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SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

MARTHA JIMENEZ, an individual, Plaintiff, v. AVONDALE GOLF CLUB, a California nonprofit corporation; and DOES 1 through 25, inclusive, Defendants.	Case No.: CVRI2305782 **<u>CLASS ACTION</u>** Assigned for all purposes to: Hon. Harold W. Hopp, Dept. 1 **DECLARATION OF YOUNG W. RYU IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: April 16, 2025 Time: 8:30 a.m. Dept: 1 **RES ID: 429738404256** PAGA Case No. LWDA-CM-982261-23: September 18, 2023 Action Filed: October 27, 2023 FAC Filed: December 20, 2023 Trial Date: None Set

DECLARATION OF YOUNG W. RYU

I, Young W. Ryu, declare as follows:

1. I am a member in good standing with the State Bar of California and an attorney licensed to practice before this Court and all courts in the State of California. I am the Managing Partner of LOYR, APC, counsel of record for Plaintiff MARTHA JIMENEZ in the within action. The facts set forth herein this declaration are within my personal knowledge and, if called as a witness, I could and would competently testify thereto.

2. I am submitting this declaration in support of the Motion for Preliminary Approval of Class Action Settlement ("Motion") of Plaintiff MARTHA JIMENEZ ("Plaintiff" or "Class Representative").

QUALIFICATIONS AND ADEQUACY OF CLASS COUNSEL

3. I have practiced law since 2007. In 2007, I joined Morrison & Foerster LLP in Virginia as an associate and my practice was focused on complex civil litigation, notably, the LCD patent rights litigation between Sharp and Samsung. Since starting my own practice about 14 years ago, I have focused nearly all of my efforts on complex litigation in state and federal courts, including consumer and employment class actions.

4. I have been responsible for all facets of class action employment and other complex litigation, from pre-filing investigation through trial and appeal. Since approximately 2010, I have spent most of my time representing consumers and employees in class action matters. I have litigated these issues in class actions to favorable statewide settlements that have recouped over ten million dollars.

5. For example, in the case of *Won Kyung Hwang v. Ohso Clean, Inc. et al.*, United States District Court case No. 3:12-CV-06355-JCS, I successfully litigated a consumer class action case involving consumer fraud claims under California Business & Professions Code section 17200 and the California Legal Remedies Act. I also successfully settled and was appointed as Class Counsel in the matter of *Wankyu Choi et al v. Mario Badescu Skin Care, Inc. et al* (Case No. BC501173), which was granted final approval of the matter in May 2014.

6. My firm represented the first indirect purchasers to file an antitrust price-fixing class action against Korean noodle companies in *An et al. v. Nongshim Company, Ltd. et al.*, in the Northern District of California, Case No. 13-cv-04115-WHO. I represented consumers in a false advertising class action in *Brenda Quijada v. Brinker Restaurant Corporation et al*, in the Central District of California, Case No. 2:15-cv-05016-JFW-PLA, which was successfully settled. I also represented the plaintiff in the class action matter *Khai Tu v. United Dental Corporation et al.*, Los Angeles County Superior Court Case No. BC542678, which was class certified. Additionally, I was the lead counsel representing consumers in a false advertising/fraud/deceit case regarding a water purification product in *Lee et al v. Coway USA, Inc. et al.* (BC628195). I have also been the lead counsel in the several other wage and hour class action matters including, but not limited to, *Mario Baez Cazares v. Servicemaster, Inc.* (BC571217), *Angelica Coronodo et al v. Landmark Restaurant Group, Inc.* (BC585287), *Chardae Hudson v. Win&Kin LLC, d.b.a. Beabeas et al.* (BC580601), *Castrellon v. Sumo Glass, Inc.* (BC594397), *Beatriz Corrales v. Torrahop, Inc.* (BC619955), *Ferdinand Rivera v. Secure Transportation* (BC612784), *Rodney Harvey v. Lincoln Training Center and Rehabilitation Workshop* (BC624322), *Rafael Olivares-Chavira v. West Valley Enterprises, Inc.* (BC634329), *Hernan Espinal v. Marmax Partners, Inc. et al.* (BC635989), *Michael Naranjo v. Lawrence Cable Company* (BC631324), *Vincent Buchanan v. BA2, LLC* (BC637355), *Sejong Im et al. v. Ebates, Inc. et al.* (CGC-17-561775), *Alma Castro et al. v. SAS Restaurant Ventures, LLC* (BC711676), *Alfredo Ramirez v. B&W Automotive, Inc. et al.* (BC716436), *Bryan Milla v. United Guard Security Inc. et al.* (BC705673), *David Wheeler v. Maher Ventures, Inc. et al.* (CIVDS1827659), *Eddie Giron et al. v. Arriaga and Associates et al.* (JCCP 4980), *Francisco Rodriguez v. Comptree Inc.* (BC670492), *Hilda Flores v. Community Hospice, Inc. et al.* (BC700547), *Homayoon Noori et al v. Mike Diamond Plumbing Inc. et al.* (30-2017-00961462-CU-OC-CXC), *KC Campbell v. DCC Companies, Inc. et al.* (30-2017-00962963-CU-OE-CXC), *Mahoo Amin v. Advanced Sterilization Products Services Inc. et al.* (8:18-cv-01528 JVS (JDEx)), *Melissa Gonzalez v. El Pollo Loco, Inc et al.* (JCCP 4957), *Moises Oseguera v. Platinum Auto Trends, Inc. et al*. (BC687830), *Omar Yerena v. EP Charger, LLC* (BC709654), *Oscar Silva et al. v. Henz Transport Group, Inc. et al.* (BC711664), *Pedro Gomez v. GP Merger Sub, Inc. et al. (*BC687831), *Sang Hee Lee v. Hyundai Shipping USA, Inc. et al.* (BC697950), *Omar*

