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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 **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** 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

TO THE COURT, DEFENDANT AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 16, 2025, at 8:30 a.m. or as soon thereafter as this matter be heard, in Department 1 of the Riverside Historic Courthouse, 4050 Main St, Riverside, CA 92501, Plaintiff MARTHA JIMENEZ ("Plaintiff"), on behalf of herself and all persons similarly situated, will and hereby does move this Court pursuant to California Code of Civil Procedure section 382 and California Rule of Court 3.769 for an Order Granting Plaintiff's Motion for an Order: 1) Granting Preliminary Approval of Class Action and PAGA Settlement, 2) Granting Conditional Certification of the Settlement Class, 3) Appointing Class Counsel, Class Representative and Settlement Administrator, 4) Approving the Notice of Class Action Settlement and Final Approval Hearing Date, and 5) Scheduling a Final Approval Hearing Date.

The application shall be based on this Notice, the accompanying Memorandum of Points and Authorities, Declaration of Young W. Ryu, Esq., Declaration of Martha Jimenez, filed herewith, on all records on file in this case, and on such other evidence as may properly come before the Court at the time of the hearing of this motion.

Dated: February 20, 2025 **LOYR, APC**

By: ______________________

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I. INTRODUCTION

On October 27, 2023, Plaintiff MARTHA JIMENEZ filed a Class Action Complaint against Defendant AVONDALE GOLF CLUB ("AGC"). Pursuant to the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement"), filed concurrently herewith, the Class consists of 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).

After engaging in substantial investigation and extensive negotiations with the assistance of a respected third-party neutral, the Honorable Steven R. Denton, Ret., the parties have agreed to settle all claims alleged in the lawsuit on a class-wide non-reversionary basis for $485,000.00, inclusive of all fees and costs. Approximately 79 Class Members shall receive a settlement share unless they opt out.

The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Class. (*See* Declaration of Young W. Ryu in support of Motion for Preliminary Approval of Class Action Settlement ("Ryu Decl."), ¶ 10-11, Ex. A). Consequently, Plaintiff hereby moves this Court for an order: (1) granting preliminary approval of the proposed Class Action and PAGA settlement, as embodied in the Settlement Agreement filed concurrently herewith; (2) granting conditional certification of the Settlement Class; (3) Appointing Class Counsel, Class Representative and Claims Administrator; (4) approving the Notice of Class Action Settlement to be sent to Class Members, and the notification schedule as set forth in the Settlement Agreement and the Proposed Order, also filed concurrently herewith; and (5) setting a hearing for final approval of the class action settlement.

II. PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS

On October 27, 2023, Plaintiff filed a Class Action Complaint against Defendant 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. (Ryu Decl. ¶ 8.)

Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto. (*See* Ryu Decl. ¶ 8.) 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. (*See id.*) After conducting their initial investigation, Class Counsel 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. (*See id.*)

On November 6, 2024, the parties attended a full day of mediation with the Honorable Steven R. Denton, Ret. (*See* Ryu Decl. ¶ 9.) Judge Denton is an experienced mediator with significant experience overseeing and resolving employment class action and PAGA lawsuits. (*See id.*) For purposes of attending mediation with Judge Denton, Plaintiff obtained certain information and documents related to AGC's policies, practices and procedures, along with other non-confidential information regarding AGC's employees. (*See* Ryu Decl. ¶ 9.) This included AGC's employee handbooks applicable during the Class Period, time cards, and wage statements. (*Id.*) After negotiating the Settlement, but before executing the Settlement Agreement, Plaintiff obtained additional documents and information, including sample class member/allegedly aggrieved employees time and payroll records, class statistics, and other class data. (*See id.*) 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. (*See id.*)

After the mediation, the parties subsequently reached a class-wide settlement entered into a long form Settlement Agreement. (*See* Ryu Decl. ¶ 10, Ex. 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 litigation experience, Class Counsel believes 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. (*See* Ryu Decl., ¶ 11.) 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. (*See id.*)

III. SUMMARY OF SETTLEMENT

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. (*See* Ryu Decl., ¶ 12.) 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). (*See id.*) 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. (*See id.*) These amounts are detailed as follows:

- Not more than One Hundred Sixty-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Six ($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 (*See* Ryu Decl., ¶ 12);
- Not more than Ten Thousand Dollars and Zero Cents ($10,000.00) to Plaintiff Martha Jimenez as a Class Representative Service Payment (*See* Ryu Decl., ¶ 12.);

- Not more than Four Thousand Six Hundred and Ninety Dollars and Zero Cents ($4,690.00) for the Settlement Administration Costs (*See* Ryu Decl., ¶ 12.);
- 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. (*See* Ryu Decl., ¶ 12.)

