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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

RODNEY LANDINGHAM, an individual and on behalf of all others similarly situated, Plaintiff, v. HOME AT LAST COMMUNITY DEVELOPMENT CORPORATION, a California non-profit corporation; and DOES 1 through 100, inclusive, Defendants.	CASE NO.: 24STCV06227 [Assigned for all purposes to the Hon. Elihu M. Berle in Dept. 6] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY; DECLARATIONS OF JOSHUA SHIRIAN PLAINTIFF AND LISA MULLINS IN SUPPORT THEREOF** <u>HEARING INFORMATION:</u> DATE: June 10, 2025 TIME: 9:00 A.M. DEPT: 6

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 10, 2025 at 9:00 a.m., or as soon thereafter as they may be heard in Department 6 of the Superior Court of the State of California for the County of Los Angeles, Spring Street Courthouse, plaintiff Rodney Landingham ("Plaintiff"), on behalf of himself and all others similarly situated and aggrieved, will and hereby does move for this Court for entry of an Order:

1. Preliminarily certifying the following settlement class ("Settlement Class," "Settlement Class Members" or "Class Members") for the purpose of settlement only: all current and former non-exempt, hourly-paid employees who performed work for Home At Last Community Development Corporation ("Home At Last" or "Defendant") in California at any time between March 13, 2020 through March 10, 2025 ("Class Period").

2. Preliminarily approving Plaintiff as Class Representative.

3. Preliminarily approving Joshua Shirian and Aaron Yousefzadeh of Shirian Law, P.C., as Class Counsel.

4. Preliminarily approving the settlement claims under the terms set forth in the Settlement Agreement.

5. Preliminarily approving payment of the Gross Settlement Amount of $500,000.00, which is subject to escalation pursuant to the Settlement Agreement.

6. Approving the form and content of the Class Notice submitted herewith.

7. Appointing ILYM Group, Inc. ("ILYM" or "Settlement Administrator") to administer the Settlement, including distribution of the Class Notice, as set forth in the Settlement Agreement.

8. Preliminarily approving the payment of not to exceed $10,000.00 for settlement administration to ILYM from the Gross Settlement Amount.

9. Preliminarily approving a service award of $7,500.00 to Plaintiff in consideration for Plaintiff's extensive efforts in prosecuting this case.

10. Preliminarily approving payment of reasonable attorneys' fees to Class Counsel in the amount of up to thirty-three percent (33%) of the Gross Settlement Amount which, unless escalated pursuant to the Settlement Agreement, amounts to $165,000.00.

11. Preliminarily approving reimbursement of Class Counsel's costs in an amount, according to proof, not to exceed $25,000.00.

12. Preliminarily approving PAGA penalties in the amount of $20,000.00, seventy-five percent (75%) or $15,000.00 of which will be paid to the Labor and Workforce Development Agency ("LWDA") out of the Gross Settlement Amount, and twenty-five percent (25%) or $5,000.00 of which will be distributed to Aggrieved Employees, defined as all non-exempt, hourly-paid employees who performed work for Home At Last in California as non-exempt, hourly-paid employees that worked at any time between February 28, 2023 through the end of the Class Period ("PAGA Period").

13. Entering an Order preliminarily approving the Settlement consistent with the terms of the Settlement Agreement.

Good cause exists for granting this Motion in that the proposed settlement is fair, reasonable and adequate.

This Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the Declarations of Joshua Shirian, Plaintiff and Lisa Mullins, and exhibits attached thereto, arguments of counsel and upon such other materials contained in the file and pleadings of this action.

Dated: April 29, 2025

SHIRIAN LAW, P.C.

JOSHUA SHIRIAN
AARON YOUSEFZADEH
Attorneys for Plaintiff, RODNEY LANDINGHAM, on behalf of himself and all others similarly situated and aggrieved

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Rodney Landingham ("Plaintiff"), on behalf of himself and all others similarly situated and aggrieved, hereby applies for preliminary approval of the proposed Joint Stipulation Re: Class Action and Representative Action Settlement ("Settlement," "Agreement" or "Settlement Agreement") upon the terms and conditions set forth in the Settlement Agreement, attached to the Declaration of Joshua Shirian as Exhibit "1."

On February 28, 2024, Plaintiff filed with the LWDA and served on defendant Home At Last Community Development Corporation ("Home At Last" or "Defendant"), a notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the LWDA to recover civil penalties on behalf of the Aggrieved Employees for various alleged Labor Code violations (the "PAGA Notice"). A true and correct copy of the PAGA Notice is attached to the Declaration of Joshua Shirian as Exhibit "2."

On March 13, 2024, Plaintiff filed a putative wage-and-hour class action alleging that, during the Class Period, Defendant, as it pertains to Class Members: (1) failed to pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or compensation in lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof; (5) failed to all wages due upon separation from employment; (6) failed to issue accurate and compliant wage statements; (7) failed to timely pay wages; (8) violated Labor Code section 227.3; and (9) engaged in unfair competition (the "Action").

On May 3, 2024, after sixty-five (65) days had passed since Plaintiff filed the PAGA Notice, without any action by the LWDA with respect to the alleged Labor Code violations, Plaintiff filed a First Amended Complaint in the Action seeking PAGA civil penalties against Defendant for the Labor Code violations alleged in the PAGA Notice.

