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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CHERYL GARAY, as an individual and on behalf of all others similarly situated, Plaintiff, vs. MARNA HEALTH SERVICES, INC. dba HILLCREST NURSING HOME, a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No.: CIVSB2419464 [*Assigned for All Purposes to Hon. Stephanie Thorton-Harris, Dept. S-31*] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: October 20, 2025 Time: 8:30 a.m. Dept.: S-31

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on October 20, 2025 at 8:30 a.m. in Department S-31 of the above-entitled Court, located at 247 W 3rd Street, San Bernardino, California 92408, Plaintiff Cheryl Garay ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:

   > All current and former non-exempt, hourly employees of Defendant Marna Health Services, Inc. dba Hillcrest Nursing Home who worked at any time in California during the Class Period.

3. For purposes of the Settlement, the "Class Period" shall mean the time period of June 11, 2020 through August 9, 2025.
4. Preliminary appointment of Plaintiff Cheryl Garay as Class Representative;
5. Preliminary appointment of Scott M. Lidman, Milan Moore, and Tiara Gose-Hardy of Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
6. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties payable to the California Labor Workforce Development Agency and Aggrieved Employees, and attorneys' fees and costs to Class Counsel;
7. Appointment of Phoenix Settlement Administrators ("Phoenix") as the third-party Settlement Administrator for mailing notices; and
8. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of Class Action and Proposed Settlement and Notice of Individual Settlement Award) and an order that it be disseminated to the proposed Settlement Class Members as provided in the Settlement Agreement.

This Motion is based on this notice of motion, the memorandum of points and authorities, the declarations of Scott M. Lidman, Milan Moore, Tiara Gose-Hardy, Paul K. Haines, Plaintiff Cheryl Garay, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: August 21, 2025

Respectfully submitted,
LIDMAN LAW, APC

By: ______________________
Scott M. Lidman

Attorneys for Plaintiff
CHERYL GARAY

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Cheryl Garay ("Plaintiff") brought this class and representative action against Defendant Marna Health Services, Inc. doing business as Hillcrest Nursing Home ("Defendant") alleging various wage and hour violations. Plaintiff's primary allegations are that Defendant: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) failed to provide meal periods; (4) failed to authorize and permit all rest periods; (5) failed to reimburse necessary business expenses; (6) failed to provide accurate, itemized wage statements; (7) failed to pay all wages owed upon termination; (8) engaged in unfair competition; and (9) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, class action settlement,[1] in which Defendant has agreed to pay $758,900.00 to the following Settlement Class:

> All current and former non-exempt, hourly employees of Defendant Marna Health Services, Inc. dba Hillcrest Nursing Home who worked at any time in California during the Class Period.
>
> For purposes of the Settlement, the "Class Period" shall mean the time period of June 11, 2020 through August 9, 2025.

Settlement Class members do not need to file a claim to participate and will automatically receive a payment unless they affirmatively opt-out. After deducting administration costs, Plaintiff's service award, attorneys' fees and costs, and PAGA civil penalties, the remaining Net Settlement Amount ("NSA") of approximately $439,683.34 will be distributed to all Settlement Class members who do not opt-out. With approximately 460 Settlement Class members, the average payment to each Settlement Class member is currently expected to be approximately **$955.83**, which does not include the $7,500.00 PAGA Amount to the PAGA Employees.

/ /

[1] The Stipulation of Settlement ("Settlement") is attached to the Declaration of Scott M. Lidman as Exhibit 2. The proposed Notice Packet (which consists of the Notice of Pendency of Class Action and Proposed Settlement and Notice of Individual Settlement Award) is attached to the Settlement as Exhibit B. All defined terms in this motion have the same definitions as used in the Settlement.

This proposed Settlement is well-within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH NEGOTIATIONS

1. The Parties

Marna Health Services, Inc. is a long-term care nursing facility. *See* Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. Plaintiff Cheryl Garay, a former non-exempt employee, was employed by Defendant from approximately August 1, 2023 through approximately May 21, 2024. *See* Declaration of Cheryl Garay ("Garay Decl."), ¶ 2. Plaintiff was a Certified Nursing Assistant, and her duties included feeding, changing, showering, dressing and transferring patients. Garay Decl., ¶ 2.

