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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

YOLANDA PEREZ, individually and on behalf of others similarly situated, and as an aggrieved employee and Private Attorney General, Plaintiff, vs. J.G. BAILEY COMPANY MILLROCK WAY-2, LLC, a California limited liability company, and DOES 1 through 50, inclusive, Defendants.	Case No.: BCV-24-101284 *Assigned for All Purposes to: Hon. Bernard C. Barmann, Jr., Division H* **<u>CLASS ACTION</u>** **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Hearing Date: November 3, 2025 Hearing Time: 8:30 a.m. Location: Division H. 1215 Truxton Ave, Bakersfield, CA 93301 Complaint Filed: April 12, 2024 FAC Filed: June 12, 2025 Jury Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on November 3, 2025, at 8:30 a.m., in Division H of the Kern County Superior Court, located at 1215 Truxtun Avenue, Bakersfield 93301, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, Plaintiff YOLANDA PEREZ ("Plaintiff") will and hereby does move the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiff and Defendant J. G. BAILEY COMPANY MILLROCK WAY-2, LLC ("Defendant").

Specifically, Plaintiff requests that the Court enter an Order:

1. Preliminarily approving the Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") attached as **Exhibit 1** to the Declaration of Heather Davis in support of Motion for Preliminary Approval ("Davis Decl.");

2. Certifying a Class for settlement purposes;

3. Preliminarily appointing Plaintiff Yolanda Perez as the Class Representative for settlement purposes;

4. Preliminarily appointing Protection Law Group, LLP as Class Counsel for settlement purposes;

5. Approving the proposed Notice of Proposed Class Action Settlement ("Class Notice") attached as Exhibit A to the Settlement Agreement to be mailed to the Class;

6. Approving the opt-out and objection procedures provided in the Settlement Agreement and set forth in the Class Notice;

7. Directing Defendant to furnish the Class Data to the Settlement Administrator within fourteen (14) calendar days after the Court grants preliminary approval of the Settlement;

8. Approving the proposed deadlines for the settlement administration; and

9. Setting a date for a hearing on final approval of the proposed settlement.

Pursuant to California Labor Code § 2699(s)(2), a copy of the proposed Class Action and PAGA Settlement Agreement, as well as information regarding the preliminary approval hearing on this matter, were submitted to the California Labor Workforce Development Agency via online filing at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html on

October 1, 2025. *See* Davis Decl. ¶¶ 26, 94, Ex. 3.

The Motion is based upon this Notice; the attached memorandum of points and authorities; the Declaration of Heather Davis filed concurrently herewith and exhibits thereto; the Declaration of Plaintiff Yolanda Perez filed concurrently herewith; the Declaration of Jodey Lawrence of Phoenix Class Action Administrators filed concurrently herewith and exhibits thereto; the pleadings and other records on file with the Court in this matter; and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

DATED: October 1, 2025

PROTECTION LAW GROUP, LLP

By:____

Heather Davis
Amir Nayebdadash
Shadi Sahebghalam
Attorneys for Plaintiff
YOLANDA PEREZ

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Yolanda Perez ("Plaintiff") seeks preliminary approval of a Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement") on behalf of all persons employed by Defendant J. G. Bailey Company Millrock Way-2 LLC in California and classified as a non-exempt employee who worked for Defendant J. G. Bailey Company Millrock Way-2 LLC at any time from April 12, 2020, to July 31, 2024. The Settlement terms are outlined as follows:

- Size of the Class: approximately 69 individuals.
- Number of PAGA Members: approximately 35 individuals.
- Gross Settlement Amount: $322,100.00, exclusive of employer-side payroll taxes.
- Settlement Administration Costs: not to exceed $10,000.00 to Phoenix Class Action Administrators.
- Requested Class Representative Service Payment: $10,000.00 to Plaintiff Yolanda Perez.
- PAGA Penalties: $25,000.00, 75% ($18,750.00) of which will be paid to the California Labor and Workforce Development Agency ("LWDA") with the remaining 25% ($6,250.00) distributed to PAGA Members.
- Requested Attorneys' Fees and Costs: $112,735.00 (35% of the Gross Settlement Amount) plus actual litigation costs and expenses not to exceed $35,000.00.
- Net Settlement Amount: approximately $129,365.00 to be distributed to Participating Class Members.