Marquez v. Buena Park Euro Cars, LLC et al. (30-2018-01038163-CU-OE-CXC**),** *Gilbert v. Angelos Enterprise, Inc. et al.* (RIC1827093), *Erahin Mendez v. KH Food & Cuisine, Inc. et al.* (RIC1905251), *Lopez v. Macy's West Stores, Inc. et al.* (CIVDS1900936), *Wheeler v. Maher Ventures, Inc. et al.* (CIVDS1827659), *Aguirre et al v. EZ-Erectors, Inc. et al.* (CIVDS1831127), *Joyce Allen v. Skid Row Housing Trust et al.* (20STCV03692), *Ramiro Espinoza v. United Valet Parking, Inc. et al*. (20STCV07027), *Teiano Sialoi v. Always Private Security Services, Inc.* (19STCV34402), *Jose Benitez v. 84 Lumber Company, ALP. et al*. (20STCV11173), *Barbara Salcedo v. JC USA, Inc. et al.* (20STCV24194), *Felipe Osorio v. US Foods, Inc.* (20STCV46858), *Alberto Escalante v. National Transmission Products LLC et al.* (20STCV43203), *Jeremy Cuellar v. Monro, Inc. et al*. (CVRI2000048), *Kimberly Westerfield et al v. Lighthouse Social Service Centers et al.* (CIVSB2126109), *Jesus Rosas v. Optec Displays, Inc. et al.* (CIVSB2024991), *Luis Orozco v. Affordable Cremations of the High Desert, Inc*. (20STCV34364), *Ricardo Flores v. Cruz Cat Construction & Engineering Inc. et al.* (CVRI2200073), *Jamie Baca v. Amazing Ventures, Inc. et al.* (21STCV02328), *Alberto Escalante v. National Transmission Products, LLC et al*. (20STCV43203), *Jesus Negrete v. Golden State Foods, Corp. et al.* (30-2021-1238386-CU-OE-CXC), *Guillermo Grijalva v. Galbi Brothers, Inc.* (21STCV21696), *Sandra Lamb v. PerkinElmer, Inc. et al.* (22STCV38033), *Robert Esquer v. Medical Breakthrough Massage Chairs, LLC et al.* (21STCV28968), *Mahoo Amin v. USGI Medical, Inc. et al.* (30-2023-01350193-CU-OE-CXC) and so on. My firm has obtained favorable settlement results in the foregoing cases for the consumers and employees. There are several other pending wage and hour class action cases that my firm is the lead counsel on.

7. I do not believe that I have any conflicts of interest with the Class or with the Class Representatives. I am not related to the Class Representatives. I have also not previously represented Defendant AVONDALE GOLF CLUB in any matter. I respectfully submit that I and LOYR, APC are well suited to act as Class Counsel in this action, and we have and will continue to vigorously represent the interests of the Class Members. I also do not have any interest or involvement with the State Controller's Unclaimed Property Fund that would provide any conflict. I also am not aware of any

other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS

8. On October 27, 2023, Plaintiff MARTHA JIMENEZ filed a Class Action Complaint against Defendant AVONDALE GOLF CLUB in the Superior Court for the State of California, in Riverside, Case Number CVRI2305782, alleging the following eight (8) causes of action: (1) Failure to Pay Minimum and Regular Rate Wages; (2) Failure to Pay Overtime Compensation; (3) Failure to Provide Meal Periods and Pay Wages in Lieu Thereof; (4) Failure to Provide Rest Periods and Pay Wages in Lieu Thereof; (5) Failure to Indemnify Necessary Expenditures of Losses; (6) Failure to Furnish Accurate Itemized Wage Statements and to Maintain Accurate Records; (7) Failure to Pay Wages at Discharge or Quitting; (7) Failure to Reimburse Business Expenses in Violation of Cal. Labor Code § 2802; and (8) Unfair Competition Law Remedies for Unlawful and Unfair Business Acts. On December 20, 2023, Plaintiff filed a First Amended Complaint, adding a ninth cause of action: (9) Private Attorneys General Act Remedies for Violations of the Labor Code. Before filing the lawsuit, LOYR, APC ("Class Counsel") investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto. This required thorough discussions and interviews between Class Counsel and Plaintiff as well as preliminary research into the various legal issues involved in the case. After conducting our initial investigation, we determined that Plaintiff's claims were well-suited for class and representative action adjudication owing to what appeared to be a common course of conduct affecting a similarly situated group of employees.