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. (*See* Ryu Decl., ¶ 13.)

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

Attached to the Settlement Agreement as Exhibit A is the Notice of Class Action Settlement (the "Class Notice"). Class Members shall each receive the Class Notice in English along with Spanish translation, via First Class Mail (after the Settlement Administrator conducts a national change of address search). (*See* Ryu Decl., ¶ 15, Ex. A to Ex. 1).

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. (See Ryu Decl., ¶ 16.) The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Class Notice, or an additional fifteen (15) calendar days if the Class Notice is re-mailed. (*See id.*) However, Class Members who are aggrieved employees will not be permitted to opt out of the PAGA Settlement. (*See id*.)

Class Members within the Response Deadline will also have an opportunity to dispute the information provided in their Notices of Class Action Settlement and produce evidence to support the information is inaccurate. (*See* Ryu Decl., ¶ 17.). The Settlement Administrator shall decide the dispute, may request information from Defendant as necessary, and make the final decision to resolve the dispute. (*See id.*) Finally, Class Members will have the opportunity to object to the Settlement Agreement, by mailing a valid Objection to the Settlement Administrator within the Response Deadline, or presenting verbal objections at the Final Approval Hearing. (*See* Ryu Decl., ¶ 18.)

The parties have also agreed that Apex Class Action Administration ("Apex") shall handle the notice and claims administration (*See* Ryu Decl., ¶ 19.), and the parties respectfully request this Court to appoint Apex to handle those procedures. The procedures for mailing notice and processing exclusions and objections as well as distribution of the Net Settlement fund are detailed in the Settlement Agreement. (*See* Ryu Decl., ¶ 10, Ex. 1.)

IV. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE

Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince v. CLS Transp. v. CLS Transp., Inc.* (2004) 118 Cal.App.4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462.) Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal.3d at 473-75.) The decision to certify a class is a procedural one, and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-41.)

To certify a settlement class, the Court must find the two primary requirements for maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-defined community of interest in the questions of law and fact involving the parties to be represented. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 805-09; *Daar v. Yellow Cab Company* (1967) 67 Cal.2d 695, 704.) These criteria are met here for the reasons set forth below.

A. There Is a Numerous and Ascertainable Class

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, supra,* 4 Cal.3d at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263, 1271.) Class members are "ascertainable" where they may be readily identified without unreasonable expense or time.

Plaintiffs contend this requirement and the requirement of numerosity is met. Class Members are all current and former California non-exempt employees who worked for Defendant during the time period from October 27, 2019, through January 1, 2025. Documents and information exchanged between the parties reflect a class of approximately 79 Class Members. (*See* Ryu Decl., ¶ 52.).

Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

B. There is A Well-Defined Community of Interest

A community of interest is established by the predominance of common issues of law and facts. *See Vasquez,* 4 Cal. 3d at 811. The requirement of a community of interest:

> [D]oes not depend upon an identical recovery, and the fact that each member of the class must prove his separate claim to a portion of any recovery by the class is only one factor to be considered … The mere fact that separate transactions are involved does not of itself preclude a finding of the requisite community of interest so long as every member of the alleged class would not be required to litigate numerous and substantial questions to determine his individual right to recover subsequent to the rendering of any class judgment which determined in plaintiffs' favor whatever questions were common to the class.

(*See id*. at 809).

Plaintiff contends that common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof. (*See* Ryu Decl., ¶ 52.) Because Plaintiff has alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." (*See In Re NASDAQ Market-Makers Antitrust Litig.* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litig.* (SDNY 1997) 169 F.R.D. 493, 518).) California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1350.) This inference "'eliminates the need for each class member to prove individually the consequences of the Defendant's actions to him or her.'" (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).)