As set forth herein, the Settlement is the product of informed discovery, arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the Class in light of the relative strength of Plaintiff's claims, the risk, expense and uncertainty of further litigation, and the benefit conferred by the Settlement. Plaintiff therefore respectfully requests that the Court grant preliminary approval of the proposed Settlement, conditionally certify the Class, approve the proposed Class Notice, and set a hearing date for final settlement approval, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant J. G. BAILEY COMPANY MILLROCK WAY-2, LLC company is a providing housekeeping and maintenance services to hotels and motels. Defendant employed Plaintiff Yolanda Perez ("Plaintiff") as Housekeeper from approximately November 2020 to approximately March 3, 2023, who was classified as a non-exempt employee and was paid on an hourly and piece rate basis. See Declaration of Declaration of Heather Davis in Support of Motion for Preliminary Approval ("Davis Decl.") ¶13; *see also* Declaration of Plaintiff Yolanda Perez in Support of Motion for Preliminary Approval ("Perez Decl.") ¶2.

On April 9, 2024, Plaintiff provided notice to Defendants and the Labor and Workforce Development Agency ("LWDA") of the alleged wage and hour violations and her intent to seek civil penalties under PAGA. Davis Decl. ¶14, Ex. 2.

On April 12, 2024, Plaintiff filed a Class Action Complaint against Defendant in the Kern County Superior Court, Case No. BCV-24-101284. In her Complaint, Plaintiff pled causes of action for: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not Timely Paid; (6) Wages Not Timely Paid During Employment; (7) Failure to Provide Accurate Wage Statements; (8) Failure to Reimburse Business Expenses; (9) Violation of California Business & Professions Code § 17200. Davis Decl. ¶15.

After more than sixty-five (65) days passed since the mailing for Plaintiff's PAGA Notice Letter and the LWDA not having indicated that it intended to investigate the violations discussed in the PAGA Notice Letter, on June 14, 2024, Plaintiff filed a First Amended Class and Representative Action Complaint ("FAC") adding an tenth (10^{th}) cause of action under PAGA. Davis Decl. ¶16.

On June 24, 2024, Plaintiff served Defendant with Form Interrogatories-General Set One; Demand for Production of Documents, Set One; and Special Interrogatories, Set One. As part of Plaintiff's Special Interrogatories, Plaintiff included a proposed *Belaire-West* Notice and emailed the proposed notice to Defendant's counsel in Word for Defendant's review and direct input/edit if any. Davis Decl. ¶17.

Meanwhile, the Parties began discussions about the resolution of the case and conditions for attending a private mediation to potentially resolve the Class Action and PAGA Action. Ultimately, the Parties agreed to attend an all-day mediation on May 13, 2025, with Lynn Frank, Esq., a mediator with substantial experience handling wage and hour matters. On August 20, 2024, the Parties executed and filed a Joint Stipulation Regarding Discovery and Mediation. Davis Decl. ¶¶18-19.

In advance of the mediation, Defendants provided Plaintiff's Counsel with extensive informal discovery including all relevant policies and handbooks in place during the Class Period, which included all applicable policies relating to meal breaks, rest breaks, timekeeping, the payment of wages and other relevant areas of investigation, a randomly selected 20% sampling of time and payroll data for the putative class, and figures and information regarding the class size and composition. The randomly-selected 20% sampling included records for putative class members who were employed throughout different time periods during the Class Period, a sampling of the time and payroll data for all non-exempt employees of Defendants in the State of California since April 12, 2020, that is representative of the Class. With this data for the Class, Plaintiff's Counsel and their retained expert were able to perform a comprehensive damages analysis and estimate Defendant's potential violations, liability, and exposure, including, and not limited to, analyzing time and pay data, considering potential meal period violations, potential rest period violations, potential synthetic meal period recordings, unpaid and rest period premiums, rounding, overtime and premium payments, etc. This discovery and investigation allowed Plaintiff's Counsel to perform a comprehensive damages analysis and estimate Defendant's potential liability on a class and PAGA basis. Davis Decl. ¶20.