9. On November 6, 2024, the parties attended a full day of mediation with the Honorable Steven R. Denton, Ret. Judge Denton is an experienced mediator with significant experience overseeing and resolving employment class action and PAGA lawsuits. For purposes of attending mediation, Plaintiff obtained certain information related to AGC's policies, practices and procedures, along with other non-confidential information regarding AGC's employees. This included AGC's employee handbooks applicable during the Class Period, time cards, and wage statements. Prior to the mediation, the parties provided Judge Denton with exhaustive mediation briefs summarizing the evidence, the state of the applicable law and providing a comprehensive, class-wide damages analysis.

The Parties conducted their own evaluation of potential risks and recoveries based on the claims alleged in the Action and from the exchange of information, with Plaintiff engaging an expert to conduct a damage analysis. After negotiating the Settlement, but before executing the Settlement Agreement, Plaintiff obtained additional information on class statistics.

10. After the mediation, the parties subsequently reached a class-wide settlement and entered into a long-form Settlement Agreement. Attached hereto as **Exhibit 1** is a true and correct copy of the long-form Settlement Agreement.

11. From my review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and my own prior litigation experience, I believe that the recovery for each Class Member is fair and reasonable, taking into consideration the amounts received in other wage and hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Class Member's claim to the settlement award he or she will receive. Further, and based on the settlement negotiations, which were extensive, and conducted in good faith and at arm's length between attorneys with substantial experience litigating class actions and wage and hour cases, the Settlement Agreement was the product of a non-collusive settlement process in which the parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the lawsuit.

SUMMARY OF SETTLEMENT

12. Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay $485,000.00 ("Gross Settlement Amount") on a non-reversionary basis to settle and release all claims asserted by Plaintiff in the operative complaint on behalf of the proposed Class and aggrieved employees. The Settlement Agreement defines the "Class Members" as all current and former California non-exempt employees who worked for Defendant during the time period from October 27, 2019, through January 1, 2025 (i.e., the Class Period). The "Net Settlement Amount" available for distribution to Class Members, shall be the Gross Settlement Amount, less Attorneys' Fees and Costs, the Class Representative Service Payment, Settlement Administration Costs, and PAGA Payment. These amounts are detailed as follows:

- Not more than One Hundred Sixty-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents ($161,666.66) to Class Counsel for attorney's fees, and not more than

Fifteen Thousand Dollars and Zero Cents ($15,000.00) in costs;

- Not more than Ten Thousand Dollars and Zero Cents ($10,000.00) to Plaintiff Martha Jimenez as a Class Representative Service Payment;
- Not more than Four Thousand Six Hundred and Ninety Dollars and Zero Cents ($4,690.00) for the Settlement Administration Costs;
- Forty-Eight Thousand Five Hundred Dollars and Zero Cents ($48,500.00) shall be allocated for settlement of claims for civil penalties under PAGA, where 75% ($36,375.00) will be paid to the LWDA and 25% ($12,125.00) will be paid to the PAGA Group Members on a pro rata basis.

13. The "Individual Settlement Payment," which is each Class Member's share of the Net Settlement Amount, will be calculated by dividing the Net Settlement Amount by the total number of Workweeks by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

14. The settlement amount was a compromised figure, factoring in the inherent risks related to certification, liability and damages. However, taking into account all of the circumstances of the action and the defenses raised by Defendants against certification, liability and damages, Class Counsel believes that the settlement is fair and reasonable.

15. Class Members shall each receive the Notice of Class Action Settlement (the "Class Notice") in English along with Spanish translation, via First Class Mail (after the Settlement Administrator conducts a national change of address search).

16. Class Members wishing to opt-out from the Settlement Agreement must submit a timely and valid Opt Out Request (as directed by the Class Notice) to the Settlement Administrator within the Response Deadline. The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Notice of Class Action Settlement, or additional fifteen (15) calendar days if the Class Notice is re-mailed. However, Class Members will not be permitted to opt out of the PAGA Settlement.

