalf of the putative class and aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

HARLEY COLLINS, individually and on behalf of the putative class,

Plaintiff,

v.

GMH, INC., a corporation; WEST COAST POWER SOLUTIONS, a corporation; and DOES 1- 50, Inclusive,

Defendants.

CASE NO.: 2023CUOE014707

CLASS ACTION

Assigned for All Purposes to:
Hon. Ben Coats
Dept.: 43

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS ACTION SETTLEMENT; (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT: (3) SETTING HEARING FOR FINAL APPROVAL; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Filed concurrently with the Declaration of Danny Yadidsion; Declaration of Harley Collins; Declaration of Jodey Lawrence; Joint Stipulation of Class Action and PAGA Settlement and Release; Class Notice; and [Proposed] Order]

Date: April 4, 2025
Time: 8:30AM
Dept.: 43

TO THE COURT AND DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 4, 2025 or soon thereafter as this matter may be heard, at Department 43, located at Ventura County Superior Court – Hall of Justice, 800 S. Victoria Ave., Ventura, CA 93009, Plaintiff HARLEY COLLINS ("Plaintiff"), on behalf of herself and all persons similarly situated, will and hereby move this Court pursuant to California Code of Civil Procedure § 382 and California Rule of Court 3.769, for an order as follows:

1. Granting preliminary approval of the proposed settlement;
2. Appointing Phoenix Settlement Administrators as the Settlement Administrator;
3. Conditionally certifying the class for settlement purposes only;
4. Approving the proposed Notice of Settlement as to form and content, and directing that it be distributed to the Class Members pursuant to the terms of the Settlement; and
5. Scheduling a Final Approval Hearing.

This Notice of Motion and Motion is based on the fact that this is a fair and reasonable settlement that benefits the class and was the product of informed, non-collusive negotiations by the parties who were represented by experienced and able counsel. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1802; *Manual for Complex Litigation* (2nd Ed. 1985) § 30.44.) The proposed settlement meets the legal standard for preliminary approval and is in the best interests of the class; the proposed Class Notice explains the settlement terms in a clear and straightforward manner; the proposed procedures for notice provide the best practical notice to the class; and class members will have an opportunity to participate in and/or object to the settlement and/or opt-out of the settlement.

This Motion is based on this Notice, the attached Memorandum of Points and Authorities; the Declarations of proposed Class Counsel Danny Yadidsion, Plaintiff, and Jodey Lawrence on behalf of the proposed Settlement Administrator 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.

Respectfully Submitted,

DATED: February 7, 2025

LABOR LAW PC

By: ______________________________

Danny Yadidsion, Esq.
Attorney for Plaintiff HARLEY COLLINS on behalf of herself and the putative class and aggrieved employees

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I. INTRODUCTION

This Motion seeks provisional certification of a settlement class (the "Settlement Class") of current and former hourly-paid, non-exempt employees of Defendants GMH, Inc. and West Coast Power Solutions (collectively, "Defendants"). This Motion also seeks preliminary approval of a common fund settlement reached in this case after extensive negotiations and a private mediation between the parties (the "Agreement"). The parties reached this Agreement through arm's-length bargaining, after sufficient investigation and discovery, and with the involvement of a professional mediator. The main elements of the Agreement, as memorialized in the Parties' Class Action and PAGA Settlement Agreement, Release, and Stipulation (Declaration of Danny Yadidsion (hereinafter referred to as "Yadidsion Decl.", Exhibit 1) are:

1. Defendant will pay up to a maximum of $695,000.00 ("Gross Settlement Amount" or "GSA"), on a non-reversionary common fund basis to the Class;

2. The GSA includes administration fees and costs (estimated not to exceed $15,000.00), attorney's fees to Class Counsel herein (Class Counsel will seek attorney's fees of no more than 35% of the GSA, or up to $243,250.00), and attorney's costs (Class Counsel will seek costs in an amount not to exceed $20,000.00);

3. Named Plaintiff Harley Collins ("Plaintiff") will apply to the Court for a Service Payment of up to $10,000.00;

4. The Class Period shall be from September 27, 2019, through the date of the Preliminary Approval ("Class Period");

5. PAGA Period. "PAGA Period" means September 26, 2022, through the date of the Preliminary Approval.

6. $20,000.00 of the GSA will be allocated to civil penalties under the California Private Attorneys General Act of 2004 ("PAGA"), 75% of which ($15,000.00) will be paid to the LWDA and $5,000.00 will be distributed on a pro rata basis to Class Members who worked during the PAGA Period;

7. The remainder of the GSA, after deduction of attorneys' fees and costs, settlement administration costs, and Plaintiff's Service Payment (i.e., the "Net Settlement Amount"), will be

distributed to Class Members who do not exclude themselves. The amount each Class Member will receive is his or her Individual Class Payment, which will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks Worked by all Settlement Class Members during the Class Period and (b) multiplying the result by each Settlement Class Member's Workweek Rate;

8. For the purposes of this Agreement, the Parties agree that the Class satisfies each of the requirements of Code of Civil Procedure Section 382. Furthermore, the Agreement is fair and reasonable and confers a substantial benefit upon the Class Members. Accordingly, pursuant to California Rule of Court 3.769, Plaintiff requests that the Court grant preliminary approval of the Agreement, certify the Class for settlement purposes, set the deadline for filing objections to the Agreement, schedule a final approval hearing, and approve the proposed Class Notice.

II. <u>STATEMENT OF RELEVANT FACTS</u>

A. <u>Procedural History</u>

On September 27, 2023, Plaintiff Harley Collins filed a complaint in Ventura County Superior Court alleging causes of action against Defendants GMH, Inc. and West Coast Power Solutions for violations of the California Labor Code, including failure to pay overtime wages, minimum wages during employment; wage statement violations; waiting time penalties, failure to reimburse work-related expenses; and unfair and unlawful business practices, *Harley Collins v. GMH, Inc., et al.,* Ventura County Superior Court Case No. 2023CUOE014707 (the "Action.").

On December 6, 2023, Plaintiff filed her First Amended Complaint ("FAC") to include civil penalties under the PAGA.

On September 12, 2024, after conducting substantial informal discovery, the Parties attended a full-day mediation before an experienced and well-regarded mediator, Steve Cerveris, Esq. Shortly thereafter, the Parties reached an agreement in principle to settle the Action and seek approval of the settlement in Action.

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B. Statement of the Claim

Plaintiff contends that during the Class Period of September 27, 2019, through the date of the Preliminary Approval, and the PAGA period of September 26, 2022, through the date of Preliminary Approval, Defendants failed to provide her and other hourly, non-exempt employees with legally compliant overtime wages, meal and rest break premiums, all wages due to discharged and quitting employees, reimbursement for work-related expenses, and minimum wage. Defendants also failed to timely pay wages, failed to maintain required records and furnish accurate, itemized wage statements. Defendants further violated California's Business and Professions Code Section 17200 based on the underlying Labor Code violations alleged in the FAC. Finally, Plaintiff asserts a representative claim for civil penalties under the PAGA.