Following a comprehensive review and analysis of the documents and information exchanged during the informal discovery process, and immediately prior to the scheduled mediation, the Parties successfully reached a resolution of their dispute through direct and voluntary negotiations. The Parties engaged in intensive and good-faith settlement discussions, during which they thoroughly evaluated and debated the merits of their respective positions. These discussions included candid exchanges concerning the factual and legal strengths and weaknesses of the asserted claims and defenses. The resolution was achieved through mutual understanding and compromise, reflecting the Parties' informed assessment of the risks, costs, and potential outcomes associated with continued litigation. Davis Decl. ¶21.

The Parties were eventually able to reach an agreement to settle the matter on a class and representative basis for a Gross Settlement Amount of $322,100.00. Thereafter, on May 16, 2024, the Parties began negotiating a long-form settlement agreement. Davis Decl. ¶22.

Over the course of several months, the Parties have undertaken sustained and diligent efforts to negotiate, refine, and finalize the terms of a comprehensive long-form settlement agreement intended to resolve all claims asserted in the Action. These efforts included multiple rounds of negotiation, exchange of draft agreements, and substantive discussions regarding the scope, structure, and implementation of the proposed resolution. The Parties worked collaboratively and in good faith to memorialize the material terms of the settlement. Davis Decl. ¶23.

On July 18, 2025, following the completion of these negotiations, the Parties entered into a fully executed Joint Stipulation of Class Action and PAGA Settlement Davis Decl. ¶24.

Pursuant to California Labor Code § 2699(s)(2), a copy of the proposed Class Action and PAGA Settlement Agreement and Class Notice, was submitted to the California Labor Workforce Development Agency via online filing at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html on October 1, 2025. Davis Decl. ¶25.

Now, following substantial investigation and extensive settlement negotiations, Plaintiff moves for preliminary approval of this Settlement and has provided notice of the proposed PAGA settlement to the LWDA. Davis Decl. ¶¶26, 96, Ex. 3.

III. THE SETTLEMENT TERMS

A. Class Definition

For purposes of settlement only, the Parties have agreed that the Class shall be defined as: all persons employed by Defendant J. G. Bailey Company Millrock Way-2 LLC in California and classified as a non-exempt employee who worked for Defendant J. G. Bailey Company Millrock Way-2 LLC at any time from April 12, 2020, to July 31, 2024. Davis Decl. ¶27, Ex. 1 – Settlement Agreement ¶¶2, 7. The release of claims covers the time period from April 12, 2020, to July 31, 2024. *Id.* The proposed Class consists of approximately 69 settlement Class Members, which includes approximately 35 PAGA Members. Davis Decl. ¶29.

B. Amount of Settlement

The Parties have agreed to settle the Class and PAGA claims at issue in the Actions for a non-reversionary Gross Settlement Amount of $322,100.00. Davis Decl. ¶30, Ex. 1 – Settlement Agreement 18, 64

C. Allocation of the Gross Settlement Amount

The Gross Settlement Amount is a Common Fund and, therefore, includes all requested costs, fees, and other allocations. As stated above, the Gross Settlement Amount includes: (1) attorneys' fees in the amount of thirty-five percent of the Gross Settlement Amount, equaling $112,735.00; (2) litigation costs, not to exceed $35,000.00; (3) a settlement administrator fee currently estimated at $10,000.00; (4) a class representative service payment to Plaintiff Yolanda Perez in the amount of $10,000.00; (5) PAGA Penalties of $25,000.00, 75% of which shall be distributed to the LWDA and 25% of which will be distributed to PAGA Members. Davis Decl. ¶31 (a)-(e), s*ee also* Ex. 1 – Settlement Agreement ¶¶4, 5, 8, 17, 64(a)-(d),

After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount of approximately $129,365.00 shall be distributed and paid to the Participating Class Members. Davis Decl. ¶32, Ex. 1 – Settlement Agreement ¶¶30, 53, 59(c) The Net Settlement Amount will be distributed and paid to Participating Class Members on a *pro-rata* basis based on the number of weeks worked during the Class Period. *Id.* In addition, PAGA Members will receive a *pro-rata* share of the 25% portion of the PAGA Payment allocated for aggrieved employees. Davis Decl. ¶33, Ex. 1 – Settlement Agreement ¶¶17, 60, 64(c). Each PAGA Payment Share is intended to settle the PAGA Group Members' claims for civil penalties and one hundred percent (100%) of each PAGA Payment Share shall represent civil penalties. Davis Decl. ¶36, Settlement Agreement ¶ 62. Employer-side payroll taxes shall be paid by Defendant separately from and in addition to the Gross Settlement Amount. Davis Decl. ¶37, Settlement Agreement ¶¶ 12, 18, 63, 65. The funds represented by Settlement Share and/or PAGA Payment Share checks remaining uncashed for more than one hundred and eighty (180) calendar days after issuance shall be voided and then shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, *et seq.*, in the names of those Participating Class Members and/or

PAGA Group Members who did not cash their checks until such time they claim their property. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Participating Class Members, whether or not they all cash their settlement checks. Davis Decl. ¶38, ¶ 56.