2. Procedural History

On June 11, 2024, Plaintiff filed the instant putative class action complaint against Defendant in San Bernardino County Superior Court alleging the following class action claims against Defendant: (1) failure to pay all overtime wages owed; (2) failure to pay all minimum wages owed; (3) failure to provide meal periods; (4) failure to authorize and permit all rest periods; (5) failure to reimburse necessary business expenses; (6) failure to provide accurate, itemized wage statements; (7) failure to pay all wages upon termination; and (8) unfair competition. Lidman Decl., ¶ 10.

After having exhausted her administrative remedies with the California Labor & Workforce Development Agency ("LWDA") by way of a letter submitted to the LWDA on June 11, 2024, on August 16, 2024, Plaintiff filed a First Amended Complaint which added a cause of action seeking civil penalties under the PAGA. Lidman Decl., ¶ 10.

3. Discovery

In the instant action, the parties have engaged in formal discovery. On September 9, 2024, Plaintiff served the following written discovery on Defendant: Form Interrogatories – General, Form Interrogatories – Employment Law, Special Interrogatories, and Requests for Production. Lidman Decl., ¶ 11. On October 31, 2024, Defendant served its responses and objections to Plaintiff's discovery requests. *Id*.

After agreeing to participate in private mediation, Defendant informally produced time records and payroll data for a 20 percent sampling of the putative class. Lidman Decl., ¶ 11. After a review and analysis of the data produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* The discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could not be reached. *Id.*

4. <u>Arms-Length Negotiations</u>

On June 10, 2025, after extensive research and analysis, including a detailed analysis of Defendant's potential exposure by Plaintiff, a full-day mediation was held with Steve Mehta, Esq., a well-respected wage and hour class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id.* Ultimately, through a mediator's proposal, the parties agreed on a class-wide resolution in principle. *Id.* In the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation of Settlement ("Settlement"). *Id.*

III. <u>ARGUMENT</u>

A. <u>CLASS CERTIFICATION FOR SETTLEMENT PURPOSES</u>

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322 (requires trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 (requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable").

As explained below, the Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the Settlement Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims are typical of the claims of absent Settlement Class Members; and (4) Plaintiff and her counsel will fairly and adequately represent Settlement Class Members' interest. *See* Cal. Civ. Proc. § 382.

1. **Numerosity is Satisfied.**

Here, there are approximately 460 Settlement Class Members. Therefore, numerosity is satisfied. *See* Lidman Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

Further, a class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is defined as "All current and former non-exempt, hourly employees of Defendant Marna Health Services, Inc. dba Hillcrest Nursing Home who worked at any time in California during the Class Period." Lidman Decl., ¶ 14. For purposes of this Settlement Agreement, the "Class Period" shall mean the time period of June 11, 2020 through August 9, 2025. *Id.*

In addition, PAGA Employee is defined as: "All current and former non-exempt, hourly employees of Defendant Marna Health Services, Inc. dba Hillcrest Nursing Home who worked at any time in California during the PAGA Period." Lidman Decl., ¶ 14. For purposes of this Settlement Agreement, the "PAGA Period" shall mean the time period of June 11, 2023 through August 9, 2025. *Id.*

2. **Commonality is Satisfied.**

The focus in a certification dispute is not the merits, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 327. Here, Settlement Class Members' claims arise from Defendant's common, uniform policies and practices that applied to Plaintiff and Settlement Class Members during the class period. Lidman Decl., ¶ 15. As a result of the common and uniform policies and practices that applied to all Settlement Class Members, their claims involve common questions of law and fact, including but not limited to:

1. Whether Defendant properly paid all minimum wages and/or overtime wages;
2. Whether Defendant provided all legally compliant meal periods;
3. Whether Defendant authorized and permitted all legally compliant rest periods;
4. Whether Defendant failed to furnish legally compliant wage statements;
5. Whether Defendant paid all wages owed to its terminated/separated employees at the time of said termination/separation;

6. Whether Defendant reimbursed its non-exempt employees for all necessary business expenses; and
7. Whether Defendant engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendant owes its non-exempt employees restitution.