Shortly thereafter, the Parties agreed to exchange informal discovery and attend a mediation, in advance of which Class Counsel was provided with, among other things: (1) 20% sampling of all Class Members and Aggrieved Employees time and payroll data; (2) complete class list with dates of employment, position, and final rate of pay; (3) relevant policy documents and employee handbooks; (4) exemplars of purported meal period waivers and arbitration agreements; (5) all personnel records, time records, payroll records and wage statements relating to Plaintiff; and (6) financial records and data reflecting Defendant's financial condition and ability to pay. On January 9, 2025, the Parties participated in a full-day mediation Lynn Frank, Esquire of Frank & Feder Mediators, a well-regarded mediator experienced in mediating complex labor and employment matters. The Parties were able to resolve the matter at mediation and reached the Settlement to resolve the Action on the terms set forth in this Agreement. Attached to the Declaration of Joshua Shirian as Exhibit "1" thereto is the Settlement Agreement between the Parties. As part of the Settlement Agreement, the Parties agreed to stipulate to Plaintiff filing a Second Amended Complaint in the Action to add class allegations setting forth an additional cause of action for alleged violations of Labor Code § 2802, which was investigated prior to and resolved at mediation. The Second Amended Complaint has since been filed.

The Parties had strong positions at the mediation sessions regarding the certifiability of Plaintiff's claims, the merits thereof, the manageability of a trial, and the likelihood of recovering civil penalties for aggrieved employees. Nevertheless, the Parties concluded, after considering the sharply disputed factual and legal issues involved in this Action, the risks associated with further prosecution, and the substantial benefits to be received pursuant to the compromise and settlement of the Action as set forth in the Settlement Agreement, that settlement on the terms set forth herein is in the best interest of Plaintiff, putative class members, aggrieved employees, and Defendant, and is fair, reasonable, and adequate.

THE SETTLEMENT

Subject to Court approval pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.679, *et seq*., the Parties have agreed to settle the Action by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached to the Declaration of Joshua Shirian as Exhibit "1" thereto. A summary of the terms of the settlement are as follows:

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Defendant will stipulate, for purpose of this settlement only, as follows:

- Certification of a class ("Settlement Class," "Settlement Class Members" or "Class Members") defined as: all current and former non-exempt, hourly-paid employees who performed work for Defendant Home At Last in California at any time between March 13, 2020 through March 10, 2025 ("Class Period").
- Defendant will pay $500,000.00 ("Gross Settlement Amount") to resolve the matter.
- Defendant represents that the Settlement Class worked approximately 25,566 Qualifying Workweeks during the Class Period. In the event the total number of Workweeks worked by Class Members during the Class Period increases by more than 10%, or 2,557 Workweeks, then it shall result in a pro rata increase of the Gross Settlement Amount. In other words, if the excess total number of Workweeks is 11%, the increase will be 1%, and if the excess is 10% or lower, the increase will be nothing (0%); provided, however, that if the workweeks through the end of the Class Period would exceed this 10% escalator, Defendant can elect to shorten the release period to avoid paying any additional gross settlement amount.
- Defendant will pay the employer's share of payroll taxes separate and apart from the Gross Settlement Amount.
- This is a non-reversionary settlement.
- Class Members will be paid their *pro rata* share of the class action settlement based on the total number of Qualifying Workweeks[1] worked during the Class Period.
- The Settlement Administration costs, estimated not to exceed $10,000.00 will be paid out of the Gross Settlement Amount.

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[1] "Qualifying Workweek" means a workweek worked by a Settlement Class Member during which he or she was employed by, and worked on one or more days for, Home At Last in a non-exempt, hourly position during the Class Period.

- Class Counsel, comprised of Joshua Shirian and Aaron Yousefzadeh of Shirian Law, P.C., hereby apply for, and Defendant will not oppose, attorneys' fees of up to thirty-three percent (33%) of the Gross Settlement Amount, which, unless escalated pursuant to the Settlement Agreement, amounts to $165,000.00, and actual costs, not to exceed $25,000.00, all of which will be paid out of the Gross Settlement Amount.
- Class Counsel hereby apply for, and Defendant will not oppose, a service award of $7,500.00 for the Class Representative, which will be paid out of the Gross Settlement Amount.
- "Aggrieved Employees" means all non-exempt, hourly-paid employees who performed work for Home At Last in California at any time between February 28, 2023 through the March 10, 2025 ("PAGA Period"). The Parties have agreed to allocate $20,000.00 of the Gross Settlement Amount as PAGA penalties, seventy-five percent (75%) or $15,000.00 of which will be paid to the LWDA, and twenty-five percent (25%) or $5,000.00 of which will be distributed to the Aggrieved Employees.
- Aggrieved Employees will be paid their *pro rata* share of the twenty-five percent (25%) of the PAGA Penalties based on the total number of Qualifying Pay Periods[2] worked during the PAGA Period.
- Participating Class Members will receive an Individual Settlement Payment and Aggrieved Employees will receive an Individual PAGA Payment as applicable. Individual Settlement Payment and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. In the event that any checks mailed to Participating Class Members and/or Aggrieved Employees are not cashed, deposited, or otherwise negotiated within the 180-day period, then the checks shall be sent to the California State Controller's Office Unclaimed Property Fund in the name of the individual, and such Class Members and/or Aggrieved Employees shall nevertheless be bound to the Settlement

[2] "Qualifying Pay Period" means a pay period worked by an Aggrieved Employee during which he or she was employed by, and worked on one or more days for, Home At Last in a non-exempt, hourly position during the PAGA Period.

and the Final Approval Order. Thus, there shall be no "Unpaid Residue" subject to the requirements of California Code of Civil Procedure section 384.