This action involves, inter alia, a determination about Defendant's alleged failure to pay wages and overtime due to allegedly common and unlawful practices, failure to provide meal and rest periods, the resulting failure to pay final wages when required, failure to provide accurate paystubs, failure to reimburse business expenses, and largely derivative claims under the Business & Professions Code and PAGA. Plaintiff contends these practices affected Class Members in the same way. Plaintiff contends these practices resulted in a failure to compensate employees at termination, and incomplete wages displayed on wage statements. The outcome of litigation on this matter depends upon questions that are common to Class Members. (*See* Ryu Decl., ¶ 52) While Defendant maintained otherwise, these issues will not be decided on the basis of facts peculiar to each Class Member, but rather on the basis of facts common to them all. It is also true that these issues of liability can be determined on a class-wide basis. (*See id*.)

C. The Named Plaintiffs' Claims Are Typical

A community of interest is established by the predominance of 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. 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*, 191 Cal.App.3d at 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 contends that Plaintiffs' claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (*See* Ryu Decl., ¶ 52.) Plaintiff was employed by Defendant during the Class Period, and was subject to the allegedly unlawful pay as well as meal and rest break policies and failures to reimburse at issue in this litigation. (*Id.*) Accordingly, Plaintiff is a member of the Class. (*Id*.) The central issues of this litigation (whether Defendant failed to pay all wages, whether Defendant failed to provide meal periods, etc.), which would arise if this was an individual action, applies to the other Class Members as well. The answer to these questions would determine Defendant's liability to the putative class. (*Id.*) Thus, the claims of Plaintiff are typical of the claims of the putative class. (*Id.*) Accordingly, the typicality requirement is satisfied.

D. Adequacy of Class Counsel and Class Representative

Class Counsel are experienced in class actions, have represented their clients zealously and have no conflicts of interest. (*See* Ryu Decl., ¶¶ 3-7.) The Class Representatives' interests are aligned with those of the Class Members, they have suffered the same alleged injuries as the Class Members, and have no conflicts of interest. (*Id*.) Therefore Class Counsel and the Class Representatives are adequate.

E. Predominance and Superiority

Individual issues do not predominant over those common to the class. (*See* Ryu Decl., ¶ 52.) The class action mechanism is superior to individualized actions because Class Members have little incentive to bring claims that are small. (*See id.*)

V. THE TWO-STEP APPROVAL PROCESS

Any settlement of class action litigation must be reviewed and approved by this Court. This is accomplished in two steps: (1) An early (preliminary) review by the trial court, and (2) a detailed review after the notice has been distributed to the class members for their comments or objections. In this regard, the Manual for Complex Litigation explains:

> Review of a proposed class action settlement generally involves two hearings. First, counsel submit the proposed terms of settlement and the judge makes a preliminary fairness evaluation.… Once the judge is satisfied as to the certifiability of the class and the results of the initial inquiry into the fairness, reasonableness, and adequacy of the settlement, notice of a formal [] fairness hearing is given to the class members.

(MANUAL FOR COMPLEX LITIGATION § 21.63 (4th ed. 2004).) The preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. (*See, e.g.*, NEWBERG, § 11.25; *North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1094-95.) Thus, the preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. Settlements to resolve PAGA claims also require court approval. (Labor Code § 2699(l)(2).) There is no articulated standard for approving PAGA settlements. PAGA settlements for as little as $0 have been approved. (*See Nordstrom Com'n Cases (*2010) 74 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated $0 to PAGA claim).) Courts have also approved settlements for $20,000 or less. (*See, e.g., Hicks v. Toys 'R' Us–Delaware, Inc*., (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving $5,000 PAGA payment in $4 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, (approving PAGA payment of $7,500 in $6.9 million settlement); *Williams v. Brinderson Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 ($10,000 PAGA settlement in $300,000 settlement).)

A review of the preliminary approval criteria demonstrates a substantial basis for granting the instant Motion and proceeding to a full settlement hearing.

VI. <u>THE SETTLEMENT IS FAIR AND ADEQUATE</u>

As a matter of public policy, courts both encourage the use of the class action device and favor settlement over continued litigation. (*See, e.g., Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 434 ("Courts have long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system."); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268, 1276 ("[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned.").)