17. Class Members within the Response Deadline will also have an opportunity to dispute (as directed by the Class Notice) the information provided in their Notices of Class Action Settlement and produce evidence to support their position that the information is inaccurate. The Settlement Administrator shall decide the dispute, may request information from AGC as necessary, and make the final decision to resolve the dispute.

18. Class Members will also have the opportunity to object to the Settlement Agreement by making a valid Objection with the Settlement Administrator within the Response deadline, by mailing a valid Objection to the Settlement Administrator within the Response Deadline, or presenting verbal objections at the Final Approval Hearing.

19. The Parties have agreed that Apex Class Action Administration ("Apex") shall handle the notice and claims administration.

<u>THE STRENGTH OF PLAINTIFF'S CASE</u>

<u>IN LIGHT OF THE SETTLEMENT AMOUNT</u>

20. Because the class consists of numerous employees, it was unlikely that the potential monetary claims of individual Class Members would have proved viable without the class-action mechanism. The Settlement Agreement should be approved in light of two California appellate decisions: *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785 and *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116.

21. The strength of the Plaintiff's case in light of the settlement amount is deemed by the courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiffs allege that Defendant AGC failed to pay all wages owed, failed to provide meal periods or provide premium pay in lieu thereof, failed to provide rest breaks or provide premium pay in lieu thereof, failed to provide accurate wage statements, failed to reimburse business expenses, failed to pay final wages when due, and related claims for violations of California's Business & Professions Code, and penalties pursuant to Labor Code section 2699, *et seq*. The merits of each of these claims will be addressed separately below.

22. Plaintiff alleges that Defendant AGC failed to pay all wages owed to Plaintiffs and Class members. Specifically, Plaintiff contends that Defendant AGC kept inaccurate payroll and timecard

records, and therefore failed to pay Plaintiff and Class Members for all hours worked. Plaintiff contends that Defendants failed to comply with their agreement to pay Plaintiff based on hours worked and non-discretionary earnings based on Plaintiff's sales of Defendants' food and drink and other measurable criteria but knowingly failed to pay Plaintiff all the earnings Plaintiff was entitled to and failed to take corrective action when Plaintiff or other Class Members complained about Defendants' deceptive and fraudulent wage theft policies and practices; Defendants failed to return, pay or provide to Plaintiff, in full thereafter or in amounts Plaintiff was entitled to after patrons left gratuities in cash or via credit card slip that Defendants collected, took or received in whole, or in part, after the gratuities were paid for Plaintiff when Plaintiff performed waiting, catering and/or bartending services; and for the foregoing and other reasons, Defendants failed to pay Plaintiff all minimum, regular rate, and overtime wages. Defendant AGC argued that their payroll and timecard system was legally compliant, and that Plaintiff and the Class were properly compensated for all hours worked. Defendant AGC expressed confidence that it would be able to obtain sworn testimony from former employees supporting its position if the matter were to be further litigated.

23. Based on the foregoing analysis, Class Counsel estimated AGC's maximum total exposure on the unpaid wages claim to be approximately $419,666.12.

Meal and Rest Periods

24. Plaintiff alleges that Defendant AGC failed to provide timely and uninterrupted meal breaks to Class Members. *See Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1040 ("[T]he wage order's meal period requirement is satisfied if the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for the entire period."). More specifically, despite working regular 12-hour shifts, Plaintiff alleges that the Class was not provided with a second meal period. However, notwithstanding the foregoing, Plaintiff alleges that the Class was not paid one (1) hour of pay at their regular rate of compensation for each work day where a legally compliant meal period was not provided. Defendant AGC disagreed with Class Counsel's interpretation of the law and facts. Defendant AGC argued that it had valid policies on meal periods, which were disseminated to all Class Members. Defendant AGC also argued that Class Members signed valid meal period waivers pursuant to California Labor Code section 512(a). While, as noted,

there was limited documentation available due to the passage of time, Defendant AGC expressed confidence that it would be able to obtain favorable testimony from former employees regarding its meal break policies.

25. In addition to meal periods, Plaintiff also contended that Defendant AGC did not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction thereof. Plaintiff contends that Class Members consistently worked in excess of consecutive four-hour shifts and were entitled to paid rest breaks of not less than ten minutes for each consecutive four-hour shift which they were denied. Plaintiff contended that Class Members were routinely required to work through their rest breaks, and were not allowed to take any break until after the 10th hour of work. Defendant AGC maintained that it did provide reasonable opportunity for Class Members to take duty-free rest breaks. Defendant AGC also pointed out that, unlike meal periods, rest breaks need not be recorded which makes proving alleged violations that much harder than for meal periods.

26. Class Counsel estimated Defendant AGC's maximum total exposure on the meal break claim at approximately $389,784.07, and on the rest break claim at approximately $578,999.82. This number was discounted due to the fact that Defendant AGC argued many individualized issues would apply making certification of this claim difficult to achieve.