II. THE TWO-STEP APPROVAL PROCESS

Any settlement of class litigation must be reviewed and approved by the Court. (*See* Cal. Rules of Court, rule 3.769). This is done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review after notice has been distributed to the class members for their comment or objections. (*See id.*).

III. THE PRESUMPTION OF FAIRNESS

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; *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation* (N.D. Cal. May 17, 2017) No. 16-cv-00295, 2017 WL 2214655, quoting *United States v. Oregon* (9th Cir. 1990) 913 F.2d 576, 580.)

IV. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

A notice of settlement of a class action "must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (Cal. Rules of Court, rule 3.769, subd. (f).)

Attached to the Declaration of Joshua Shirian as Exhibit "1" thereto is the Settlement Agreement between the Parties. Attached to the Settlement Agreement as internal Exhibit "A" is the proposed Class Notice to be distributed to Class Members in English and Spanish. The proposed Class Notice satisfies these requirements.

The Parties respectfully request that this Court approve the above-referenced Class Notice and dissemination of the Class Notice to the Class Members, consistent with the manner and timing as set forth in the Settlement Agreement. The Parties have agreed to use ILYM Group, Inc. ("ILYM" or "Settlement Administrator"), an experienced Settlement Administrator, to administer the settlement.

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V. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON OBJECTIVE EVIDENCE

A. The Settlement was Negotiated at Arm's-Length and is not Collusive

The Settlement that has been reached, subject to this Court's approval, is a product of substantial efforts by the Parties and their counsel. The Settlement was reached after extensive factual and legal investigation and research; substantial negotiation regarding the scope of informal discovery; an exchange of documents and information that included review of 20% of the time and payroll records in the Class Period and analysis thereof with the aid of Plaintiff and expert consultants; an exchange of financial data and documents and a detailed review and evaluation of Defendant's financial condition with the aid of expert consultants, critical to evaluating Defendant's ability to fund a proposed settlement; an investigation and analysis of purported arbitration agreements signed by Class Members; an analysis of shifts and Qualifying Workweeks worked by Class Members in the Class Period, analysis of the number of pay periods and number of Aggrieved Employees in the PAGA Period for calculating PAGA penalties, number of Class Members potentially eligible for wage statement penalties and waiting time penalties; an analysis of Plaintiff's employment records; extensive correspondence and communication between counsel; a review of pleadings, evidence and rulings in similar actions litigated elsewhere in the state; a review of similar cases in the same industry elsewhere in the country; and preparation for and attendance at a full-day session of mediation, followed by further discussions and coordination to finalize the terms and conditions of the general settlement parameters agreed to by the Parties.

While Class Counsel believe in the chance of success of certifying the claims, Class Counsel recognized the potential risk, expense and complexity posed by further litigation. Moreover, litigating Plaintiff's claims in this Litigation—claims that involve approximately 483 Class Members during the Class Period—would require substantial preparation and discovery and ultimately would involve the deposition and presentation of numerous more witnesses (including Class Members and expert witnesses), as well as the consideration, preparation and analysis of expert reports. Counsel also considered the practical realities of Defendant's ability to fund a class wide settlement, collection risk, and Defendant's ongoing business.

Therefore, should litigation have progressed any further, there would have been significant expense incurred by each side (above and beyond the expense already incurred).

B. <u>The Settlement Amount is Well Within Range of Reasonableness</u>

The settlement amount reached in this case provides significant recovery to Class Members and Aggrieved Employees, and easily falls within the range of reasonableness. Based on documents and information provided by Defendant, Class Counsel understand there were approximately 25,566 Qualifying Workweeks during the Class Period.

1. Unpaid Wages for Failure to Pay Off-the-Clock Work

Class Counsel theorized, based on Plaintiff's narrative evidence, discussions with Class Members, and documents produced by Defendant, that Defendant failed to pay all wages due to Class Members because Defendant required Class Members to work off-the-clock or Class Members spent time off-the-clock under Defendant's control, including, without limitation, attending meetings and driving between locations off-the-clock.

Class Counsel contend, based on Plaintiff's narrative evidence, discussions with Class Members, and documents produced by Defendant, that Class Members worked off-the-clock for a conservative estimate of one (1) hour each workweek throughout the Class period because: (1) Class Members were required to attend de-brief meetings before clocking in and/or after clocking out (2) Class Members were forced to complete written reports after clocking out, and (3) Class Members were forced to drive between shelter locations after clocking out.