Moreover, courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (NEWBERG ON CLASS ACTIONS §11.51 (4th ed. 2002) ("NEWBERG"); *Rodriguez v. West Publ. Corp.* (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents, particularly when settlement has been reached by experienced counsel familiar with the litigation. (*Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 6 1087.)

In *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 128, the court laid out several factors that should be analyzed in determining if a class action settlement should be approved. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

The Settlement here satisfies each of these factors. Class Counsel conducted extensive discovery before executing the Settlement Agreement, including a detailed analysis of Defendant's policies and a considerable sample of Defendant's time and pay records. (*See* Ryu Decl., ¶ 9.) This permitted Class Counsel to fairly evaluate the strengths of the case and the risks associated with ongoing litigation. Class Counsel is very experienced in the handling of wage and hour class actions and supports this Settlement. (*See* Ryu Decl., ¶¶ 3-7.)

F. The Strength of Plaintiff's Case

The claims in this action include failure to pay all wages owed including overtime wages, failure to provide meal and rest breaks or provide premium pay in lieu thereof, failure to provide accurate wage statements, failure to pay final wages when due, failure to reimburse business expenses, and related claims for violations of California's Business & Professions Code and for penalties under PAGA. (*See* Ryu Decl., ¶ 21.) Defendant contends, however, that its policies complied with California law.

G. The Risks Associated with the Merits

As with all litigation, there are risks that a party will not prevail on the merits. In this case, Plaintiff alleges that Defendant 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 shifts of more than 5 hours, Plaintiff alleges that the Class routinely worked for Defendant without being provided with all timely, 30-minute, duty-free meal periods because Defendant gave Plaintiff too much work to perform and did not relieve Plaintiff of all duties before the lapse of each five-hour period of work. 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 on the other hand disagrees with Class Counsel's interpretation of the law and facts. Defendant argued that it had valid policies on meal periods, which were disseminated to all Class Members. (*See* Ryu Decl., ¶ 24.)

In addition to meal periods, Plaintiff also contended that Defendant did not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction thereof. Plaintiff contend 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. Defendant maintained that it did provide reasonable opportunity for Class Members to take duty-free rest breaks. Defendant 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. (*See* Ryu Decl., ¶ 25.)

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 maintains that it provided all necessary equipment, and that any costs incurred for necessary business expenses were properly reimbursed. (*See* Ryu Decl., ¶ 27.)

Finally, Plaintiff contends that Defendant failed to comply with their agreement to pay Plaintiff and Class Members 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. And Plaintiff further contends that Defendant failed to return, pay or provide to Plaintiff and Class Members, in full thereafter or in amounts Plaintiff and Class Members were entitled to after patrons left gratuities in cash or via credit card slips that Defendant collected. (*See* Ryu Decl., ¶ 22.)

H. The Risks Associated with Paystub Violations and Waiting Time Penalties

In order to establish liability for these penalties, Plaintiff would first have to establish liability for the underlying claims. Moreover, Defendant argued that certain wage violations, even if established, could not be the predicate for a Labor Code § 226 wage statement or § 203 waiting time claim. (*See* Ryu Decl., ¶¶ 29-35.) Defendant further contended that wage claim violations, even if established, could not be the predicate for a Labor Code § 226 wage statement claim. (*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].) 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* Code Civ. Proc., § 340.)

In addition, Plaintiff would have to establish that Defendant's conduct was willful to recover waiting time penalties. (Lab. Code, § 203.) With these penalties, there is always the risk that the trier of fact would not have held that Defendant's actions were done "willfully." A good faith belief in a legal defense can preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As such, there was some risk associated with waiting time penalties that Class Counsel had to consider. (*See* Ryu Decl., ¶¶ 32-35).

I. The Risks Associated with the PAGA Penalties

The Labor Code Private Attorneys General Act, Labor Code § 2699 et seq., allows Plaintiff to obtain civil penalties on behalf of themselves and other aggrieved employees for Defendant's violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. (See Ryu Decl. ¶ 36). 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. (*See id.*) 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. (*See id.*) The limitations period for all penalties is 430 days prior to the filing of the complaint. (*See id.*)

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].) (See Ryu Decl. ¶ 37.)