The proposed class includes all of Defendants' hourly-paid, non-exempt employees throughout the State of California during the Class period.

C. Discovery and Investigation

Before filing this lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto. (Yadidsion Decl., ¶13.) After conducting this thorough initial investigation, Class Counsel determined that Plaintiff's claims were well-suited for class action adjudication due to what appeared to be a common course of conduct affecting a similarly situated group of employees. *(Id.)*

Subsequently, the Parties undertook significant investigation, including formal and informal discovery, during the prosecution of this Action. *(Id.,* ¶13-14, 17-18.). Such discovery and investigation included extensively interviewing Plaintiff, conducting a detailed damage analysis, reviewing Defendant's voluminous document production, which included the review of personnel records, policies, time and pay records for Class Members, and other detailed information relevant to the Class Member's claims. *(Id.)* Counsel for the Parties have investigated the law as applied to the facts discovered regarding the alleged claims of the Class and potential defenses thereto, and potential damages claimed by the Class. *(Id.,* ¶14.)

Plaintiff sought relevant records from Defendants through informal discovery mechanisms. In response, Defendant produced voluminous documents and data, including Plaintiff's personnel files and related records, Defendant's employee handbook, Defendant's company policies and procedures relating to its employment practices, and allegedly enforceable arbitration agreements. *(Id.,* ¶15.)

After Plaintiff and Defendant conducted significant discovery in this action, the Parties agreed to participate in mediation. *(Id.,* ¶18.) To prepare for mediation, Defendant informally produced additional information to Plaintiff to evaluate the class claims, including a spreadsheet containing information regarding the periods of employment, any applicable meal and rest period penalty payments, per diem payments, and number of weeks worked for each putative class member. *(Id.)* Plaintiff's counsel thoroughly reviewed, investigated, and analyzed this information, which taken together with documents formally produced by Defendant during discovery, amounted to hundreds of pages of data and information. *(Id.)* Counsel for the Parties also investigated the law as applied to the discovered facts regarding the alleged claims of Plaintiff and the Class, potential defenses thereto, as well as the potential damages claimed by Plaintiff and the Class. This informal discovery process occurred over a period of several months and involved significant meet and confer efforts between counsel for the parties. *(Id.)*

The Parties' attorneys have engaged in extensive discussions about the strengths and weaknesses of the claims and defenses in the Actions.

D. <u>Mediation</u>

On September 12, 2024, the Parties attended a full-day mediation before an experienced and well-regarded mediator, Steve Cerveris, Esq. (Yadidsion Decl., ¶19.) The Parties did not resolve the case at mediation. *(Id.)* However, the mediator engaged in extensive follow-up efforts, and the Parties continued settlement discussions post-mediation. In about three months and after extensive post mediation negotiations, the Parties reached an agreement regarding the resolution of this Action, which is embodied in the terms of the Agreement. *(Id.,* Exh. 1.) From Class Counsel's review of the facts, strengths and weaknesses of the case, the risks and delays posed by further litigation and Class Counsel's own prior class action litigation experience, Class Counsel believes that the recovery for each class member is fair and reasonable. *(Id.,* ¶20.)

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III. SUMMARY OF THE AGREEMENT

A. The Settlement Class

The Settlement Class is comprised of: all individuals who are or were previously employed by Defendants GMH, Inc. and West Coast Power Solutions and classified as non-exempt or hourly-paid employees at any time during the period of September 27, 2019 through the date of Preliminary Approval. (Yadidsion Decl., ¶22.)

B. The Consideration

Defendants have agreed to pay a maximum amount of $695,000.00 ("Gross Settlement Amount" or "GSA"). The Settlement provides for the following payments to be made from this common fund:

Gross Settlement Amount		$695,000.00
Attorney's Fees	-	$243,250.00
Attorney's Costs	-	$20,000.00
Settlement Administration Fees and Costs	-	$15,000.00
Named Plaintiff's Enhancement and General Release Payment	-	$10,000.00
PAGA Allocation and Penalties	-	$20,000.00
Net Settlement Amount ("NSA")		$386,750.00

C. Individual Settlement Calculations

The NSA will be allocated entirely to the Settlement Class Members and includes the employee portion of payroll taxes. The Parties agree that the Settlement payments will be allocated as follows: forty percent (40%) to wages, for which an IRS Form W-2s shall be issued, forty percent (40%) for alleged civil and statutory penalties, and twenty percent (20%) for alleged interest on unpaid wages and any other non-wage related amount, if any, and will be reported as such to each Settlement Class Member on an IRS Form 1099 (Yadidsion Decl., Exh. 1 at ¶51(a).)[1]

The Net Settlement Amount shall be divided among and distributed to individual Settlement Class Members. Individual Settlement Payments shall be calculated using the following formula:

[1] The employer's share of payroll taxes shall be paid by Defendants. (Yadidsion Decl., Exh. 1 at ¶49(g)(ii).)

(Net Settlement Amount ÷ All Settlement Class Members' qualifying Workweeks)

x Participating Class Member's Workweeks

(Yadidsion Decl., Exh. 1 at ¶49(g).)

If a check is returned to the Settlement Administrator ("SA"), the SA shall re-email by First-Class U.S. mail the Class Notice returned by the Post Office with a forwarding address, and shall re-email by First-Class U.S. mail the Class Notice to any Class Member/PAGA Member who personally provides an updated address to the SA.

Settlement Class Members and/or PAGA Members who are sent Settlement Payments shall have one hundred fifty (150) days after mailing by the SA to cash their settlement. If such Settlement Class Members and/or PAGA Members do not cash their checks within that period, those checks will become void and a stop payment will be placed on the uncashed checks. Checks that are not cashed within one hundred and fifty (150) days of mailing shall, subject to Court approval, be distributed pursuant to the State Controller Unclaimed Property Fund, or as otherwise directed by California Code of Civil Procedure Section 384 and as ordered by the Court. (Yadidsion Decl., Exh. 1 at ¶62.) The Parties agree that if the remaining funds are not able to be distributed to the State Controller Unclaimed Property Fund and if a *cy pres* fund is required, subject to Court instruction, that the SA shall forward the entire amount of any amounts remaining from uncashed checks, plus any interest that has accrued thereon, to the California CASA Association (see https://www.californiacasa.org), unless not accepted by the Court in which case the Parties will meet and confer about an acceptable *cy pres*.

D. <u>Release By Class Members</u>

Participating Settlement Class Members shall provide the following limited release:

> As of the Effective Date, Named Plaintiff and all Settlement Class Members hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all Released Claims against any and all Released Parties. In other words, the Settlement includes a release of all Released Claims during the Class Period by Settlement Class Members employed at any time during the Class Period.