Class Counsel understands, based on time and payroll records produced by Defendant that there were approximately 25,566 workweeks and 116,812 shifts during the Class Period, approximately 68% of all shifts were exactly or more than eight (8) hours in length, and Class Members had an average hourly rate of $20.00. Thus, one calculation performed by Class Counsel resulted in **Defendant's exposure for alleged unpaid off-the-clock work in the approximate amount of $3,670,676.93** (1 hr x $18.93/hr x 1.5 OT rate x 116,812 shifts x .68 shifts equal to or over 8 hours)) + (1 hr x $18.93/hr x 2 liquidated damages x 116,812 shifts x .32 shifts under 8 hours)).

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Class Counsel understand that Defendant makes the following defenses in connection with this claim: Defendant argued that it did not require Class Members to work off-the-clock and, rather, they were paid for all time suffered or permitted to work; Defendant contends that its policies prohibit off-the-clock work; Defendant also contends that any theory that off-the-clock work was performed is purely speculative, such off-the-clock work was voluntary if it occurred, unapproved, and certainly not indicative of a pattern or practice. Moreover, Defendant asserts that they did not require Class Members were required to attend meetings off the clock, drive off the clock, or complete reports after clocking out, and instead remained Class Members remained clocked in for such duties and tasks. Additionally, Defendant asserts that any allegations that Class Members were required to perform work off-the-clock, such as attending debrief meetings, completing incident reports after clocking out, or driving between locations, would necessitate individualized inquiries into whether such tasks were performed, under what circumstances, and whether Defendant had knowledge of the work. As such, Defendant contends that these issues defeat commonality and render class treatment inappropriate, and that any trial would be unmanageable due to the highly individualized nature of the claims. Defendant further argued that any estimate of time worked off-the-clock for every single shift during the Class Period is a vast exaggeration. Furthermore, Defendant contends that Class Members signed enforceable arbitration agreements, and thus no class action is even tenable in this Action. Lastly, Defendant contends that even if liability were established, the monetary exposure calculated by Class Counsel is grossly overstated and, in any event, Defendant would not have the financial ability to satisfy such an award, particularly given its status as a nonprofit organization with limited resources and significant operational obligations. With that said, Class Counsel understand from the mediation process that Defendant attributed no settlement value to this claim.

2. Recovery of Damages for Non-Compliant Meal Periods

Class Counsel theorized, based on narrative evidence of Plaintiff, discussions with Class Members, and documents produced by Defendant, that Defendant's meal period practices throughout the Class Period were non-compliant because Class Counsel allege: (1) Class Members were not informed that they were entitled to a meal period premium in the event a meal period is interrupted, not duty-free, cut short or not received at all; (2) Class Members' meal periods were interrupted by work duties and supervisors; and (3) Defendant's meal period policies were non-complaint because they did not make clear that Class Members are entitled to meal period premiums for late, interrupted, or missed meal periods and did not indicate meal periods are duty free.

Class Counsel understand from the documents provided by Defendant and analysis of expert data consultants retained by Class Counsel, that there were 27,373 shifts with alleged meal period violations during the Class Period (late, short, missed meal periods, no meal period premiums were ever issued throughout the Class Period, and others). Thus, one calculation made by Class Counsel resulted in **Defendant's maximum exposure for non-compliant meal periods in an approximate amount of $518,170.89** (27,373 eligible shifts x $18.93/hour).

Class Counsel understand that Defendant makes the following defenses in connection with this claim: Defendant argues that they had compliant meal period policies and practices; Defendant argues that Class Members took timely and full meal periods; Defendant contends that their policy requires their employees to take timely and full meal periods; Defendant further contends that any instance of a Class Member failing to take a compliant meal period was voluntary, in violation of its meal period policy, would necessitate an individualized inquiry and would not lend itself to a manageable trial. Moreover, Defendant argued that almost all Class Members signed valid and enforceable meal period waivers, thereby doing away with the vast majority of any alleged non-compliant meal periods. Additionally, Defendant contends that they paid meal period premiums for non-compliant meal periods during the Class Period. Finally, Defendant contends that a vast majority of Class Members signed enforceable arbitration agreements, and thus no class action is even tenable in this Action. Thus, Defendant contends that *no* monies are owed for this account but, even if any amounts were due, the amount calculated by Class Counsel is excessive and grossly overstated and, in any event, Defendant would not have the financial ability to satisfy such an award, particularly given its status as a nonprofit organization with limited resources and significant operational obligations.

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3. Recovery of Damages for Non-Compliant Rest and Recovery Periods

Class Counsel theorized, based on Plaintiff's and Class Members' narrative evidence, that Defendant's rest break practices throughout the Class Period were non-compliant because Class Members were not permitted to take rest periods within the fifth hour and not allowed to leave Defendant's premises. Notably, there was no rest period premiums were ever issued throughout the Class Period and approximately 113,074 rest period eligible shifts were greater than 3.5 hours in length. Thus, one calculation performed by Class Counsel resulted in, assuming a very conservative 25% violation rate for rest-eligible shifts, **Defendant's exposure for failure to provide compliant rest periods in an approximate amount of $535,122** (113,074 shifts x .25 violation rate x $18.93/hour).