These alleged practices result in common questions as to the affected Settlement Class Members. *See e.g.*, *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

3. <u>Typicality is Satisfied.</u>

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action).

Here, Plaintiff's claims are typical of those held by the Settlement Class. First, Plaintiff was employed by Defendant during the Class Period as a non-exempt employee and was subject to Defendant's wage and hour policies at issue in this case. *See* Garay Decl., ¶ 2. Second, Plaintiff was injured by the same challenged policies that injured the Settlement Class as a whole. For example, Plaintiff asserts that she, like the Settlement Class, was not paid all legally required minimum wages and overtime wages, was not provided with all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when she was not provided compliant meal or rest periods, was not provided with accurate itemized wage statements, was not reimbursed for business expenses, and was not paid all wages owed upon the separation of employment. Garay Decl., ¶¶ 2-6. Given that Defendant's policies and practices applied to all non-exempt employees, Settlement Class Members possess a similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, because Plaintiff's claims and those of the Settlement Class all arise from the same conduct, typicality is satisfied.

4. <u>Adequacy is Satisfied.</u>

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007) Cal.App.4th 676, 697.

Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class she seeks to represent. Lidman Decl., ¶ 32; Garay Decl., ¶ 12. Indeed, Plaintiff's interests are aligned with those of the Settlement Class Members, as they all seek monetary relief under the same facts and legal theories. *Id*. Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. Lidman Decl., ¶ 32; see *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class).

Further, Class Counsel also have extensive experience in wage and hour class action litigation and have vigorously litigated this case. *See* Lidman Decl., ¶¶ 3-29; Declaration of Milan Moore ("Moore Decl."), ¶¶ 2-5; Declaration of Tiara Gose-Hardy ("Gose-Hardy Decl."), ¶ 2-4; and Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8.

B. <u>THE PROPOSED CLASS ACTION SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE</u>

Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g.*, *Hanlon*, *supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement agreement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

1. <u>The Preliminary Approval Standard is Met</u>

To make a fairness determination, the Court should consider several factors, including: "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, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. The Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case for the following reasons.

a. **The Strength of Plaintiff's Case**

Although Plaintiff maintains that her claims are meritorious, she acknowledges there were substantial risks and uncertainty in proceeding with litigation. As described below, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and class certification. Thus, while Plaintiff was prepared to litigate these claims through certification and trial, success was not certain.

b. **Risk, Expenses, Complexity, and Duration of Further Litigation**

Although the Parties engaged in formal and informal discovery throughout this action, the Parties still had significant discovery to complete in formal litigation had the matter not settled. Lidman Decl., ¶ 33. Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id*. Even if the classes sought to be certified by Plaintiff was in fact certified, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id*. This Settlement avoids those risks and the accompanying expense. Thus, this factor supports preliminary approval.

c. **Risk of Maintaining Class Action Status**

Plaintiff has not yet filed her motion for class certification and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial.

d. **Overview of the Settlement Agreement**

If the Court approves this Settlement, Defendant will pay a Gross Settlement Amount ("GSA") of $758,900.00.[2] Lidman Decl., ¶ 13, Exh. 2 (Settlement, ¶ 4). Significantly, this Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.* (Settlement, ¶ 4.D.). Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. The monetary terms of the Settlement are summarized below:

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[2] Defendant represents that there are an estimated 460 Class Members who worked an estimated total of 20,100 Workweeks during the Class Period. If the number of Workweeks actually worked during the Class Period is more than 10% greater than this figure (i.e., if there are 22,111 or more Workweeks worked during the Class Period), Defendant agrees to increase the Gross Settlement Amount on a proportional basis (i.e., if there was an 11% increase in the number of workweeks worked during the Class Period by Class Members, Defendant will increase the Gross Settlement Amount by 11%). *See* Settlement ¶ 4.F.