(Yadidsion Decl., Exh. 1 at ¶47.) In addition, Class Members, regardless of whether they opt-out of the Agreement, will receive their share of PAGA civil penalties and will be deemed to have released all claims for civil penalties under the PAGA during the PAGA Period and Class Period with respect to the underlying wage and hour claims pled in the FAC. (*Id*., Exh. 1 at ¶62.)

The time period governing the Released Claims shall be the Class Period and PAGA Period only. The September 27, 2019, start date of the Class Period was chosen as four years prior to the filing of the Complaint. (Yadidsion Decl. ¶35.) The September 26, 2022, start date of the PAGA Period was chosen as one year prior to the Plaintiff's submission of her claims to the LWDA. *(Id.)* The Parties have agreed that the Class Period shall extend through the date of the Preliminary Approval. *(Id.)*

Upon entry of the Final Approval Order and Defendant's payment of the Gross Settlement Amount, and except as to such rights or claims as may be created by this Settlement Agreement, on behalf of themselves, and each of their heirs, representatives, successors, assigns, and attorneys, Settlement Class Members shall be deemed to have, and by operation of the final judgment shall have, fully released and discharged the Defendant from any and all Released Claims.

E. <u>Notice Program</u>

1. Mailing of Notice

Within thirty (30) days after filing of the Preliminary Approval Order, or within the time ordered by the court, Defendants shall provide to the SA a list of Class Members and PAGA Members that identifies for each Class Member/PAGA Member, his/her Social Security number, last-known address, and the workweek numbers and other Class Member data confirm qualifying Workweeks Worked and PAGA Workweeks Worked or will forward the start and end date(s) of employment for the SA to calculate the Workweeks Worked and PAGA Workweeks Worked. Defendants agree to consult with the SA as required to provide the list in a format reasonably acceptable for the duties of the SA. The SA will keep the list confidential, use it only for the purposes described herein, take adequate safeguards to protect confidential or private information and return or certify the destruction of the information or continued safeguarding of the information upon completion of the Settlement Administration process. (Yadidsion Decl., Exh. 1, at ¶53 (b).)

The Class Notice will include information on how Class Members may opt-out of or object to the Settlement and a procedure by which a Class Member may challenge the number of Workweeks Worked identified on his/her Class Notice. The Named Plaintiff will seek approval of language in the Class Notice in the motion for preliminary approval and will seek permission for the Parties in conjunction with the SA to be able to correct immaterial errors on these forms or other mailed materials without approval from the Court, provided the changes do not alter the preliminary approval by the Court. Once the Court approves the Class Notice, the SA will send it to each Class Member and PAGA Members by First-Class U.S. Mail. Yadidsion Decl., Exh. 1, at ¶54.)

Prior to mailing the Class Notice, the SA will update the addresses for the Class Members and PAGA Members using the National Change of Address database and other available resources deemed suitable by the SA. To the extent this process yields a different address from the one supplied by Defendants ("Updated Address"), that Updated Address shall replace the address supplied by Defendants ("Last Known Address") and be treated as the new Last Known Address for purposes of this Agreement and for subsequent mailings in particular. The Settlement Administrator shall be permitted to provide notices and communicate to the Class and PAGA Members in a format and statement to be provided to the Court, which Named Plaintiff will submit in conjunction with the motion for preliminary approval and/or motion for Final Approval. (Yadidsion Decl., Exh. 1, ¶54 (a).)

Within fourteen (14) days after receipt of the above information from Defendant, the SA shall send the Class Notice to each Class Member's and PAGA Member's Last Known Address or Updated Address (if applicable) via First-Class U.S. mail. (Yadidsion Decl., Exh. 1, ¶54 (b).)

2. Dispute Procedure

A Class Member challenging the number of Workweeks worked may also submit documentary evidence in order to prove the claimed number of Workweeks Worked during the Class Period. Defendant shall have the right to respond to the challenge by any Settlement Class

Member. No challenge to the number of Workweeks Worked will be accepted unless sent by U.S. mail within sixty (60) days from the initial mailing of the Class Notice by the SA, with proof of date of submission to be the postmark date unless ordered by the Court. Additional time may be provided to a Class Member only upon a showing of good cause and within an amount of time determined by the SA that will not delay the distribution of Settlement Payments to other Class Members/PAGA Members and in no event beyond the date of filing of the motion for final approval. The SA will inform Class Counsel and Defendants' counsel in writing of any timely filed challenges and will preliminarily determine all such disputes after consulting with the Parties regarding the number of Workweeks Worked. If each of the Parties does not agree with the SA's preliminary determination, the dispute will be submitted to the Court for a decision, and the Court's determination shall be final and binding without a right of appeal. (Yadidsion Decl., Exh. 1, at ¶55 (c).)

3. Exclusion Procedure

Unless a Class Member timely opts out of the Settlement described in this Agreement, he/she shall be bound by the terms and conditions of this Agreement, and shall also be bound by the Final Judgment. A Class Member will not be entitled to opt-out of the Settlement established by this Agreement unless he or she submits to the SA a request or notice of opting out via U.S. mail postmarked on or before the expiration of the Exclusion Period. The request must be in writing on an Opt-Out Request and include the Class Member's name, address, date, signature, to the notice that indicates he or she "opts out" of the Settlement. Opt-Out Requests do not apply to the Released PAGA Claims and will not exclude PAGA Members from the release of Released PAGA Claims. (Yadidsion Decl., Exh. 1, at ¶55 (d).)

Any Class Member who fails to submit via U.S. mail a timely, complete, and valid Opt-Out Request shall be barred from opting out of this Agreement or the Settlement. The SA shall not have the authority to extend the deadline for Class Members to file a request to opt out of the Settlement absent agreement by both Parties. (Yadidsion Decl., Exh. 1, at ¶55 (d) (ii).)

Class Members shall be permitted to rescind in writing their request to opt-out by submitting a written rescission statement to the SA no later than the Effective Date, and provided individual Settlement Payments can be recalculated to reflect the rescission. (Yadidsion Decl., Exh. 1, at ¶55 (d) (iii).)

4. Objection Procedure

Any Settlement Class Member may object to the Settlement. Any such objection may be submitted to the SA in writing on or before the close of the Exclusion Period or may appear at the Final Approval Hearing object orally. If any Settlement Class Member wish to object in writing, any such written Objection shall include: (1) the full name of the Settlement Class Member; (2) address of the Settlement Class Member; (3) the basis for the objection; and (4) if the Settlement Class Member intends to appear at the Final Approval Hearing. The Parties shall be permitted to file responses to the Objection in addition to any motion for final approval documents. Settlement Class Members may also appear at the Final Approval Hearing to object. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit written objections to the Settlement or appeal from the Order granting final approval and/or Final Judgment. Class Counsel shall not represent any Settlement Class Members with respect to any such objections. (Yadidsion Decl., Exh. 1, at ¶56.)