Here, Defendant has maintained that it would be unjust to award any PAGA penalties and as further explained below, that even if penalties were awarded, the Court would exercise its discretion to significantly reduce any penalties. (*See* Ryu Decl. ¶ 38.) Furthermore, PAGA penalties are also derivative of each and every other claim, and Defendant 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 has never been notified of the alleged violations. *Id.* at 1208-1209. (*See* Ryu Decl. ¶ 38.) Moreover, Section 2699(e)(1) authorizes the Court to exercise the same discretion as the Division of Labor Standards Enforcement whether to award civil penalties. *Amaral* 163 Cal.App.4th 1157, 1211-12. (*See* Ryu Decl. ¶ 38.) 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. (*See* Ryu Decl. ¶ 38.) Moreover, in *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th at 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." (*See* Ryu Decl. ¶ 38.)

Based on this analysis, Class Counsel believes that this settlement is fair and reasonable and in the best interest of the Class. (*See* Ryu Decl., *passim*.)

J. The Risk, Expense, Complexity and Likely Duration of Any Litigation

Given the risks outlined above, the issues in this case were complex and the risk for Plaintiffs and the Class Members associated with this litigation was high. (*See* Ryu Decl., ¶¶ 43-44.) A class trial would have required the retention of expensive expert witnesses, the accrual of extensive litigation costs, and the parties would have had to spend a substantial amount of time litigating. Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay for the Class Members who have already waited years for resolution in this matter.

K. The Risk of Maintaining Class Action Status Through Trial

In class actions, decertification is always a possibility. There is always a risk that a trial of this magnitude can become unmanageable. (*See* Ryu Decl., ¶¶ 43-44.) Given cases like *Duran v. U.S. Bank Nat. Assn*. (2014) 59 Cal.4th 1, 34, that deal with the complexity of using statistical samples in class actions, decertification is a real risk that Class Counsel must take into account.

L. The Amount Offered in Settlement

There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive, and arms-length negotiations between the parties with an experienced mediator.

There are approximately 79 Class Members. Class Counsel estimated the maximum exposure for the unpaid wage claim to be $419,666.12. (*See* Ryu Decl., ¶ 23.) Class Counsel estimated the maximum exposure for the meal period claim to be $389,784.07. (*See* Ryu Decl., ¶ 26.) Class Counsel estimated the maximum exposure for the rest break claim to be $578,999.82. (*Id*.) Class Counsel estimated the maximum exposure for the wage statement claim being $194,200 (*Id*. at ¶ 31.) Class Counsel estimated the maximum exposure on the unreimbursed expenses claim at approximately $100,139.11. (*Id*. at ¶ 28. Class Counsel estimated the maximum exposure for the waiting time penalties claim being $121,243.20. (*Id*. at ¶ 35). On the PAGA claim, Plaintiff's estimated the total exposure being $7,253,100.80. (*Id*. at ¶ 39.)

Once Class Counsel was able to determine the maximum potential damages, it was able to determine a fair and reasonable settlement for the Class. (*Id*. at ¶¶ 23-41.) Class Counsel analyzed the likelihood of success on the merits. (*Id*.) It believes that the Class had a reasonable likelihood of success on the core claims. (*Id*.) However, Defendant disputes this contention, denies all wrongdoing in this matter and is confident it has strong legal and factual defenses to Plaintiff's claims. Moreover, Plaintiff's maximum calculations were based on multiple assumptions of 100% violation rates given the data reasonably available at the time, and these assumptions would certainly be challenged during trial. (*Id*.) After taking into account the likelihood of success on each claim and the challenges faced with certifying these claims, Class Counsel determined that the settlement amount of $485,000.00 was fair and reasonable.

Under the Settlement, each of the 79 Class Members will receive on average $3,103.08 (*Id.* at ¶ 42.)

To summarize, the Settlement here is fair because it provides a substantial payment to each Class Member for releasing his or her claims; extinguishes the risk of litigation; and provides a fair and adequate distribution of the settlement proceeds whereby the funds are allocated to Class Members proportionally based on their Payout Ratio.