Unreimbursed Business Expenses

27. Additionally, Plaintiff alleges that Defendant failed to indemnify and reimburse Plaintiff and Class Members for uniform wear requirements, which included Defendant's policy of requiring Class Members to purchase and to maintain, including by laundering and pressing, uniform items that included logoed wear. Defendant AGC maintains that it provided all necessary equipment and that any costs incurred for necessary business expenses were properly reimbursed.

28. Class Counsel estimated Defendant AGC's maximum total exposure on the unreimbursed expenses claim at approximately $100,139.11.

Paystub Violations

29. Plaintiff also contended that Defendant AGC failed to provide Class Members with accurate, itemized wage statements as required by California Labor Code § 226(a). As a direct and proximate cause of Defendant's violation of Labor Code § 226(a), the Class Members suffered injuries,

including among other things confusion over whether they received all wages owed them. Pursuant to Labor Code §§ 226(a) and 226(e), employees are entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

30. Defendant AGC contends that Plaintiff's claim for further Labor Code § 226(e) penalties would depend in large part on their underlying wage claims, and thus be subject to the same defenses. Defendant further contended that wage claim violations, even if established, could not be the predicate for a Labor Code § 226 wage statement claims. *See, e.g. Culley v. Lincare Inc.* (E.D. Cal. 2017) 236 F.Supp.3d 1184, 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393 (noting wage statement need only document compensation actually received and the hours used to calculate that compensation). Defendant AGC further noted that the payroll information provided from ADP appeared to contradict Plaintiff's allegations. Finally, because the damages for this cause of action are penalties, the statute of limitations only runs from one year prior to the filing of the original complaint. See Cal. Civ. Pro. § 340.

31. Plaintiff's estimated Defendant AGC's maximum total exposure on the section 226 claim at approximately $194,200 on the basis of 1,975 estimated pay periods. The parties discussed these issues, and in light of these and other considerations Class Counsel factored in a reduction of liability and damages for this cause of action.

Failure to Pay Final Wages

32. In failing to pay the California Class Members their minimum wages, overtime wages, meal and rest break premiums, all discussed above, Defendant AGC willfully failed to pay these Class Members all wages due and certain at the time of termination or within seventy-two (72) hours of resignation, as required under Labor Code § 203.

33. Labor Code § 203 provides that if an employer willfully fails to pay an employee all wages due at termination or within 72 hours of resignation, then that employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the date they were due. Because Class Members stopped working for Defendant AGC but again were not paid their full compensation for the

reasons discussed above, Class Members did not receive all wages due upon termination of employment.

34. Defendant AGC argued that, under Labor Code § 203, employers are only obligated to pay waiting time penalties if they "willfully" fail to pay wages due and owing at the time of termination or resignation. As Title 8, California Code of Regulations, § 13520 states:

> A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. However, 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. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist. Defenses presented which, under all the circumstances, are unsupported by any evidence, are unreasonable, or are presented in bad faith, will preclude a finding of a "good faith dispute."

35. Plaintiff's expert estimated Defendant AGC's maximum total exposure on the section 203 claim at approximately $121,243.30 (approximately 79 former employees during the Class Period). Given the foregoing arguments, this claim had to be steeply discounted.

PAGA PENALTIES

36. The Labor Code Private Attorneys General Act, Labor Code § 2699 et seq., allows Plaintiff to obtain civil penalties on behalf of himself and other Class Members for Defendant's violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25) percent allocated to the affected employees. The limitations period as for all penalties is one year prior to the filing of the complaint.

37. PAGA penalties are not mandatory but permissive. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *See Thurman v. Bayshore* (2012) 203 Cal.App.4th 1112 (substantially reducing PAGA penalties by 30% under this provision).

38. Here, Defendant AGC maintains that it would be unjust to award any PAGA penalties and that even if penalties were awarded, the Court would exercise its discretion to significantly reduce any penalties. Furthermore, PAGA penalties are also derivative of each and every other claim, and Defendant AGC therefore argues the PAGA claims would be subject to the same defenses to the underlying claims and similarly fail on the merits. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, it can be argued that penalties under PAGA could, at best, be awarded only at the rates obtainable for initial violations under the applicable statutes, because Defendant had never been notified of the alleged violations. *Id.* at 1208-1209. Moreover, Section 2699(e)(1) authorizes the Court to exercise the same discretion as the DLSE whether to award civil penalties. *Amaral* 163 Cal.App.4th 1157, 1211-12. Therefore, if the Labor Commissioner — on whose behalf Plaintiff is prosecuting this action for civil penalties — would not impose civil penalties in a case like this, the Court may not award civil penalties. Moreover, in *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1136, the Court of Appeal affirmed the trial court's reduction of PAGA civil penalties by 30 percent, finding that awarding the full penalties would have been "unjust."