IV. <u>PRELIMINARY SETTLEMENT APPROVAL</u>

As a matter of public policy, settlement is a strongly favored method for resolving disputes. (*See Utility Reform Project v. Bonneville Power Admin*., 869 F.2d 437, 443 (9th Cir. 1989).) This is especially true in complex class actions such as the one before the Court. (*See Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982); *Wilkerson v. Martin Marietta Corp*., 171 F.R.D. 273, 284 (D. Colo. 1997).)

Any class settlement must be reviewed and approved by the Court. California Rules of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e). This is done in two steps: (1) early (preliminary) review by the court and (2) final review after notice has been distributed to the class members for their comments or objections. The *Manual for Complex Litigation* succinctly describes the scope of the preliminary approval inquiry as follows:

> Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a

> preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of Class Representative or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice...be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.

(*Manual for Complex Litigation* (4th Ed. 2004) § 30.41.)

Thus, preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer or is presumptively valid subject only to any objections that may be raised at a final hearing." (4 William B. Rubenstein, et al., *Newberg on Class Actions* (5th Ed. 2016) § 11.26.)

In short, the Court need find only that the settlement falls within the range of possible final approval, also described as the "reasonable range." (*See, e.g., North County Contractor's Assn. v. Touchstone Ins. Services.* (1994) 27 Cal. App. 4th 1085.) Trial courts have broad discretion to determine whether a class action settlement is fair. (*See Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 128.) The trial court must exercise its discretion through the application of several well-recognized factors when deciding whether a class action settlement is fair. (*See Clark v. American Residential Services, LLC* (2009) 175 Cal. App. 4th 785, 799.) The list of factors, which "is not exhaustive and should be tailored to each case," includes "the strength of Plaintiff's 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, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581; *Kullar*, 168 Cal.App.4th at p. 128, quoting *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801.) The most important factor the trial court should consider in determining whether to approve a class action settlement is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement. (*See*, *e.g.*, *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 408; *Kullar,* 168 Cal. App. 4th 116 at p. 130.) In sum, at the preliminary approval stage, the trial court must determine that the settlement was not the product of fraud, overreaching or collusion, and that the settlement is fair, reasonable and adequate. (*Nordstrom,* 186 Cal.App.4th. at p. 581.) In order to elicit the class members' "reaction ... to the proposed settlement," they must first receive notice of the proposed resolution. The preliminary approval process allows that to happen.

A. <u>The Settlement Agreement Resulted from Arm's-Length Negotiations</u>

The presumption is that a proposed settlement is fair and reasonable when it is the result of arm's-length negotiations. (*See Williams v. Vukovich*, 720 F.2d 909, 922-923 (6th Cir.1983) ("The court should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs."); *In re Excess Value Ins. Coverage Litig.*, No. M-21-84 (RMB), 2004 U.S. Dist. LEXIS 14822, at *34 (S.D.N.Y. July 30, 2004) ("Where 'the Court finds that the settlement is the product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation, the Settlement will enjoy a presumption of fairness'"); *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 359, 380 (N.D. Ohio 2001) (granting preliminary settlement approval) ("when a settlement is the result of extensive negotiations by experienced counsel, the Court should presume it is fair"); *see also* 4 Rubenstein, et al., *Newberg on Class Actions* (5th Ed. 2016) §11.41; *Manual For Complex Litigation* (4th Ed. 2004) §21.612.)

The proposed settlement here is the product of arm's-length negotiations, assisted by a well-respected and independent mediator for which the Parties prepared by exchanging substantial relevant information and documents.

Counsel for the parties have investigated the applicable law, as applied to the facts discovered, regarding the alleged claims of Plaintiff and potential defenses thereto, and the damages claimed by Plaintiff. Armed with this extensive body of knowledge and analysis, the Parties engaged in mediation with a skilled mediator. At all times, the negotiations leading to the Agreement have been adversarial, non-collusive, and at arm's length.

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B. <u>The Strength of Plaintiff's Case and Complexities of Further Litigation</u>

Plaintiff believes that the Settlement Class claims in this action are legally meritorious and present a reasonable probability of a favorable determination on behalf of the class. At the same time, there is undeniably significant litigation risk avoided by the proposed Agreement, both at class certification proceedings, at trial, and in the appellate courts.

Liability remains highly contested by Defendant, which denies that it engaged in any violations of the law, and further denies any liability or engagement in wrongdoing of any kind associated with the claims alleged in the Action by the Named Plaintiff or any Class Member. Defendant contends that at all times it complied with all wage-and-hour laws in connection with the employment and/or retention of services of Plaintiff and the Class Members.

Plaintiff's counsel understood and appreciated the defenses and position of Defendant but believed Plaintiff would ultimately succeed in the action. In light of their strongly divergent views, the Parties, with the assistance of the mediator, were able to negotiate a fair settlement, considering the costs and risks of continued litigation. The negotiations were at all times conducted professionally and at arm's length and have produced a result that the Parties believe to be in their respective best interests.

The Parties have also considered the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims asserted in the action, the defenses thereto, and the difficulties in establishing damages.

In evaluating the settlement, the Court will seek a reasonable estimate of the nature and amount of recovery that each class member could have obtained if the Plaintiff had prevailed in the litigation. Numerous decisions summarize a trial court's task when considering whether to approve the settlement of a putative class action. As one Court stated:

> The trial court has broad discretion to determine whether the settlement is fair. [Citation.] It should consider relevant factors, such as the strength of Plaintiff' 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, the experience and views of counsel, the presence

of a governmental participant, and the reaction of the class members to the proposed settlement.

(*Cellphone Fee Termination Cases* (2009) 180 Cal. App. 4th 1110, 1117-18, quoting *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801.)

The court's consideration of relevant factors, however, does not transform the settlement approval "into a trial or rehearsal for trial on the merits." (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1145, quoting *Class Plaintiff v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).) The record need only provide the trial court with an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.

Because settlements are inherently a compromise, once the parties have provided it with the requisite "basic information," the trial court must only "satisfy itself that the class settlement is within the 'ballpark' of reasonableness." (*Tech-Bilt, Inc. v. Woodward-Clyde & Assoc*. (1985) 38 Cal.3d 488, 499-500.)

Here, in preparation for mediation, Plaintiff calculated Defendant's liability to Class Members to be in excess of the settlement amount. Plaintiff' valuation assumed that Plaintiff: (1) prevailed in certifying the case and (2) prevailed in establishing liability on the merits. (Yadidsion Decl. ¶19.)

The realistic range of outcomes for this litigation was significantly discounted due to the present state of the law regarding alleged "off-the-clock" work, reimbursement for reasonable business expenses, failure to pay overtime claims, and the other claims brought in the Actions, Defendant's defenses for each claim, and the likelihood of prevailing on a class certification motion as well as trial and any appeals. (Yadidsion Decl. ¶¶35-89.) Where both sides face significant uncertainty, the attendant risks favor settlement. (*See Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1026 (9th Cir. 1998).)