Gross Settlement Amount ("GSA"):	**$758,900.00**
Minus Court-approved attorneys' fees (1/3 of GSA):	$252,966.66
Minus Court-approved, verified costs (up to):	$20,000.00
Minus Court-approved Class Representative Service Award:	$7,500.00
Minus Settlement Administration Costs:	$8,750.00
Minus PAGA civil penalties:	$30,000.00
Net Settlement Amount ("NSA"):	**$439,683.34**

The Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and Aggrieved Employees. Defendant agrees to deposit the Gross Settlement Amount and the required employer-side taxes with the Settlement Administrator in three separate payments: (1) $455,340.00 deposited within 65 calendar days following final approval; (2) $151,780.00 deposited within 90 calendar days of the first payment; and (3) $151,780.00 deposited within 60 calendar days of the second payment, in addition to employer-side taxes. Lidman Decl*.,* ¶ 13, Exh. 1 (Settlement ¶ 4.B).

After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Awards to Plaintiff, Settlement Administrator costs, and the PAGA civil penalties, the Settlement requires Defendant to pay a Net Settlement Amount ("NSA") of at least **$439,683.34** to all Settlement Class Members who do not timely opt out. Lidman Decl*.,* ¶ 13. This amount does not include the $7,500.00 PAGA Amount to be paid to the PAGA Employees. *Id*.; Exh. 2 (Settlement ¶ 5.A).

According to Defendant, there are approximately 460 total Settlement Class Members. Lidman Decl., ¶ 14. Thus, the average Individual Settlement Award (assuming there are no opt-outs) is projected to be approximately **<u>$955.83, exclusive of any PAGA civil penalties</u>**. *Id.*

Settlement Class Members will have sixty (60) calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶ 10.C. Those Settlement Class Members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant included within the Settlement, for the period of June 11, 2020 through August 9, 2025. *See* Settlement, ¶ 3.

Settlement Class Members who opt-out of Settlement will still receive a portion of the PAGA Amount if they were an Aggrieved Employee during the PAGA Period. *See* Settlement, ¶ 10.C.ii.

As this is a non-reversionary Settlement, 100% of the NSA shall be consumed in that if a Settlement Class Member opts-out of the Settlement, the portion allocated to the individual who opts-out shall be added to the NSA and redistributed and allocated to the Settlement Class Members who did not opt-out. *See* Settlement, ¶ 4.D.

e. The Parties Engaged in Fair and Honest Negotiations.

This Settlement was a result of serious, informed, non-collusive negotiations with the assistance of a mediator. After the detailed review of the data produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. Lidman Decl., ¶ 11. The formal and informal discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could not be reached. *Id*.

On June 10, 2025, the parties participated in mediation with Steve Mehta, Esq. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id*. Ultimately, through a mediator's proposal, the Parties agreed on a class-wide resolution. *Id*. In the weeks that followed, the parties finalized the terms of the Settlement. *Id*.

Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result of factual investigation and data analysis; the exchange of substantial class data, including timekeeping and payroll records; arm's length negotiations by counsel; and mediation before an experienced wage and hour class action mediator. *See* Lidman Decl., ¶¶ 11-12; *See Kullar*, *supra*, 168 Cal.App.4th at 130. Thus, these factors support preliminary approval.

Further, there are no deficiencies in the Settlement. The Settlement does not grant preferential treatment to the class representative or segments of the class, and is within the range of possible approval, as discussed in detail below. The Settlement will provide monetary relief to Settlement Class Members. The amounts proposed for Class Counsel's attorneys' fees and costs, and service award are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

f. Amount Offered in Settlement Given Realistic Value of Claims

Unlawful Rounding/Paid to Schedule: Plaintiff alleges that Defendant failed to compensate its non-exempt employees for all time worked. Lidman Decl., ¶ 16. Specifically, Plaintiff alleges that Defendant rounded and/or paid its employees for scheduled hours – not actual hours worked, despite Plaintiff and other non-exempt employees performing work duties both before and after their scheduled shifts. *Id*. As a result, Plaintiff contends that Defendant failed to pay her and other non-exempt employees all minimum and overtime wages owed. *Id*. Accordingly, based on 5 minutes of unpaid time each shift, Plaintiff estimates Defendant's exposure at a total of $180,968.00 (20,086 workweeks x 5 days/workweek x .083 minutes per shift x $21.71 average hourly rate). *Id*.