39. Class Counsel estimated Defendant AGC's total exposure on the PAGA claim at approximately $7,253,100.80, the bulk of which ($3,605,000) was for Labor Code section 226(a) violations. Class Counsel then applied discounts in light of the countervailing arguments with regard to the other causes of action, and moreover the Court's power to award "a lesser amount than the maximum civil liability." Class Counsel also applied discounts on the basis of the California Supreme Court's recent decision in *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, severely limiting the availability of PAGA penalties for alleged violations of section 226(a). Furthermore, Defendant argued that there were significant manageability concerns for trying Plaintiff's PAGA claims on a representative basis. *Wesson v. Staples* (2021) 68 Cal.App.5th 746. There were also

problems of proof related to the passage of time and limited documentation available to support Plaintiff's claims. Defendant AGC also argued that the ADP payroll information that was provided contradicted Plaintiff's claims. Accordingly, this makes the settlement's contemplated PAGA payment of $48,500.00 appropriate.

Unfair Business Practices

40. Plaintiff pleaded this cause of action in order to augment their other causes of action and aid in their prosecution. Business and Professions Code §17208 extends the statute of limitations on Plaintiff's wage claims, which qualify as unfair business practices, to four years rather than the three years provided by statute.

Summary

41. The foregoing discussion has sought to explain how the settlement amount is adequate in light of the merits of Plaintiff's case. It has done this by explaining the legal basis for each of Plaintiff's causes of action, summarizing the evidence that Class Counsel gathered in support of those causes of action, and relating Defendant AGC's legal and factual arguments that worked to detract from the strength of Plaintiff's case.

42. Class Counsel had to apply appropriate discounts in light of the facts and law as discussed above. Thus, this settlement, like most others, was the product of compromise. Because of these and other risks, a recovery of $485,000.00 under the Settlement Agreement is an excellent result. Under the Settlement, each of the approximately 74 Class Members will receive on average $3,103.08.

THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION, AS WELL AS THE RISK OF MAINTAINING CLASS ACTION STATUS THROUGH TRIAL

43. The next *Clark*/*Kullar* factors recognize that settlements take into consideration the risks and expenses posed by further litigation and, in the class-action context, the risk of noncertification. Consequently, it is proper that trial courts should keep these considerations in mind when judging the adequacy of class action settlements. Further litigation of this case posed real risks for a number of reasons. First, there were the risks of unfavorable rulings on the merits of the various indeterminate legal issues outlined in the previous section. In that section, it was observed that almost every cause of action was subject to some unique indeterminacy of its own, and that the derivative causes of action

were thus subject to a double indeterminacy, both their own and those of the causes of action on which they were based. The parties disputed the effect of these and other issues on class certification and decertification. Class Counsel maintained that there were several legal and factual questions at issue in the case that could best be decided on a class-wide basis. Class Counsel contended that the same policies and practices applied to all Class Members and therefore common questions obtained and were likely to predominate over individual inquiries. Defendant AGC disputed these contentions and insisted that the *Brinker* decision called into question the certifiability of cases such as this one. Defendant AGC also argued that their policies were compliant with the law and that despite the lack of a signed employee handbook due to the passage of time, Defendant AGC would be able to obtain favorable testimony from former employees. Plaintiff disputed that the policies were lawful, and argued the lawfulness of such policies would give rise to common questions amenable to certification. Thus, the parties had set positions on the propriety of certifiability and liability that did not admit of an easy resolution.

44. Finally, it is always preferable to reach a relatively early resolution of a dispute because, in addition to what has already been said, such resolutions save time and money that would otherwise go to litigation. In light of the risk and expense of the lawsuit and proceeding to trial there was a need to resolve this matter soon than later. Most cases settle sooner or later. If this case settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less available for Class Members after all was said and done. This is not just an abstract contention. The parties were moving into the phase of this litigation where they would have had to depose a number of people such as managers, supervisors, and employees for class certification purposes. Because Defendant AGC has ceased operations in December 2021, this would have necessitated substantial costs from investigation and third-party discovery. Discovery disputes would have been in the offing. The parties were also aware that a class action trial would be a complicated and expensive proceeding, and then there was the likelihood of a long, drawn-out appeals process. In contrast, the settlement provides real benefits for Class Members in the immediate future. The benefits are not insignificant for anyone, especially given the current economic climate. Consequently, the risk and expense of further litigation outweighed any benefit that might have been gained otherwise.

REQUEST FOR ATTORNEYS' FEES

45. Under the Settlement, Class Counsel also requests, without opposition from Defendants, an award of attorneys' fees and costs consisting of: (1) no more than $161,666.66 in fees, and (2) $15,000.00 for reimbursement of Class Counsel's costs. This request is fair, reasonable, and adequate to compensate Class Counsel for the substantial work they have put into this case and, moreover, the risk they assumed by taking it in the first place. The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated work that they have already done and for all the work they will continue to do in carrying out and overseeing the notification to Class Members, communicating with Class Members regarding their claims, and assisting in the administration of the settlement if it is preliminarily approved.