1. *Kullar v. Footlocker* Analysis

To allow this Court to make an informed assessment pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, Plaintiff's Counsel provides the following assessment of the case and settlement. Plaintiff's Counsel believes the settlement is a very good one for the class members. In this case, Plaintiff sought unpaid wages and statutory penalties as well as equitable remedies such as restitution. In advance of mediation, Plaintiff reviewed all relevant facts and legal authority, and in collaboration with their expert, prepared a damages model for this action. If Plaintiff were to prevail both on certification and on the merits of each of his claims, assuming 20% liability for meal period violations, 20% liability for rest period damages, a substantial amount of unpaid overtime hours (3 hours of overtime, and 1 hour of double time per pay period), 100% liability for unpaid wages (5 minutes per shift), $5 of unreimbursed business expenses per workweek, 100% recovery for waiting time and wage statement penalties under Labor Code Section 203, and 100% recovery for at least one PAGA penalty, total recoverable damages through the date of mediation in September 2024 would be, excluding interest, approximately $4,344,350.50 ($2,070,611.00 in damages, $1,660,039.50 in waiting time and wage statement penalties, and $613,700.00 in PAGA penalties). (Yadidsion Decl. ¶¶36-80.)

The proposed settlement before the Court amounts to approximately 16% of Defendants' maximum total damages exposure. (Yadidsion Decl. ¶80.) Courts have determined that settlements are, of course, reasonable even where Plaintiff recover only a portion of their actual losses. (*See Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990) ("[T]he fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate.").) Indeed, "[a] settlement can be satisfying even if it amounts to a hundredth or even - a thousandth of a single percent of the potential recovery." (*Id.*; *see also City of Detroit v. Grinnell Corp.*, 356 F. Supp. 1380, 1386 (S.D.N.Y. 1972) (a recovery of 3.2% to 3.7% of the amount sought is "well within the ball park"), *aff'd in part, rev'd on other grounds*, 495 F.2d 448 (2d Cir. 1974); *Martel v. Valderamma*, 2015 U.S. Dist. LEXIS 49830, at * 17 (C.D. Cal. 2015) (approving a settlement of $75,000 when potential damages were $1.2 million); *In re Toys R US FACTA Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014) (approving settlement with vouchers (not cash) potentially worth a maximum of three percent (3%) if all possible claims were actually made, or $391.5 million aggregate voucher potential where the class could have recovered $13.05 billion); *Ma v. Covidien Holding, Inc.*, No. SACV 12-02161-DOC, 2014 WL 360196 at *5 (C.D. Cal. Jan. 31, 2014) (finding a settlement worth 9.1% of the total value of the action "within the range of reasonableness"); *Balderas v. Massage Envy Franchising, LLC*, No. 12-CV-06327 NC, 2014 WL 3610945 at *5 (N.D. Cal. July 21, 2014) (granting preliminary approval of a net settlement amount representing 5% of the projected maximum recovery at trial); *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 WL 221862, at *9 (N.D. Cal. Jan. 26, 2007), *aff'd*, 331 Fed. Appx. 452 (9th Cir. 2009) (approving a settlement of an action claiming unpaid overtime wages where the settlement amount constituted approximately 25% to 35% of the estimated actual loss to the class); 4 William B. Rubenstein *et al.*, *Newberg on Class Actions* (5th ed. 2016) § 13:15 (the range of reasonableness percentage could be as low as 1/100th or 1/1000th of 1%).

Collectively, the damages were broken down as follows:

Meal and Rest Break Claims

Plaintiff's expert conducted an analysis of Defendants' records and determined that there were approximately 349 Class Members. Based on information developed since the Parties' September 2024 mediation, the Parties currently estimate that there are approximately 349 Class Members. (*Id*., ¶14.)

Plaintiff's expert valued the meal and rest break claims at a maximum of approximately $721,303.00 for each type of violation, assuming 20% liability for every meal break and 20% liability for every rest break. Plaintiff's expert determined this value based on a class period from September 27, 2019 through September 12, 2024. (Yadidsion Decl. ¶¶38-45.)

Unpaid Overtime Wages

After reviewing Defendants' business records, Plaintiff's expert determined that the total damages for unpaid overtime is approximately $27,777.00. (Yadidsion Decl. ¶¶46-49.)

Unpaid Minimum Wages

After reviewing Defendant's business records, Plaintiff' expert determined that the total damages for unpaid minimum wages is approximately $435,793.00 assuming a weighted average minimum wage of $14.47/hour. (Yadidsion Decl. ¶¶46-49.)

Late/Termination Pay

Plaintiff's late pay claim is derivative of her claim for unpaid wages. Thus, assuming that Plaintiff prevailed on their claims, Plaintiff's expert calculated Defendants' exposure under Labor Code Sections 201 through 203 to be approximately $1,056,439.50, assuming 100% liability and the Court rules that Defendants willfully violated the law as the statute expressly requires. (Yadidsion Decl. ¶¶56-60.)

Wage Statement Damages

Plaintiff's expert valued Defendant's exposure for alleged wage statement violations, assuming 100% liability, to be approximately 6,137 violations, giving rise to approximately $603,600.00 in penalties. (Yadidsion Decl. ¶¶64-69.) Defendant denied Plaintiff's allegations and calculations.

Business Expense Reimbursement Claim

Plaintiff's expert valued Defendant's exposure for alleged failure to reimburse business expenses, assuming 100% liability, to be approximately $164,435.00. This estimate is based on Plaintiff and Class Members incurring $5 per workweek as business expenses. (Yadidsion Decl. ¶¶70-75.) Defendant denied Plaintiff's allegations and calculations.

PAGA Penalties

Assuming approximately 202 members of the PAGA Class, Plaintiff's expert valued Defendant's exposure for alleged civil penalties under the PAGA, assuming 100% liability for at least one PAGA violation, to be approximately $613,700.00. (Yadidsion Decl. ¶¶79-84.)

Risks of Litigation Which Necessitated Settlement Discounts

In determining the reasonable settlement value of the asserted claims, Plaintiff's Counsel considered a number of issues necessitating deductions to be taken from the maximum potential value to arrive at the Gross Settlement Value.

Risks of Certification in General: The great discretion afforded trial courts in electing to grant or deny class certification, and the resultant possibility that this Court would deny certification of any of the proposed classes, resulting in no recovery whatsoever for those unnamed class members, further weighed in favor of settlement. Going into mediation, Class Counsel were realistic about cases wherein class certification was denied in meal period and rest break cases. (*See, e.g., In re Lamps Plus Overtime Cases* (2012) 209 Cal. App. 4th 35; *Washington v. Joe's Crab Shack*, 271 F.R.D. 629 (N.D. Cal. 2010) ("individualized inquiry will be required to determine whether any single employee failed to take a meal break because he/she was too busy, and also to determine whether a particular employee signed a waiver based on a decision not to take meal breaks"); *Hernandez v. Chipotle Mexican Grill, Inc.* (2012) 146 Cal. Rptr. 3d 424.)