D. Release of Wage and Hour Claims

In exchange for participating in the Settlement, Participating Class Members will release their wage and hour claims against Defendants and the Released Parties, as defined in the Settlement Agreement. The release for Participating Class Members is narrowly tailored to only release claims based upon the facts alleged in the operative complaint in the Action. Davis Decl. ¶36, Ex. 1 – Settlement Agreement ¶68. The proposed Settlement also resolves all PAGA Members' claims arising under the PAGA that could have been premised on the facts alleged both in the operative complaint and in the PAGA Notice provided to the LWDA, and which arose during the PAGA Period. Davis Decl. ¶37, Ex. 1 – Settlement Agreement ¶69

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The settlement of a class action requires court approval. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996). "In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds).

The review and approval of a proposed class action settlement involves a two-step process. *See* Cal. Rules of Court, Rule 3.769(c) – (h). First, counsel submit the proposed terms of settlement and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the range of a fair settlement to justify providing notice of the proposed settlement to class members. After notice is provided to the class, the Court must conduct a second inquiry into whether the proposed settlement is fair, reasonable and adequate. *See Id.*

The initial evaluation of the settlement at the preliminary approval step "is not a fairness hearing." *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed settlement is within the range of possible approval and, as a result, "whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing." A presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).

Preliminary approval does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to object or exclude themselves from the settlement. *See* Cal. R. Ct. 3.769(g). In considering a potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, and need not engage in a trial on the merits. *See Officers for Justice v. Civil Service Commission of City and County of San Francisco*, 688 F.2d 615, 625 (1982).

V. THE SETTLEMENT IS PRESUMED FAIR

A. Arm's-Length Bargaining

California courts recognize that "a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining." *Wershba*, 91 Cal.App.4th at 245 (disapproved on other grounds); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). Here, the Parties engaged in arms-length, non-collusive negotiations at all times. This litigation was hotly contested, and settlement negotiations were at all times arm's length and adversarial. The Parties agreed to attend an all-day mediation with Lynn Frank, Esq., a highly respected mediator with particular experience in wage and hour class actions. On the eve of the scheduled mediation, the Parties successfully resolved their dispute through direct and voluntary negotiations, having engaged in intensive, arm's-length settlement discussions conducted in good faith, were adversarial. Defendant at all times maintained that it had complied with California wage and hour laws. At all times, Plaintiff was willing and prepared to litigate this matter if the Parties had been unable to reach a favorable resolution. The proposed settlement was reached at the end of a process that was neither fraudulent nor collusive and was reached only after intensive, arm's-length discussion which allowed the Parties to reach a compromise of the hotly disputed claims. Davis Decl. ¶¶42-43.

B. Sufficient Investigation and Discovery by Experienced Class Counsel

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. As discussed above, the Parties engaged in extensive informal discovery prior to reaching a settlement. Prior to agreeing to attend mediation, Defendant produced a sampling of time and payroll data for non-exempt employees employed by Defendant in the state of California since April 12, 2020, and written policies including the employee handbooks in effect during the Class Period. The Parties extensively briefed these issues and provided their analyses to each other, and the Parties debated the strengths and weakness of their positions. Davis Decl. ¶¶42-43.

Additionally, settlement negotiations were conducted by highly capable and experienced counsel. Plaintiff's Counsel are respected members of the bar with strong records of vigorous and effective advocacy and are experienced in handling complex wage and hour class action litigation. Davis Decl. ¶¶2-11. Accordingly, Plaintiff's Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 246, 250 (disapproved on other grounds). In evaluating the reasonableness of a settlement, a trial court must consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008).