Class Counsel understand that Defendant makes the following defenses in connection with this claim: Defendant argues that it had compliant rest period policies and practices; Defendant argues that Class Members took timely and full rest periods; Defendant contends that their policy requires their employees to take timely and full rest periods; Defendant argues that Class Members were not required to stay on premises for rest periods; and Defendant further contends that any instance of a Class Member failing to take a compliant rest period was voluntary, in violation of their rest period policy, would necessitate an individualized inquiry and would not lend itself to a manageable trial. Moreover, Defendant argued that Class Members were provided a reasonable opportunity to take uninterrupted rest breaks. Finally, Defendant contends that a vast majority of Class Members signed enforceable arbitration agreements, and thus no class action is even tenable in this Action. Accordingly, Defendant maintains that *no* monies are owed with respect to this claim; however, even assuming *arguendo* that any amounts were owed, Defendant contends that the damages estimated by Class Counsel are grossly inflated and, in any event, exceed what Defendant could reasonably afford to pay given its financial condition.

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4. Wage Statement Violations

Class Counsel theorized that Class Members are entitled to recover penalties for Defendant's alleged failure to issue compliant wage statements under Labor Code section 226, subdivision (e), for the derivative impact of the failure to pay all wages owed on providing accurate information on wage statements. Specifically, Class Counsel theorized that penalties are owed under Labor Code section 226 due to, at minimum, Defendant's failure to pay premium wages for alleged overtime and non-compliant meal and rest breaks. A non-exempt employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code section 226, subdivision (a), is 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) per employee for each violation in a subsequent pay period. Class Counsel understand from the data provided by Defendant that there were 4,731 pay periods during the relevant statutory time period for Class Members. If, in fact, Class Members worked every off-the-clock every shift as set forth above, and no rest premiums were paid, every wage statement would thus, Class Counsel theorized, violate Labor Code section 226. Thus, **Defendant's maximum exposure for wage statement violations would be $473,100** (4,731 pay periods x $100/pay period).

Class Counsel understand that Defendant makes the following defenses in connection with this claim: Defendant contends that the wage statements issued to the employees fully complied with Labor Code section 226; Defendant contends that because they believe no wages are unpaid that, thus, there can be no derivative penalties. Further, Class Counsel also understand the risks inherent in this claim if the above claims were not certified. Class Counsel also had to factor in, and did factor in, the risk that a Court would find there was no injury to Class Members even if the wage statements were inaccurate or that Defendant's conduct was not intentional, both of which are requirements of Labor Code section 226 before penalties can issue. Class Counsel also note that the calculation used does not take into account the first pay period violation only being $50 and the fact that all Class Members did not work all pay periods and, therefore, do not qualify for the maximum penalty of $4,000 as calculated in Plaintiff's exposure model used at mediation. Thus, Defendant contends that no monies are owed for this account but, even if any amounts were due, the amount calculated by Class Counsel is excessive.

5. Waiting Time Penalties

Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory period (*i.e.*, three years before the filing of the initial Complaint) is entitled to up to 30 days' worth of wages as waiting time penalty for not being paid all wages due upon separation from employment. Class Counsel theorized, based on relevant documents provided by Defendant, that, under Labor Code section 203, Defendant is liable to pay each Class Member, who was terminated or who left his or her employment during the relevant statutory period, a full 30-day worth of wages as waiting time penalty for failure to pay compensation in lieu of compliant meal and rest periods, and failure to timely pay all wages due at the time of termination or resignation. Based on relevant documents provided by Defendant, there were approximately 347 Class Members who were terminated or resigned during the relevant statutory period. Thus, one calculation performed by Class Counsel resulted in **Defendant's maximum exposure for waiting time penalties to be $1,576,490.40** (347 separated Class Members x $18.93/hour x 8 hours x 30 days).

Class Counsel understand that Defendant contends that there is no credence to Plaintiff's off-the-clock theory and that, thus, no waiting time penalties are owed based on that theory. Defendant also contends that a vast majority of Class Members signed arbitration agreements, thereby precluding class certification and rendering a class action untenable. Additionally, Defendant asserts that many Class Members executed meal period waiver forms in which they affirmed that they had received all required meal and rest breaks and had been fully compensated, further undermining Plaintiff's claims on a class wide basis. Finally, Defendant contends that their actions were not "willful" and that, thus, waiting time penalties cannot be awarded. Thus, Defendant argued that no waiting time penalties are owed. Even assuming liability were established, Defendant maintained that its financial condition would not permit payment of the substantial penalties sought.

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6. Failure to Reimburse Business Expenses

Class Counsel theorized, based on relevant documents provided by Defendant and narrative evidence of Plaintiff, that Defendant failed to indemnify Class Members for necessary business expenses.

Based on narrative testimony from Plaintiff, Class Counsel allege that Defendant required their employees to drive to different locations to cover shifts, conservatively averaging 5 miles per week, but were not reimbursed by Defendant. Thus, one calculation performed by Class Counsel resulted in Defendant's exposure for the costs of $127,830.00 ($.50 IRS Mileage Rate x 5 miles x 25,566 workweeks). Thus, one calculation performed by Class Counsel at mediation resulted in **Defendant's exposure for failure to reimburse for business to be $63,915.**

Class Counsel understand that Defendant argues that it reimbursed employees for all expenses incurred in furtherance of work including, for mileage and gas. Defendant contends that mileage reimbursement was provided in accordance with its written policies and that any remaining claims would require individualized inquiries into the necessity, authorization, and amount of mileage driven by each Class Member; and thus would render any trial on this claim unmanageable. Accordingly, Defendant contends that it owes no monies to Class Members under this theory. Thus, Defendant contends that it owes no monies to Class Members under this theory either.