Defenses to Claims of Willful Violations: Defendant has asserted a number of defenses to Plaintiff's claims for willful violations of the Labor Code. Initially, waiting time penalties under Labor Code Section 203 may not be recoverable in this instance in light of the fact that an employer's good faith mistaken belief that no wages are owed may negate a finding of willfulness. A good faith dispute that *any* wages are due "will preclude imposition of waiting time penalties under Section 203," and an employer's good faith mistaken belief that wages are owed may negate a finding of willfulness. (8 C.C.R. § 13520; *Road Sprinkler Fitters Local 669 v. G & G Fire Sprinklers, Inc.* (2002) 102 Cal. App. 4th 765, 782.) Accordingly, on remand from the Supreme Court's decision in *Troester v. Starbucks Corp.*, the district court granted summary judgment for Starbucks on the waiting time penalty claim, finding that a good faith dispute existed based on Starbucks' defense to the unpaid wage claim in reliance on the *de minimis* doctrine that had not previously been addressed by the California courts. (*See Troester v. Starbucks Corp.*, 387 F.Supp.3d 1019, 1030 (C.D. Cal. 2019).)

Plaintiff also alleges that Labor Code Section 1194.2 entitles the class to double the amount of unpaid minimum wages as liquidated damages. But that Section provides that:

> (b) Notwithstanding subdivision (a), if the employer demonstrates to the satisfaction of the court or the Labor Commissioner that the act or omission giving rise to the action was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the commission, the court or the Labor Commissioner may, as a matter of discretion, refuse to award liquidated damages or award any amount of liquidated damages not exceeding the amount specified in subdivision (a).

The courts have held that pursuant to Labor Code Section 1194.2, an employee who has not received the minimum wage is entitled to recover the amounts unlawfully withheld plus additional amounts as penalties and liquidated damages only where *culpable conduct* is shown. (*See Brewer v. Premier Golf Properties* (2009) 168 Cal. App. 4th 1243, fn. 8 (citing *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 325–326).) As with the waiting time penalty claim discussed above, Plaintiff may be unable to prove willfulness in this instance.

Finally, Plaintiff has a claim under Labor Code Section 226(e), which provides that an employee suffering injury as the result of a knowing and intentional failure to comply with Section 226 is subject to a penalty of up to $100.00 per pay period up to $4,000.00 per employee. Similar defenses appear to exist in response to that claim, however, because Plaintiff may not be able to establish that Defendant's alleged violation was "knowing and intentional" as the statute requires. In *Arroyo v. International Paper Co.*, ___ F.Supp.3d ___, 2020 WL 887771 at *10-12 (N.D. Cal. 2020), the district court held that an employer's good faith belief that it is in compliance with Section 226 precludes liability for the statutory penalty provided by Section 226(e).

<u>Trial and Manageability Issues</u>: While Plaintiff was confident in the strength of their claims, as is always the case with a trial, Plaintiff needed to accept that there was a possibility that they would not prevail at trial. (Yadidsion Decl. ¶99 (i).)

Compromise is inherent and necessary in the settlement process. Thus, even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated," this is no bar to a class settlement because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." (*Wershba*, 91 Cal. App. 4th at 241 (quoting *Air Line Stewards, Loc. 550 v. American Airlines, Inc*., 455 F.2d 101, 109 (7th Cir. 1972).) The Ninth Circuit observed "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" (*Officers for Justice v. Civil Serv. Commission*, 688 F.2d 615, 624 (9th Cir.1982) (citation omitted).) Thus, when analyzing the amount offered in settlement, the Court should examine "the complete package taken as a whole," and the amount is "not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*Id.* at 625, 628.)

Given the difficulties Plaintiff and the Class faced, both in terms of certification and in adjudicating their claims on the merits, the litigation discounts afforded by Plaintiff are reasonable and the proposed Agreement is fair, reasonable, and adequate.

In the present case, it is clear that the proposed Agreement before this Court is the best course of action as it ensures fair, reasonable, and adequate redress and recovery for the members of the class. Thus, it was clearly reasonable for Plaintiff to negotiate a smaller certain award rather than seek the full recovery but risk recovering nothing.

C. <u>The Agreement Has No Obvious Deficiencies</u>

The proposed Agreement has no obvious deficiencies. The settlement provides no preferential treatment for the Plaintiff or other settlement class members. The Plaintiff will receive distributions from the settlement proceeds calculated in the same manner as the distributions to all other Settlement Class Members, plus any service payment award approved by the Court.

The proposed Agreement does not place the named Plaintiff's interests ahead of the class as a whole. Apart from a reasonable incentive payment for his efforts on behalf of the class, typical in class action litigation (and subject to Court approval after notice to the Settlement Class), the named Plaintiff's personal recovery in this action and settlement will be the same as those with whom they share a common set of facts among the Settlement Class. The named Plaintiff has not in any way tried to leverage a class action for personal agenda or gain.

Plaintiff contends that the proposed Agreement does not place Class Counsel's interests ahead of Class Members' interests. Further, the Agreement provides only for a maximum permissible amount of the request for any award of attorneys' fees and litigation expenses. Any award of fees and expenses remains to be determined by the Court at the time of the Final Approval Hearing and must necessarily be found to be fair and reasonable to the Settlement Class based on applicable law.

Each Settlement Class Member has the right to object and be heard regarding the amount of fees and expenses requested. Any amounts not awarded by the Court as fees and expenses will remain in the Net Settlement Amount to be distributed to the Class. Counsel will file a separate motion for approval of the fee award sought herein, at the time of and in conjunction with the filing of the Motion for Final Approval, should Preliminary Approval be granted, and a Final Approval Hearing be scheduled by the Court.

D. The Class Representative's Payment, Class Counsel Fees Payment, and Class Counsel Litigation Expenses Payment

1. The Enhancement Award Requested by Plaintiff Is Reasonable

As part of the Agreement, Plaintiff will seek a class representative service payment award of $10,000.00 in addition to her share of the Net Settlement Amount.

Plaintiff was formerly employed by Defendant. (Declaration of Harley Collins ("Collins Decl."), ¶3.) Plaintiff has taken an extraordinary step to challenge her former employers' actions by bringing this lawsuit. She did so in the belief that they, and the members of the Class, were, in fact, entitled to the relief sought in this case. Plaintiff's actions have resulted in a substantial recovery for the members of the Class, and the enhancement award she seeks is reasonable.

Plaintiff fully participated in the analysis and planning of this action throughout the pendency of the litigation. (Collins Decl., ¶6, 10-17.) She was kept well informed of the nature and extent of settlement discussions and approved the same. *(Id.)*

The service payment award sought for Plaintiff is entirely reasonable, consistent with awards in this Court, and represents a mere one point forty-four percent (1.44%) of the Gross Settlement Fund. Absent the actions taken by Plaintiff, none of the Class Members would have reaped the rewards of this action.