46. Class Counsel took this case on a contingent-fee basis against a business represented by a reputable defense firm. When we take contingent cases, we must pay careful attention to the economics involved or one bad case can destroy years of work. Accordingly, when we take contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the number of hours in a day is limited. Because of this, when we take on one particular matter, we are unable to take on other matters. When Class Counsel became involved in this case, we realized the time commitment that it would entail and we were forced to turn down matters that would require Class Counsel's time and attention throughout its pendency. The requested fee is reasonable for the services provided to Class Members and for the benefits they are to receive. Indeed, even with a modest multiplier under the lodestar theory, *see Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997, Class Counsel's fees would still be justified. Class Counsel will more fully brief the Court on its lodestar in the motion for final approval.

ENHANCEMENT TO PLAINTIFF AS CLASS REPRESENTATIVE

47. Plaintiff herein is entitled to reasonable service payment for her efforts and initiative in bringing and helping to prosecute this action. Plaintiff spent a considerable amount of time better apprising herself of her rights, deciding whether remedial action should be taken, how it should be taken, searching for attorneys, and finally contacting Class Counsel, who spent many hours with

Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not only her own rights but also those of her co-workers by filing a class action lawsuit.

48. The courage it took to stand up to Defendants by filing and litigating this action in this way should not be underestimated. By suing Defendants, Plaintiff increased her risk of retaliation by prospective employers. Plaintiff's lawsuit has now required Defendants to expend considerable resources, and Plaintiff justifiably fears the fact that she served as class representatives in a wage and hour class action will not be lost on a prospective employer who has to choose between an applicant who has never sued a prior employer and one who has. Plaintiff contends this risk is particularly real in the information age, where employers can, more easily than ever, perform background checks of prospective employees, sometimes with the stroke of a key. It is common for employers to screen employee candidates to determine whether they have ever filed suit, and employee candidates who might be branded "litigious" are likely to be screened out of the process. In fact, an entire industry exists for providing employers with background information on employee candidates.

49. But Plaintiff did not allow her fears of the potential repercussions of being class representative to deter her from acting for the benefit of Class Members. To the contrary, Plaintiff has been intimately involved in this case since its inception. She has devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation. Both before and after the filing of the Operative Complaint, Plaintiff conferred with Class Counsel on numerous occasions to discuss every aspect of the case. Plaintiff provided Class Counsel with information about Defendants and about the industry generally, reviewed documents, consulted Class Counsel throughout the litigation repeatedly and at length, participated in the mediation process, and monitored the progress of the litigation with Class Counsel.

50. Plaintiff has spent a significant amount of time with Class Counsel detailing her knowledge of Defendant's practices and helping Class Counsel with the prosecution of this action. She has diligently, adequately, and fairly represented Class Members, and has not placed her interests above any member of the putative class. The payment to Plaintiff is intended to recognize her time and effort on behalf of the Class. The amount requested is fair and appropriate based on her contribution and involvement. For example, Plaintiff instigated the lawsuit by bringing these violations to the attention

of Class Counsel. She spent several hours answering questions and providing information to Class Counsel throughout the pendency of this action. She explained to Class Counsel the day-to-day business practices of Defendants with regard to work schedules, etc. The parties are in agreement that Plaintiff is entitled to an enhancement for her time and effort in this matter. This sort of payment to a class representative has been a common feature of settlements negotiated by Class Counsel and has been routinely approved by trial courts.

51. In light of the foregoing, Class Counsel believes that the service enhancement payment in the amount of $10,000 is fair and reasonable. This amount is a far cry from the $50,000 of enhancement awards to the two named plaintiffs approved by the trial court in *Clark*. (*See Clark,* supra, 175 Cal.App.4th at 807.) Although Class Counsel appreciate that the Court has a duty to ensure that class representatives are not overcompensated at the expense of the class, modest incentive awards in employment class actions, such as the one here, are necessary not only to compensate class representatives for the time they spend in the case, but also, and more importantly, to encourage aggrieved employees to challenge questionable employment practices notwithstanding the very real consequences they may face.

CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS

52. The proposed Classes satisfy the criteria for certification of a settlement class under California law, as embodied in California Code of Civil Procedure § 382. Defendants agreed to the certification of the class for settlement purposes. In general, courts may take a proposed settlement into account in evaluating the propriety of class certification. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19.) Indeed, a "lesser standard" of scrutiny applies in certifying classes for settlement purposes. (*Ibid.*) Therefore, the Court should take into consideration the fact that the parties have settled their claims and stipulated to certification for settlement purposes when assessing typicality and adequacy.

a. **Numerosity and Ascertainability**. The putative classes are so numerous that joinder of all members is impractical. Class Members consists of all current and former California non-exempt employees who worked for Defendants during the time period from October 27, 2019, through January 1, 2025 (i.e., the Class Period). There are approximately 79 persons fitting this definition. Thus, there are a sufficient number of Class Members to warrant certifying this as a class action for settlement purposes. Furthermore, the putative class is defined in a manner that is precise, objective, and ascertainable.

b. **Typicality**. A class representative's claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative class members, and if their claims rest on the same legal theories. The class representative's claims must be "typical" but not necessarily identical to the claims of other class members. It is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all Class Members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc*. (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class representative must have identical interests with the class members."). Thus, it is not necessary that the class representative should have personally incurred all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 228. Plaintiff's claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. Plaintiff was employed by Defendants during the Class Period and subjected to the allegedly unlawful break policies and pay practices at issue in this litigation. Accordingly, Plaintiff is a member of the class. The central issues of this litigation (whether Defendants failed to pay all wages, whether Defendants failed to provide meal periods, etc.), which would arise if this were an individual action brought by Plaintiff apply to the other Class Members as well, and the answer to these questions would determine Defendant's liability to the entire putative class. Thus, Plaintiff's claims are typical of the claims of the putative class. Accordingly, the typicality requirement is satisfied.

c. **Adequacy**. A class representative must possess the same interest and suffer the same injury as the class members. "To assure 'adequate' representation, the class representative's personal claim must not be inconsistent with the claims of other members of the class." *J.P. Morgan & Co., Inc. v. Sup.Ct.* (*Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 212. Thus, the adequacy requirement is satisfied when the class representative's interests are not antagonistic to those of the class. *McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451. Plaintiff has no conflicts with the class and in fact her interests are aligned with those of the class. Because Plaintiff's claims are identical to those that would be asserted by the unnamed Class Members were they before the Court, Plaintiff has every interest in zealously representing the unnamed class members. Plaintiff has not shrunk from this responsibility. Indeed, Plaintiff has devoted a substantial amount of time and energy to litigating this action and effecting a settlement. Furthermore, as detailed above, Class Counsel are experienced in wage-and-hour litigation, especially class actions, and have zealously represented the interests of the class in litigating this case. Accordingly, the adequacy requirement is satisfied.

d. **Commonality**. Common questions of law or fact in this case predominate over individual questions. This action involves, inter alia, a determination about Defendant's alleged failure to pay all wages owed including overtime wages, failure to provide meal/rest breaks or provide premium pay in lieu thereof, failure to provide accurate wage statements, failure to pay final wages when due, and related claims for violations of California's Business & Professions Code, and penalties pursuant to Labor Code section 2699, *et seq*. Plaintiff contends these practices affected class members in the same way. All class members were employed during the Class Period. Therefore, the operative complaint delineates a common course of conduct applicable to all Class Members. Therefore, based on Class Counsel's investigation, the review of the discovery produced by Defendants, and their discussions with Plaintiff, Plaintiff contends the evidence supports their position that the employment practices and policies of Defendant's business were consistent and uniform.

e. **Predominance**. Individualized issues do not predominate over the issues of law and fact that are common to the class as a whole. The principal issues of controversy are whether Class Members were paid for all hours worked, provided lawful meal and rest breaks, etc. As explained, supra, there are common issues of law and fact given that Plaintiff and all Class Members were subjected to the same policies and pay practices during the relevant time period. Plaintiffs and Class Members seek meal & rest break premiums, unpaid wages and overtime, and penalties for work performed as non-exempt employees for Defendants. These issues are suitable for common adjudication because all Class Members were subject to the same employment policies and Plaintiff contends the practices applied uniformly to all Class Members.

f. **Superiority**. Class resolution is superior to other available methods for the fair and efficient adjudication of the controversy. There is little interest or incentive for Class Members to individually control the prosecution of separate actions. Although the injury resulting from Defendant's policies and practices are real and significant, the cost of individually litigating each such case against Defendants would easily exceed the value of any relief that could be obtained by any one Class Member individually. If Class Members are forced to litigate their claims individually this would result in about 74 individual actions against Defendants. Here, the alternative methods of resolution are individual suits for relatively small amounts. Hence, an individual suit would prove uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery.

NOTICE TO THE LWDA OF THE SETTLEMENT

53. On February 20, 2025, pursuant to Labor Code section 2699(l)(2), our firm submitted the Settlement Agreement to the LWDA. Attached hereto as **Exhibit 2** is a true and correct copy of the proof of submission to the LWDA of the Settlement Agreement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 20th Day of February, 2025, at Los Angeles, California.

By: ______________________________
Young W. Ryu