7. Failure to Timely Pay Wages

Class Counsel, based on Plaintiff's narrative evidence, theorized Defendant failed to pay wages to Class Members for work performed in a timely manner in violation of Labor Code section 204. However, after investigation and discovery, Class Counsel did not attribute significant value to this claim at the time of mediation.

8. Failure to Pay All Earned and Vested Vacation Time

Class Counsel, based on Plaintiff's narrative evidence, theorized Defendant failed to pay all accrued vacation for Class Members upon separation from employment in violation of Labor Code section 227.3. However, after investigation and discovery, Class Counsel did not attribute significant value to this claim at the time of mediation.

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9. PAGA Penalties

Class Counsel understand from the time and payroll data provided by Defendant that there were roughly 6,052 pay periods worked by approximately 280 Aggrieved Employees during the PAGA Period. Plaintiff's claims in the Action under PAGA asserted each of the foregoing alleged Labor Code violations, as well as other additional Labor Code violations as set forth in Plaintiff's PAGA Notice and the Second Amended Complaint. Defendant contends that only initial violation rates may be used instead of the subsequent violation rates initially used by Class Counsel. With this in mind, and because Class Counsel through investigation and discovery did not come to the conclusion that Defendant at any time were notified by any governmental entity that they violated any Labor Code sections presented in the PAGA Notice and PAGA claims, Class Counsel adjusted the exposure model for Defendant to include only initial violation rates.

While Class Counsel are informed and believe that reasonable minds differ with regard to calculation of PAGA penalties, Class Counsel believe it is reasonable to calculate Defendant's maximum exposure in PAGA penalties as follows:

a. <u>Overtime Violations</u>: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $302,600 (6,052 pay periods x $50).

b. <u>Minimum Wage Violations</u>: Labor Code section 1197.1 prescribes penalties of $100 for an initial violation and $250 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single PAGA Member in the PAGA Period, this amounts to a maximum exposure of $605,200 (6,052 pay periods x $100).

c. <u>Meal Period Violations</u>: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single non-exempt employee in the Settlement Period, this amounts to a maximum exposure of $302,600 (6,052 pay periods x $50).

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d. Rest Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single non-exempt employee in the Settlement Period, this amounts to a maximum exposure of $302,600 (6,052 pay periods x $50).

e. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Because this violation is merited only at separation of employment, a 100% violation rate would likely include just one violation per employee. The data produced by Defendant indicates that there were Aggrieved Employees whose employment was separated during the PAGA Period. This amounts to a maximum exposure of $11,100 (111 separated Aggrieved Employees x $100).

f. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021) 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty for wage statement violations that are inaccurate, which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation (*Id.* at 247-248). Using the initial pay period rate for all violations and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $605,200 (6,052 pay periods x $100).

g. Failure to Reimburse Work Expenses: Labor Code section 2699 would be the appropriate penalty for failure to reimburse work expenses, which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation (*Id*. at 247-248). Using the initial pay period rate for all violations and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $605,200 (6,052 pay periods x $100).

h. Failure to Pay Vacation Pay Upon Separation of Employment: Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. However, after investigation and discovery, Class Counsel did not attribute significant value to this claim at the time of mediation.

i. Violation of Labor Code § 204: Labor Code section 204 states that labor performed between the first (1^{st}) and fifteenth (15^{th}) days, inclusive, of any calendar month shall be paid for between the sixteenth (16th) and twenty-sixth (26th) day of the month during which the labor was performed, and labor performed between the sixteenth (16th) and the last day, inclusive, of any calendar month shall be paid for between the first (1st) and tenth (10th) day of the following month. Labor Code section 210 would be the appropriate penalty for violation of Labor Code section 204. However, after investigation and discovery, Class Counsel did not attribute significant value to this claim at the time of mediation.

j. Violation of Labor Code § 246: Labor Code section 246 states that Defendant must provide paid sick leave for employees who have worked more than 30 days within one year of employment. Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. This amounts to a maximum exposure, using the initial violation rate, of $605,200 (6,052 pay periods x $100).

k. Violation of Labor Code § 404: Labor Code section 404 states that Defendant shall reimburse Aggrieved Employees, plus interest, for the deposits made for uniforms immediately upon the return of such property. Labor Code section 2699 would be the appropriate penalty for failure to return uniform deposits. However, after investigation and discovery, Class Counsel did not attribute significant value to this claim at the time of mediation.

l. Violation of Labor Code § 2810.5: Upon hire, employers must provide each Aggrieved Employee a notice under Labor Code section 2810.5 with the information set out under that Labor Code section. Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. However, after investigation and discovery, Class Counsel did not attribute significant value to this claim at the time of mediation.

m. Suitable Seating Violations: Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation for the failure to provide suitable seating to employees when the nature of work reasonably permits the use of seats. However, after investigation and discovery, Class Counsel did not value to this claim at the time of mediation.