2. The Enhancement Award Requested by Plaintiff Is Reasonable

As for the fees to be awarded to Class Counsel, California Rules of Court, Rule 3.769 (b) provides, in pertinent part:

> Any agreement, express or implied, that has been entered into with respect to the payment of attorney's fees ... must be set forth in full in any application for of the ... settlement of an action that has been certified as a class action.

The proposed Class Notice provides Class Members with information as to the amount of attorneys' fees and litigation-expense reimbursement that will be sought in this matter. Although Class Counsel will provide further argument when they file their motion for the award of fees and expenses in connection with the Final Approval Hearing, the following is a brief statement of the law concerning the same.

As noted, *supra*, the Agreement provides for Class Counsel to apply to the Court for an award of fees in the maximum amount of one third (1/3) of the Gross Settlement Fund, plus reimbursement of their litigation expenses in an amount not to exceed $20,000.00. This percentage award is commensurate with (1) the risk Class Counsel took in commencing this action, (2) the time, effort and expense dedicated to the case, (3) the skill and determination they have shown, (4) the results they have achieved throughout the litigation, (5) the value of the Agreement which they have achieved for Class Members, and (6) the other cases they have turned down in order to devote their time and efforts to this matter.

California encourages attorneys to take the risks of time and money necessary to vindicate the public interest. To fulfill this policy, California law provides that attorneys' fees awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. (*See Lealao v. Beneficial Cal., Inc*. (2000) 82 Cal.App.4th 19.) Accordingly, Class Counsel's request is based on marketplace standards. In *Lealao*, the First Appellate District held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*Id*. at 50.)

The governing principles, as well as a survey of attorneys' fees jurisprudence (both in California and throughout the country), are set out in *Lealao*. As *Lealao* notes, trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." (82 Cal. App. 4th at 41.) Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court ...." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) As the court in *Lealao* explained, in determining an attorney fee request, courts should strive to award fees equivalent to those "freely negotiated in the legal marketplace in comparable litigation." (82 Cal.App.4th at 50.) "If courts were to ask what fee structure an informed, sophisticated client would use to compensate his attorney when close monitoring is not feasible, they would at least have focused on the correct question." (*Id.* at 48.) As *Lealao* recognizes, fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." (*Id*. at 53.) Finally, an attorneys' fees motion should not turn into "a second major litigation." (*Id.* at 31 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).)

As in many cases of this type, Class Counsel seek a fee award for their successful prosecution and resolution of this action, calculated as a percentage of the total value of benefits afforded the Class Members by the Agreement. (*See Serrano v. Priest* (1977) 20 Cal.3d 25, 49 (*Serrano III*); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Vincent v. Hughes Air West, Inc*., 557 F.2d 759, 769 (9th Cir. 1977).) The purpose of this equitable doctrine is not only to avoid unjust enrichment of counsel, but also to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. (*See Vincent*, 557 F.2d at 769.) Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorney fees as a reasonable percentage of the settlement created. (Weil and Brown, *California Practice Guide: Civil Procedure Before Trial* § 14:145; *see also Dunk*, 48 Cal.App.4th at 1808.)

E. Claims Administration

Plaintiff seeks the appointment of Phoenix Class Action Administration Solutions ("Phoenix") as the Settlement Administrator. Phoenix is a well-established class action administration company that has served as administrator in hundreds of wage and hour cases throughout the country. (*See* Declaration of Jodey Lawrence ("Lawrence Decl."), ¶ 5-8) The Settlement Administrator has estimated the cost for administrating the settlement will not exceed $15,000.

F. The Proposed Class Notice is Adequate

Rule 3.769(e) of the California Rules of Court provides:

> If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing.

Here, the parties have negotiated the form of a notice (the "Class Notice," attached as Exhibit A to the Settlement Agreement, which is attached as Exhibit 1 to the Yadidsion Declaration). The Class Notice will be disseminated to all Class Members and will be provided in both English and Spanish. Class Notices returned as undeliverable will be subjected to a further follow-up and re-mailing procedure. (Yadidsion Decl. ¶¶91-93.)

The content of the proposed Class Notice meets all requirements for appropriately providing full disclosure and information to the Class Members. "Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." (4 *Newberg on Class Actions* § 8.32.)

In light of the foregoing, the Class Notice is proper and affords the best possible notice under the circumstances presented in this case.

V. **CLASS CERTIFICATION IS APPROPRIATE**

As part of their negotiations, the Parties have stipulated to class certification for the purposes of settlement only. Should this Court decline to approve the Parties' settlement, Defendant reserves all rights to challenge class certification, and nothing contained in this motion or the documents submitted in connection with the settlement shall be a waiver by Defendant of any argument as to why the class should not be certified. Additionally, in the event approval of the proposed Agreement is denied, this Motion and the documents submitted for settlement may not be used as evidence against Defendant's argument that the class should not be certified.

California has a very strong public policy favoring the use of class actions to resolve claims asserting violations of its strict wage and hour laws. In *Gentry v. Superior Court* (2007) 64 Cal. Rptr. 3d 773, the California Supreme Court addressed the issue of a class arbitration waiver clause in an employment agreement in relation to a Plaintiff seeking overtime compensation, and observed that:

> Given these risks and economic realities, class actions play an important function in enforcing overtime laws by permitting employees who are subject to the same unlawful payment practices a relatively inexpensive way to resolve their disputes. We have acknowledged as much in a case involving overtime litigation similar to that at issue in the present case. "By

> establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation."

Id. at 784 (quoting *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 340.) In light of this well-settled California public policy, the conditional certification of the proposed Class for purposes of settlement only is appropriate.

A. <u>Standard for Pre-Certification Settlements</u>

"[P]re-certification settlements are routinely approved if found to be fair and reasonable." (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 244; *accord Dunk*, 48 Cal.App.4th at 1803 (although the settlement was reached before any "adversary certification," the court was satisfied that it was "fair, adequate and reasonable"); *see also In re Baldwin-United Corp*., 105 F.R.D. 475, 478 (S.D.N.Y. 1984) ("many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals").)

"The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal... may be set out in conditional orders granting tentative approval to the various items submitted to the court. Three basic rulings are often conditionally entered at this preliminary hearing. These conditional rulings may approve a temporary Settlement Class, the proposed settlement, and the class counsel's application for fees and expenses." (4 *Newberg on Class Actions* § 11.26.)

The standard for class certification in the settlement context is a significantly lower threshold than in a contested proceeding or a trial context:

> The two basic purposes for the Rule 23 certification requirements, as they relate to questions of a nationwide class are: (1) to keep the lawsuit manageable for trial; and (2) to protect the interests of the nonrepresentative members. The first purpose is inapposite in the settlement context, and the second, as it relates to commonality of issues, only makes a difference if the nonrepresentative class members would do much better by litigating on their own or in their own jurisdiction. The second category concerns are protected by the trial court's fairness review of the settlement."