Here, the reasonableness of the Settlement is underscored by the fact that Defendants have legal and factual grounds for defending the action. Based upon Plaintiff's Counsel's experience litigating similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification and the merits absent a settlement. Davis Decl. ¶¶44-81.

*1. **<u>Plaintiff's Counsel's Analysis of the Maximum Available Liability and Damages</u>***

Prior to resolution, Plaintiff's Counsel analyzed a sampling of the time and payroll data for anion-exempt employees employed by Defendants in the state of California since April 12, 2020, provided by Defendants and other relevant documents and informal discovery. With this data, Plaintiff's Counsel and their retained expert were able to perform a comprehensive damages analysis and estimate Defendants' potential violations, liability, and exposure. Davis Decl. ¶42-43. Based on the informal discovery provided, Plaintiff's Counsel estimated with respect to the claims at issue, with all claims adjudicated in favor of the Class, Defendants faced a maximum potential liability of $1,498,173.24. However, during negotiations Defendants raised legitimate risks and defenses that Plaintiff was forced to consider in evaluating the case. Davis Decl. ¶44.

*2. **<u>Plaintiff's Counsel's Risk-Based Analysis and Risk-Based Adjustments</u>***

While Plaintiff believes Defendants faced significant exposure, substantial barriers to a class recovery exist and Plaintiff faced numerous challenges attempting to bring the alleged claims on a class and representative basis. Defendants contended that Plaintiff's claims were not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1051 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014). While Plaintiff and Class Counsel disagree with Defendant predictions, they also recognize that there is a significant risk that the Court may deny class certification. Davis Decl. ¶¶45-46; *see also*, *Findings of the Study of California Class Action Litigation*, 2000-2006, available at http://www.courts.ca.gov/documents/class-action-lit-study.pdf (finding that only 21.4% of class actions were certified either as part of a settlement ***or*** as part of a contested certification motion).

A significant portion of Defendants' overall liability lies in Plaintiff's meal period claims, which have become increasingly difficult to certify in recent years. *See Brinker*, 53 Cal. 4th at 1034-35. Plaintiff's meal period claims were based upon Defendant's alleged failure to provide authorize and provide timely, full, and/or uninterrupted meal periods. In contrast, Defendants argued that they maintained lawful and compliant meal period policies and practices throughout the class period and that there were individualized issues regarding why a meal period was missed, late, short, or interrupted. Class Counsel had to consider the risk that the Court would find validity to Defendant's individualized proof defense. Davis Decl. ¶¶47-50.

Defendants also challenged Plaintiffs' ability to sufficiently prove the alleged rest period violations. Plaintiffs argued that the same practices that prevented employees from taking their meal periods also affected employees' abilities to take timely and compliant rest breaks. However, Defendants claim they allowed employees to take their rest periods and that their practices comply with California law and that they were not required to record these breaks. Given the lack of records, Defendants argued that even if Plaintiff managed to establish a practice of denying compliant rest breaks, this claim would not be manageable, and Plaintiff could not demonstrate significant damages. Davis Decl. ¶¶51-54.

Plaintiff also faced challenges certifying and proving liability for her minimum wage and overtime claims, which were largely based on unrecorded, off-the-clock work that Plaintiffs alleged were performed by the class members before and after their scheduled shifts and during meal periods. However, Defendants argued that their overtime policies and practices complied with the law and that they did not permit and had no knowledge of such off-the-clock work. Certifying these claims was not certain, would require complex analysis, and was subject to challenges regarding individualized inquiry and potential damages. Davis Decl. ¶¶55-58.

There are also risks associated with Plaintiff's waiting time penalties. First, Plaintiff's waiting time claims were derivative of Plaintiff's previous claims and if Plaintiff was unable to prevail on her underlying claims, these claims would also be affected. However, even if Plaintiff prevailed on her underlying claims, he would still be required to demonstrate that Defendant's violations of Labor Code §§ 203 were <u>willful</u> violations, a difficult prospect. *See, e.g.*, *Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013) (holding reasonable, good faith belief may negate willfulness.) Plaintiff's wage statement claims were also risky, as these claims were also derivative of Plaintiff's other claims. However, Defendants argued that these violations could not be shown to have been knowing and intentional or have caused injury as required by Labor Code §226(e). Wage statement claims have seen high and low water marks in their treatment at the appellate level because such claims contain an element of discretion. *Cf., Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp*., 192 Cal.App.4th 1136 (2011). Accordingly, these derivative claims, which comprised a substantial portion of Defendants' estimated potential liability, are extremely risky. Davis Decl. ¶¶59-66.