n. Unfair Competition and Restraints on Lawful Conduct: Labor Code section 2699 would be the appropriate penalty for violations of Labor Code sections 96, 98.6, 232, 232.5, and 1197.5 subdivision (k), which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation for requiring employees to sign unlawful agreements, conducting unlawful pre-employment inquiries and background checks, and unlawful reliance on salary history when making hiring and compensation offers. Using the initial pay period rate for all violations and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $605,200 (6,052 pay periods x $100).

q. <u>Conclusion</u>: In sum, Class Counsel calculated Defendant's total maximum exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved Employee every pay period and not exercise its discretion to reduce any of those penalties to be **$3,339,700**. Class Counsel understand that Defendant argues the following in connection with this claim: Defendant contends that no PAGA penalties are likely to be awarded and, even if they were, the maximum exposure calculated by Class Counsel is vastly overstated; Defendant argues that PAGA penalties cannot and should not be stacked; Defendant asserts that individualized issues predominate the PAGA claims, making the claims unmanageable for trial; Defendant denies that a violation for each pay period can be established; Defendant contends that a Court is unlikely to exercise its discretion to award civil penalties under PAGA where, as here, there is no conduct shown by Plaintiff that would show any Labor Code violation by Defendant is knowing and intentional. Defendant insists that this is especially true in this Action where class action damages are available to Class Members, rendering an award of PAGA penalties in addition to class action damages to be double recovery.

9. Conclusion

While Plaintiff believes in the likelihood of certifying the claim and proceeding with a successful trial, Class Counsel applied a sixty-five percent discount at mediation in connection with Plaintiff's class allegations in light of Defendant's defenses, particularly considering Defendant's financial ability to fund a class wide settlement, the enforceability of the purported arbitration agreements and meal period waivers which were signed by a vast majority Class Members. Thus, Class Counsel determined one calculation of Defendant's reasonable exposure for the class allegations to be **$2,393,265.07** ($6,837,900.22 x 0.35).

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Furthermore, Class Counsel maintain that it is possible to recover the subsequent violation rate for penalties, that stacking is permissible, and that there is no manageability requirement under PAGA (citing *Estrada v. Royalty Carpet Mills, Inc.*), Class Counsel also understand the risks inherent should the Court not exercise its discretion to grant any PAGA penalties, in addition to potential issues on the merits, trial manageability, and issues the possibility that the Court does not use permit stacking of penalties or permit the use of the subsequent violation rate when providing penalties. As such, Class Counsel believe a 90% discount of the PAGA claims to be reasonable, resulting in a valuation of $333,970 as a reasonable estimate of the likelihood of what Plaintiff may recover at trial for PAGA penalties ($3,339,700 x .10).

When including derivative penalties, such as waiting time penalties, wage statement violations, and discretionary PAGA penalties, Class Counsel theorized Defendant's reasonable exposure to be approximately **$2,727,235.08**.

In all, Class Counsel obtained a Gross Settlement Amount of **$500,000.00**. Particularly in light of the risks involving obstacles to class certification, all issues and risks related to liability, the issues with manageability at trial, the discretionary nature of PAGA penalties, the agreements signed by Class Members, Defendant's ability to fund a settlement, practical realties of collection risk, Defendant's limited assets and operational obligations, and considering the case law regarding fair, reasonable and adequate settlements, Class Counsel strongly believe that the settlement reached is fair, reasonable and adequate, and in the best interest of Class Members.

Moreover, $20,000 of the Gross Settlement Amount was attributed to PAGA penalties. This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the fact that damages are available for the failure to pay wage claims while only penalties are available for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA penalties at all in light of the fact that damages are available for Class Members and it may find any further liability against Defendant unnecessarily punitive.

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VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Class Counsel seek an attorneys' fees award of *up to* thirty-two percent (33%) of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to $165,000.00. Class Counsel also seek reimbursement of costs not to exceed $25,000.00. The requested fees fall well within the historical range of attorney's fees awards under the common fund theory, which is generally from 25% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive and time-consuming litigation on a contingent fee basis. Thus, the Court should preliminarily approve the requested attorneys' fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case and the great risks undertaken by Class Counsel. The requested attorneys' fees will not be opposed by Defendant and are well within established guidelines.

VIII. THE REQUESTED ENHANCEMENT AWARD TO THE NAMED PLAINTIFF AND CLASS REPRESENTATIVE IS REASONABLE

Plaintiff is entitled to an enhanced award for his service as class representative, for answering extensive questions by Class Counsel, for being available and answering questions during mediation, for the risks in being the named plaintiff and for providing Defendant with a more expansive release of claims, including a waiver based upon California Civil Code section 1542, in exchange for the enhancement award. Defendant does not oppose the requested enhancement to Plaintiff. Plaintiff risked intrusive discovery and the payment of employer costs. In the experience of Class Counsel, the typical enhancement award in wage and hour class actions ranges from approximately $10,000.00 to $25,000.00, although some awards are higher. In contrast, Class Counsel seek an extremely limited enhancement of $7,500.00 to Plaintiff, for his service.