As detailed at length in the accompanying Declaration of Young Ryu, the settlement is the result of extensive settlement negotiations between the parties, conducted at arm's length, and informed by substantial factual and legal investigations. (*See* Ryu Decl., passim.) Throughout this case, Class Members have been represented by experienced counsel with many years of experience in employment class action litigation. (Ryu Decl., ¶¶ 3-7.)

Class Counsel has devoted a considerable amount of time to the prosecution of this case, including but not limited to, interviewing Plaintiff on repeated occasions; drafting pleadings; and meeting and conferring with defense counsel about same; reviewing and analyzing time records and various handbooks and policies, and other documentation; researching California law; preparing for and attending mediation; and negotiating and finalizing the Settlement Agreement and related documents. (Ryu Decl., ¶¶ 8-12.)

Among those matters considered during the course of settlement negotiations were the strength of Plaintiffs' case versus the amounts offered in settlement; the risks, expenses, and length of further litigation, including class certification and the appeals process; the present state of the law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present value of a settlement versus the long wait necessitated by any potential judgment in class members' favor; the burdens of proof necessary to establish liability against Defendant; and Defendant's defenses to the action. (*See* Ryu Decl., passim.)

These factors each indicated that the interests of Class Members are best served by settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.

The Settlement Agreement confers a substantial benefit on the class of up to $485,000.00. Moreover, the settlement awards for each Class Member will be tailored to their workweeks during the class period. (*Id*. at ¶ 10, Ex. 1.)

Class Counsel believes that the settlement is fair and reasonable and serves the best interests of the Class Members. Although the recommendations of counsel proposing the class settlement are not conclusive, the Court can properly take the recommendations into account, particularly if counsel has been involved in litigation for some period of time, appear to be competent, and have experience with this type of litigation. (*See* NEWBERG, §11.47.)

VII. THE CLASS REPRESENTATIVE ENHANCEMENT IS FAIR AND REASONABLE

It is appropriate to provide a relatively modest additional incentive payment to the class representative. (*See* NEWBERG, § 12.1; *Van Vranken v. Atlantic Richfield Co*. (N.D. Cal. 1995) 901 F.Supp. 294.)

Plaintiff is entitled to reasonable service payment for her efforts and initiative in bringing and helping to prosecute this class action. Plaintiff spent significant time better apprising herself of her rights, deciding whether remedial action should be taken, how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing their case and the law. (*See* Ryu Decl., ¶¶ 47-51.) 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.

The courage it took to do this should not be underestimated. By suing Defendant, Plaintiff increased her risk of retaliation by prospective employers. (*Id*.) Plaintiff's lawsuit has now cost Defendant considerable resources, and Plaintiff contends such conduct 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. (*Id*.) 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. (*Id*.)

But Plaintiff did not allow her fear of the potential repercussions of being class representatives deter her from acting for the benefit of Class Members. (*Id*.) To the contrary, Plaintiff has been intimately involved in this case since its inception. (*Id.*) She have devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation. (*Id.*) Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel to discuss every aspect of this case; Plaintiff has provided Class Counsel with information about Defendant and about the industry generally, reviewed documents, consulted Class Counsel throughout the litigation, participated in the mediation process, monitored the progress of the litigation with Class Counsel (*Id.*)

Plaintiff has spent a significant amount of time with Class Counsel detailing her knowledge of Defendant's practices. (*Id.*) She have diligently, adequately, and fairly represented Class Members, and have not placed their interests above any member of the putative class. (Id.) 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. (*Id.*)

In light of the foregoing, Class Counsel believes that the incentive award in the amount of $10,000.00 to Plaintiff Martha Jimenez is fair and reasonable. (*Id.*)

VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS

Constitutional due process requires that class members be provided with notice sufficient to give them an opportunity to be heard in the proceedings. (*Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306.) Proper notice must provide the class members with sufficient information to make an informed decision as to whether to accept or object to the settlement. (*Id.* at 314.) The notice must apprise the class members of the pendency of the action; reasonably convey information regarding the settlement and the class members' rights, entitlements, and obligations; and afford class members the opportunity to present their objections. (*Id.*)