Plaintiff's Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the amount of wages due to each Class Member would be an expensive, time-consuming, and extremely uncertain proposition. In order to prove liability and damages, Plaintiff's Counsel would be required to spend hundreds of additional hours obtaining discovery and likely substantial motion practice. Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. On the other hand, Defendant would likely be able to obtain the cooperation of their employees. Moreover, even if Plaintiff prevailed, possible appeals would substantially delay any recovery by the Class. Davis Decl. ¶77.

Finally, Plaintiff separately considered Defendants' potential PAGA exposure. The Parties agreed during settlement negotiations to allocate $25,000.00 of the Settlement towards the claims resolving the alleged PAGA Claims. Twenty-Five Thousand Dollars ($25,000.00) is approximately 7.76% of the Gross Settlement Amount. This percentage of the settlement is well above the range regularly approved in both state and federal court when a lawsuit includes both a class and PAGA action. A settlement that allocates approximately 1% of the total settlement value to resolve PAGA claims is typical of wage-and-hour settlements that include both Class and PAGA claims based on the same alleged violations. *See* Davis Decl. ¶67-69.

Furthermore, PAGA claims are subject to the same defenses described above as well as defenses unique to PAGA. Plaintiff also had to consider that PAGA penalties may not be recovered where they are duplicative of the underlying claims and arguably cannot be stacked based on the same conduct. *see Thurman v. Bayshore Transit Management, Inc.,* 203 Cal.App.4th 1112, 1131 (2012)(imposition of both statutory and civil penalties for same conduct is impermissible double recovery). This argument is only strengthened by recent changes to PAGA which now prohibit stacking penalties in many instances unless there is a showing that such penalties were knowing or intentional, as well as placing caps on certain penalties. Although the recently enacted reforms are not applicable here, these recent changes instructing judges to not stack penalties for derivative violations that are neither willful, knowing, or intentional, and placing caps on certain penalties, suggest that the Court would be highly unlikely to stack the derivative penalties that make up a substantial portion of Defendant's PAGA liability in this matter. There is also a risk that these penalties would be drastically reduced as unjust, arbitrary, or oppressive and confiscatory even if obtained. *Fleming v. Covidien, Inc.,* 2011 WL 756304718, at *4 (C.D.Cal. Aug. 12, 2011)(reducing PAGA penalties by 80%); *Carrington v. Starbucks Corp*., 30 Cal.App.5th 504, 529 (2018)(approving reduction in penalties from $50 per pay period to $5 per pay period based on good faith attempts to comply with obligations). Davis Decl. ¶¶70-76.

After taking into account the strengths and weaknesses of each claim, the unique risks associated therewith, the general risks associated with litigating the case, and the significant additional costs and expenses that would be incurred by both sides in litigating the Action through class certification, trial, and appeals, Class Counsel estimated an overall adjusted risk-based liability based on the primary claims at issue of approximately $307,819.06. Given these attendant risks, the payment of $322,100.00 is an excellent result that provides the class with a certain recovery over a relatively short period of time with significant savings in costs. The parties have agreed to a non-reversionary settlement that will pay out a substantial return to the class members. In light of the parties' respective legal positions and the risks to potential recovery, the settlement is fair, adequate, and reasonable. Davis Decl. ¶¶77-79.

VI. <u>CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED</u>

Code of Civil Procedure § 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, *i.e.*, proceeding as a class is superior to other methods. *See Dunk*, 48 Cal.App.4th at 1806. Plaintiff contends that this matter, which is primarily based upon Defendants' wage and hour policies and practices, satisfies the class certification requirements under California Code of Civil Procedure § 382. Defendant denies

Plaintiff's allegations, but for purposes of this Settlement only, Defendants have stipulated to certification of the proposed class action.

A. An Ascertainable and Numerous Class Exists and Joinder is Impractical

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is defined as all persons employed by Defendant J. G. Bailey Company Millrock Way-2, LLC in California and classified as a non-exempt employee who worked for Defendant J. G. Bailey Company Millrock Way-2, LLC at any time from April 12, 2020, to July 31, 2024. Davis Decl. ¶28, Ex. 1 – Settlement Agreement ¶¶2, 7. This provides a clear and definite scope for the proposed class.

Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Under the Federal Rules, the minimum number of a class is one-hundred individuals. Under California law, that number is significantly less. *See e.g., Rose v. City of Haywood*, 126 Cal.App.3d 926, 934 (1981) (holding forty-two class members sufficient to satisfy numerosity). Here, the estimated Class size of 69 Class Members plainly favors class certification. Davis Decl. ¶29.

Finally, the question whether class members are easily identifiable turns on whether a plaintiff can establish "the existence of an ascertainable class." *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695 at 706 (1967). The existence of an ascertainable class in this case can be established through Defendants' payroll records, and the class definition is sufficiently specific to enable the Parties, potential Class Members and the Court to determine the parameters of the Class. *See Clothesrigger, Inc.*, 191 Cal. App. 3d at 617 (proposed class defined as all persons nationwide subscribing to telephone service since January 1, 1981, who were charged for long distance calls deemed "plainly" ascertainable).

B. The Class Shares a Well-Defined Community of Interest

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. Plaintiff easily satisfies all three requirements.

The commonality criterion requires the existence of common question of law or fact and is generally established with the issues of predominance and typicality. *See Daar*, 67 Cal. 2d 695, 706. What is required is that a common question of fact or law exists which predominates over issues unique to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising from employment—is not a bar to class certification as long as they do not render class litigation unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

In this matter, the alleged claims present sufficient common issues of law and fact that predominate and warrant class certification. Plaintiff alleges that Defendant denied compliant meal and rest periods to employees, failed to properly compensate employees for missed meal or rest periods, required employees to perform work off-the-clock, and failed to fully compensate employees for all time worked. These policies and practices mean that Defendant failed to pay minimum and overtime wages, and other related claims. Plaintiff alleges that these practices were uniform as to all Settlement Class Members and thus, class treatment is appropriate.

To satisfy the typicality requirement, California law does not require that a Plaintiff have claims identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff, and whether other class members have been injured by the same alleged course of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality requirement for a class representative refers to the nature of the claim or defense of the representative, and not to the specific facts from which it arose or the relief sought. *See Id*.

Here, Plaintiff alleges that her claims are similar to that of the other class members. All of Plaintiff's claims arise out of the same alleged facts and course of conduct giving rise to the claims of the other class members. Finally, Plaintiff's claims are typical of the class. Plaintiff's claims are based upon the same alleged conduct and business practices as those of the potential class members and she seeks the same relief, accordingly, the typicality requirement has been satisfied.

Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations are satisfied. Counsel for Plaintiff includes well-regarded and accomplished lawyers who are qualified and experienced in employment-related, class-action litigation. Davis Decl. ¶¶2-11. Plaintiff will vigorously, adequately and fairly represent the interests of the Class. *See also* Declaration of Plaintiff Yolanda Perez ("Perez Decl.") ¶¶1-18. Because Plaintiff's claims are typical of other class members and are not based on unique circumstances, there is no antagonism between the interests of Plaintiff and the class.

C. A Class Action is Superior to a Multiplicity of Litigation

Under the circumstances, proceeding as a class action is a superior means of resolving the Actions, as the Class Members and the court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will come forward to prove his or her separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly burden the courts and could lead to inconsistent results. Therefore, class action proceedings are superior to individual litigation.

VII. THE REQUESTED SERVICE PAYMENT IS REASONABLE

Plaintiffs in class action and PAGA lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz v. BCI Coca-Cola Bottling Co.*,186 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. S*ee Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995) (approving $50,000 enhancement).

Plaintiff initiated and has stepped forward in this Action on behalf of her former co-workers and the LWDA, who will now benefit from the Settlement. Plaintiff has invested substantial time and effort into litigation of this Action, including her own research, reviewing documents, and extensive discussions with Plaintiff's Counsel. Further, the requested amount is also extremely reasonable given the benefit gained by other Class Members. Accordingly, Plaintiff requests that a service award of $10,000.00 be preliminarily approved by the Court. *See* Davis Decl. ¶80-85; Perez Decl. ¶¶1-18.