IX. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES

A. The Class should be Preliminarily Certified

In California, there are two certification prerequisites: (1) the existence of an "ascertainable class;" and (2) "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." (*Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th 639, 647.) To certify a class, the party advocating class treatment must demonstrate: (1) a numerous class; (2) predominant common questions of law or fact; (3) class representatives with claims or defenses typical of the class; and (4) class representatives who can adequately represent the class." (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Each of the criteria for class certification is satisfied in this instance:

1. Ascertainability – "Ascertainability" is a due process requirement that ensures it is possible to decide who will be bound by the judgment (*res judica* effect). The determination is made by examining the class definition and the size of the class. Here, the Class Members definition (*i.e.*, all non-exempt, hourly-paid employees who performed work for Home At Last, in California at any time during the Class Period) is derived from the Second Amended Complaint, which complains of alleged violations of Labor Code sections that are chiefly and, in some instances, solely applicable to non-exempt employees of Defendant Home At Last. There is no difficulty ascertaining who is a Class Member based on the above-described definition as it is readily apparent to all involved who is a non-exempt employee who worked in California for Defendant Home At Last during the Class Period, based solely from Defendant's payroll records, which amounts to approximately 483 persons.

2. Numerosity – According to the California Supreme Court, a putative class is sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable and thus substantial benefits accrue both to litigants and the courts if the action proceeds as a class action. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) Numerosity is presumed satisfied if there are forty (40) putative class members. (*Miri v. Dillon* (E.D. MI 2013) 292 F.R.D. 454, 461.) However, as few as 10 class members has been found sufficient. (*See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574.) Class Counsel understand from documents provided that Defendant has identified at least 483 Class Members. That is sufficiently numerous to establish the numerosity requirement.

3. Commonality – California law also requires that "questions of law or fact common to the class [be] substantially similar and predominate over the questions affecting the individual members." (*In re Steroid Hormone Product Cases* (2010) 181 Cal.App.4th 145, 153.)

This Litigation is brought to resolve common issues that include whether Defendant failed to pay for all hours worked; whether Defendant provided full, timely and un-interrupted meal and rest periods, whether Class Members are entitled to premium pay for incomplete, untimely or interrupted meal or rest periods, among other claims as set forth above.

4. **Typicality** – Typicality requires only that the named plaintiff's interests in the action be significantly similar to those of other class members. (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Plaintiff's claims are typical of those of other Class Members as Plaintiff: (1) is a non-exempt employee like other Class Members; (2) complains of not being paid for all time under Defendant's control or suffered and/or permitted to work for Defendant; (3) did not receive full premium pay for meal periods that were not compliant with the Labor Code; (4) did not receive premium pay for rest periods that were not provided, among others as set forth above.

5. **Adequacy of Representation** - To maintain a class action, the representative plaintiff must adequately protect the interests of the class. (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Adequacy of representation consists of two components. First, there must be no disabling conflicts of interest between the class representatives and the class. Second, the class representative must be represented by counsel who are competent and experienced in the kind of litigation to be undertaken. (*See McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450; *accord In re Juniper Networks, Inc. Securities Litigation* (N.D. Cal. 2009) 264 F.R.D. 584, 590.) Both criteria are met in this instance:

(i) **<u>No Disabling Conflict of Interest Exists Between the Class Representative and the Class</u>**

No conflicts, disabling or otherwise, exists between Plaintiff and Class Members because Plaintiff alleges to have been damaged by the same alleged conduct of Defendant (*i.e.*, Plaintiff classified as a non-exempt, hourly-paid employee, not paid premium pay, etc.) and thus has the incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery.

(ii) **<u>Class Counsel are Experienced Class Action Attorneys</u>**

As set forth in the Declarations of Class Counsel, Class Counsel in this matter consist of experienced class action attorneys, have been appointed as class counsel in other class actions and have a successful "track record" in litigating class actions.

6. Superiority of Class Action - Also relevant to the Court's certification decision is whether a class action is the superior method of adjudication. (*Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)

It deals with common issues that are most efficiently adjudicated together, as indicated above. Moreover, with at least 483 Class Members, presentation of all of them before this Court may be problematic, impractical, and burdensome. On the contrary, a class action allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation.

7. Conclusion – Thus, because this class action meets all criteria for certification and a lesser standard of scrutiny applies when evaluating these criteria for settlement purposes, it should be certified for purposes of effectuating this settlement.

X. CONCLUSION

Therefore, the Parties request the Court grant preliminary approval of the proposed settlement.

Dated: April 29, 2025

SHIRIAN LAW, P.C.

JOSHUA SHIRIAN
AARON YOUSEFZADEH
Attorneys for Plaintiff RODNEY LANDINGHAM, on behalf of himself and all others similarly situated and aggrieved

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 11110 Ohio Ave., Suite 106, Los Angeles, California 90025.

On April 29, 2025, and pursuant to the California Code of Civil Procedure section 1010.6, I caused a true and correct copy of the foregoing document(s) described as **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY; DECLARATIONS OF JOSHUA SHIRIAN, PLAINTIFF, AND LISA MULLINS IN SUPPORT THEREOF; [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND CERTIFYING CLASS FOR SETTLEMENT PURPOSES ONLY** to be served by electronic transmission to the below referenced electronic e-mail addresses as follows:

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Attorneys for Defendant HOME AT LAST COMMUNITY DEVELOPMENT CORPORATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on, April 29, 2025 at Los Angeles, California

____
Joshua Shirian