(*Dunk*, 48 Cal.App.4th at 1807, fn. 19 (*emphasis added*).) The reason for this is that no trial is anticipated in the settlement context, so any case management issues inherent in determining if the class should be certified need not be confronted. (*See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1987).)

The very liberal standard expressed in *Dunk* is plainly satisfied here. The requirements for class certification in the settlement context – ascertainability, numerosity, predominance of common questions of law and fact, typicality, and adequacy – all are met. It certainly cannot be said that the class members would do "much better by litigating on their own." (*Dunk*, 48 Cal.App.4th at 1807, fn. 19.) The Settlement Class should be conditionally certified as requested.

B. The Requirements for Class Certification in the Settlement Context Are Satisfied

1. Ascertainability and Numerosity

The proposed Settlement Class is ascertainable and sufficiently numerous. A "class is ascertainable if it identifies a group of unnamed Plaintiff by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." (*Bartold v. Glendale Fed. Bank* (2000) 81 Cal.App.4th 816, 828.) The class definition, the size of the class and the means for identifying the members of the class determine whether the class is ascertainable. (*Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1274.)

Whether a class is ascertainable is determined by examining the class definition, the size of the class and the means available for identifying class members. *See Vasquez,* 4 Cal. 3d at 821-22; *Reyes,* 196 Cal. App. 3d at 1271. Class members are "ascertainable" where they may be readily identified without unreasonable expense or time. Plaintiff contends that the requirements of numerosity and ascertainable class membership are met here, and for settlement purposes only, Defendant does not dispute that both of these requirements are met. The Class Period is defined as the period from September 27, 2019 through the date of Preliminary Approval. (Yadidsion Decl., Exh. 1 at ¶6.) The Settlement Class means all Class Members other than those who have timely and validly submitted Opt-Out Requests and thereby excluded themselves from releasing Released Claims from the Settlement. (*Id*., Exh. 1 at ¶¶4, 21, 55 (d).)

In this case, the members of the proposed Settlement Class are identifiable from Defendant's own records. (Yadidsion Decl., ¶13.) The Settlement Class members are also sufficiently numerous to justify class certification. Defendant has preliminarily identified at least 349 employees comprising the Settlement Class.

2. <u>Predominance of Common Questions of Law and Fact</u>

The interrelated commonality and predominance requirements are satisfied if common issues predominate. At its heart, this is a procedural inquiry asking "whether... the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (citing *Collins v. Rocha* (1972) 7 Cal.3d 232, 238).) Under the lower threshold applicable in the settlement context, "commonality of issues only makes a difference if the non-representative class members would do much better by litigating on their own." (*Dunk*, 48 Cal.App.4th at 1807, fn. 19.)

The Settlement Class members' claims here all stem from a common set of facts, circumstances and occurrences. Common questions of law and fact relevant to adjudication of the Class Members' claims include the following:

- Whether Defendant maintains a policy and/or practice that deprives Plaintiff and Class Members of overtime wages earned;
- Whether Defendant maintains a policy and/or practice that deprives Plaintiff and Class Members of minimum wage;
- Whether Defendant failed to pay all wages owed to Plaintiff and other Class Members upon their separation from Defendant's employment;
- Whether Defendant failed to reimburse all work-related expenses owed to Plaintiff and other Class Members;
- Whether Defendant maintains a policy and/or practice that results in the issuance of inaccurate wage statements to Plaintiff and the Class;
- Whether Defendant maintains a policy and/or practice that results in the timely payment of wages to Plaintiff and the Class;

The complex common questions implicated by the facts and law in this case strongly suggest that Settlement Class Members could not do substantially better than this Agreement by litigating individually. (*See Dunk*, 48 Cal.App.4th at 1807, fn. 19.) Commonality and predominance requirements for certification, particularly in the less intensive context of a Settlement Class, are therefore satisfied.

3. <u>Typicality</u>

Typicality means merely that the class representative is similarly situated to the members of the class, not that his claims are identical. (*See Classen v. Weller* (1983) 145 Cal. App. 3d 27, 45-46.) The typicality requirement is satisfied if the class representative's claims arise from the same events or course of conduct that gives rise to the class claims, and are premised upon the same legal theories. (*Id.*)

The Class Representative has claims or defenses typical of the class and can adequately represent the class. (*See Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429.) Section 382 of the Code of Civil Procedure authorizes class suits in California when "the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." To obtain certification, a party must establish the existence of both an ascertainable class and a well-defined community of interest among the class members, which involves three factors: predominant common questions of law or fact, a Class Representative with claims or defenses typical of the class, and a Class Representative who can adequately represent the class." (*Id.* at 435.)

In this case, Plaintiff's claims are typical of the members of the Class. (Collins Decl., ¶¶3-6, 8; Yadidsion Decl., ¶93.) Plaintiff, like other members of the Class, worked for Defendant in California and was subjected to Defendant's policies and practices. Plaintiff discovered that she and other employees were not being paid for all hours worked and were not provided with legally compliant meal and rest periods. (Collins Decl., ¶¶3-6, 8.) Apart from seeking a moderate incentive, common in class litigation, Plaintiff seeks to gain nothing personally from this litigation or settlement which is not made available to the Settlement Class members. Plaintiff has at all times been willing and able to aggressively and competently assert the interests of the Settlement Class members, and, but for this Agreement, would continue to do so. (*Id*., ¶¶3-6, 8-10.)

4. Adequacy

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." (*McGee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 487.) Plaintiff's counsel is an experienced class action litigator, with particular experience in litigating similar wage and hour class cases. (Yadidsion Decl., ¶¶3-8.) In addition, the proposed Class Representative has at all times been willing and able to aggressively and competently assert the interests of the Settlement Class members. (Collins Decl., ¶¶3-6, 8-10.) Adequacy of representation exists here.

VI. CONCLUSION

Based upon the foregoing, Plaintiff respectfully requests that this Court issue an Order:

1. Granting preliminary approval to the class action Agreement achieved in this matter;
2. Certifying the Settlement Class for settlement purposes, pending final approval of the Agreement;
3. Preliminarily approving Plaintiff Harley Collins as the Class Representative of the Settlement Class;
4. Preliminarily approving Plaintiff's counsel as Class Counsel for the Settlement Class;
5. Preliminarily approving Phoenix Settlement Administrators as the Settlement Administrator and preliminarily approving the costs of the settlement administration;
6. Setting this matter for hearing on the issues of final approval, approval of the service payment award, and approval of Class Counsel's application for attorney's fees and expenses; and,
7. Granting such other and further relief as the Court deems just and proper.

Respectfully Submitted,

DATED: February 7, 2025

LABOR LAW PC

By: ______________________

Danny Yadidsion, Esq.
Attorney for Plaintiff
HARLEY COLLINS, on behalf of herself and the putative class and aggrieved employees