VIII. REQUESTED ATTORNEYS' FEE AND COSTS

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id*. at 47. In cases where class members present claims against a common fund and the defendant agrees to the use of a percentage of the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

Here, the requested attorneys' fees of $112,735.00, which is thirty-five percent of the common fund, are disclosed to Class Members in the proposed Class Notice. *See* Exhibit A to the Settlement Agreement. The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Plaintiff's Counsel's request for fees and the reimbursement of litigation costs not to exceed $35,000.00. Davis Decl. ¶86.

IX. NOTICE TO THE CLASS, THE OPT OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS

Subject to the Court's Approval, the Parties have stipulated to have Phoenix Class Action Administrators, ("Phoenix") serve as the Settlement Administrator in this action. Davis Decl. ¶87, Ex. 1 – Settlement Agreement ¶¶28. Phoenix is an experienced settlement administrator who has been approved to administer settlements by Courts across the state. Phoenix estimates it will incur no more than $5,995.00 in costs administering the settlement. Davis Decl. ¶87, Ex. 1 – Settlement Agreement ¶64(d). *See also* Declaration of Jodey Lawrence of Phoenix Settlement Administrators ("Phoenix Decl."), ¶¶1-16, Ex. A-B. The Parties do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict. Davis Decl. ¶89, Ex. 1 – Settlement Agreement ¶65; Phoenix Decl. ¶4.

The Parties have jointly drafted a Notice which will be delivered to the Class Members. The Notice will include information regarding the lawsuit, a summary of the Settlement terms, the class definition, information on how to object or opt-out, and the date of the Final Approval Hearing. The Notice will also list each Class Member's workweeks and the approximate amount they are eligible to receive from the settlement. Davis Decl. ¶ 14, Ex. 1 – Settlement Agreement ¶44, Ex. A.

Within fourteen (14) days after the Court grants preliminary approval of the Settlement, Defendant will provide to the Settlement Administrator the following information for each Class Member: (1) full name; (2) last known home address; (3) last known telephone number; (4) social security number; (5) start and end dates of active employment as an hourly-paid or non-exempt employee of Defendant in the State of California; (6) total Workweeks during the Class Period; (7) total Workweeks during the PAGA Period; and (8) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement. Davis Decl. ¶88, Ex. 1 – Settlement Agreement ¶¶ 6, 44(a).

If a Class Notice is returned by the U.S. Postal Service because of an incorrect address, the Settlement Administrator will promptly, and not later than five (5) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the Class Members' Data and otherwise work with Defense Counsel or utilize its own resources, such as skip traces, to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address of any Class Member for whom a Class Notice is returned by the U.S. Postal Service. These reasonable steps shall include the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. Davis Decl. ¶89, Ex. 1- Settlement Agreement ¶ 44(c).

No later than seven (7) days after receiving the Class List, the Settlement Administrator shall mail the Notice by U.S. First Class to the Class Members. Davis Decl. ¶90, Ex. 1- Settlement Agreement ¶ 55.

In determining whether to approve a settlement of a class action, a trial court has substantial discretion regarding the manner of giving notice to class members. *See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380 (2010). Here, Class Counsel is not aware of an alternative method of providing Notice to the Class which would result in a higher likelihood of actual notice. The original source of the mailing addresses is from each Class Member, who provided the information to Defendants. As a fail-safe to this highly reliable method, skip tracing will be performed if necessary. Davis Decl. ¶91.

Any Class Members who wishes to exclude themselves from the Settlement ("opt out" of the Settlement) must submit to the Settlement Administrator, not later than forty-five (45) days after the date that the Settlement Administrator first mails the Class Notices, an Exclusion Request ("the Exclusion Period"). Davis Decl. ¶92, Ex. 1 – Settlement Agreement ¶45(b).

Any Class Member wishing to object to the approval of this Settlement shall provide a signed and dated written statement that includes the name, address, the dates of employment and basis for each objection. Objections must be mailed to the Settlement Administrator, not later than forty-five (45) days after the Settlement Administrator initially mails the Class Notice. Participating Class Members may also appear and object at the final approval hearing, regardless of whether they have submitted a written objection. Davis Decl. ¶93, Ex. 1 – Settlement Agreement ¶45(a)-(c),

X. <u>CONCLUSION</u>

For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's Motion for Preliminary Approval and the relief requested herein.

Respectfully submitted,

DATED: October 1, 2025

PROTECTION LAW GROUP, LLP

By:______________________________

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