The Notice meets constitutional standards because it provides all the information a reasonable person would need to make a fully informed decision about the settlement. It will notify all class members of the terms of the settlement, of its effect on their rights, of their options as class members (i.e., participate, object, opt out, do nothing), and of the consequences of exercising those options. (*See* Ryu Decl., ¶¶ 10, 15, Ex. A to Ex. 1 of Ryu Decl.) Moreover, the Notice will specifically direct any class members who have questions or concerns to contact the Class Action Administrator, Apex, or Class Counsel. (*See Id.*)

The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California's Deskbook on the Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual notice by mail is preferred when possible and dissemination of combined certification/settlement notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.) Here, the Class Notices will be sent via First-Class Mail to each class member, in English along with a Spanish translation. (*See* Ryu Decl., ¶ 15.) If any Class Notices are returned undeliverable without a forwarding address, the Settlement Administrator will use the national change of address database and perform a skip trace to locate the class member and mail a new Class Notice to him or her at the correct address. (*See* Ryu decl. ¶ 10, Ex. 1) Thus, most, if not all, class members will likely receive the Class Notice.

Pursuant to controlling authority, the proposed Class Notice and method of distribution fully comport with due process requirements. Therefore, the Court should approve the Class Notice and direct that it be distributed as proposed herein.

IX. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS REASONABLE AND SHOULD BE APPROVED

Under the Settlement Agreement, subject to approval by this Court, Class Counsel will seek an award of fees of no more than $161,666.66, one third of the Gross Settlement Amount, and not more than $15,000 in costs. The requested fees are fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-consuming litigation solely on a contingent basis. (*See* Ryu Decl. ¶¶ 45-46). Defendant will not oppose Class Counsel's fees and cost request. California courts routinely look to the federal courts on class action approvals. The Ninth Circuit has recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. (*Vincent v. Hughes Air West, Inc*. (9th Cir. 1977) 557 F.2d 759, 769).

The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (Id.) Accordingly, courts have discretion to choose either the percentage-of-the-fund method or the lodestar method. (*In re WPPSS Litig.* (9th Cir. 1994) 19 F.3d 1291, 1295-96.)

Several courts have, however, expressed frustration with the "lodestar" approach for deciding fee awards, which usually involves wading through voluminous time records. Thus, the percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.* (N.D. Cal. 1989) 723 F.Supp. 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach to determine the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).)

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding this case is well within the range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50% of the common fund, depending on the circumstances of the case. (NEWBERG, at §14.03; *see also In re Activision Sec. Litig.*, 723 F. Supp. at 1378.) Newberg further notes: "[A]chievement of a substantial recovery with modest hours expended should not be penalized but should be rewarded for considerations of time saved by superior services performed." (*Id.* at §§ 14-10:14-11.) The attorneys' fees request provided for in the Settlement Agreement is commensurate with judicial precedent. Both state and federal courts regularly approve fee awards equal to or greater than the percentage requested in this case. (*See, e.g., In re Ampicillin Antitrust Litig.* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of $7.3 million settlement fund).

Here, Class Counsel has borne the entire risk and costs of litigation and will not receive any compensation until recovery is obtained. (*See* Ryu Decl., ¶¶ 45-46.) The Court should also consider the benefit obtained by Class Counsel on behalf of class members. Thus, the requested award for

Class Counsel is reasonable.

X. SCHEDULING A FINAL APPROVAL HEARING IS APPROPRIATE

The final step in the settlement approval process is a Final Fairness Hearing, at which the Court may hear all evidence and arguments necessary to evaluate the Settlement. Proponents of the Settlement may explain the terms and conditions of the Settlement and offer argument in support of or in opposition to the Settlement. (MANUAL FOR COMPLEX LITIGATION § 21.631 (4th ed. 2004).) Plaintiffs request that this Court set a date for a Final Approval Hearing at a time convenient for the Court and consistent with the class notice provisions in the Settlement.

XI. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court enter an order granting preliminary approval of the Settlement, conditionally certifying the Settlement Class, appointing Class Counsel and Plaintiff as the Class Representative and Apex as claims administrator, approving the Class Notices and setting a date for the Final Approval Hearing.

Dated: February 20, 2025

LOYR, APC

By: ________________________________

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