Defendant contends that it used a timekeeping system that rounded evenhandedly and alleges that the rounding did not result in systemic underpayment of wages, and thus no violation of law occurred. Lidman Decl., ¶ 17. Defendant further asserts that Plaintiff would be unable to certify an unpaid wages class given that its policies comply with the law and the individualized inquiries that would be required. *Id*. In light of these defenses, Plaintiff discounted the maximum exposure by 35% for the risk of non-certification, and an additional 40% to account for Defendant's defenses on the merits to arrive at an estimated exposure of approximately $70,577.52. *Id*.

Meal Period Violations: Plaintiff alleges that she and Settlement Class Members were not provided with all legally-required meal periods in compliance with California law due to Defendant's unlawful meal period policies/practices. Lidman Decl., ¶ 18. Due to work demands, Plaintiff was often prevented from taking meal periods that commenced before the end of the 5th hour of work. *Id*. Plaintiff calculated Defendant's maximum exposure for the alleged meal period violations at $2,180,335.00 (20,086 workweeks x 5 days per workweek x $21.71 average hourly rate). *Id*.

Defendant counters that it has always provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of Defendant. Lidman Decl., ¶ 19. Defendant also points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. *Id*.; *Brinker*, *supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Finally, Defendant contends Plaintiff's meal period claim is not suited for class certification because its policies comply with the law and individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id*. Accordingly, Plaintiff discounted the maximum exposure by 25% for the risk of non-certification, and an additional 20% to account for Defendant's defenses on the merits to arrive at an estimated exposure of $1,308,201.00. *Id*.

<u>Rest Period Violations</u>: Plaintiff alleges that she and other Settlement Class Members were not authorized and permitted to take all required rest periods due to Defendant's rest period policies/practices which fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 20. Specifically, Defendant often interrupted Plaintiff's rest periods and Defendant's work demands often prevented her from taking a second rest period. *Id.* Thus, Plaintiff calculated Defendant's exposure on rest period violations at $1,090,168.00 (20,086 workweeks x 5 days per workweek x .50 violation rate x $21.71 average hourly rate). *Id.*

Defendant contends it has always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 21. Defendant argues that Plaintiff's rest period claims are inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id*. Accordingly, Plaintiff discounted the maximum exposure by 35% for the risk of non-certification, and an additional 30% to account for Defendant's defenses on the merits to arrive at an estimated exposure of $496,026.44. *Id*.

<u>Wage Statement Violations</u>: Plaintiff further alleges that Defendant issued inaccurate wage statements in violation of Labor Code § 226. Lidman Decl., ¶ 22. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members did not include all hours worked and the rate at which they were being paid. *Id*. Therefore, Plaintiff calculated Defendant's maximum exposure for wage statement violations at $318,750.00 (based on the

3,211 settlement statements issued during the relevant time period and applying $50 for the first violation and $100 for each subsequent violation). *Id.*

Defendant argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that she or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 23. As such, Plaintiff discounted the calculated exposure by 20% for a risk of non-certification and an additional 20% for a risk of being unsuccessful on the merits to arrive at an estimated total of $204,000.00. *Id*.

<u>Unreimbursed Business Expenses</u>: Plaintiff alleges that Defendant required her and the other Settlement Class Members to use their personal cellular phone for business purposes and purchase medical tools. Lidman Decl., ¶ 24. Despite knowing that putative class members had incurred necessary business expenses to communicate with Defendant through their own personal electronic devices and purchase medical tools, Defendant failed to reimburse putative class members in violation of Section 2802 and *Cochran. Id.*; See *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1144. Therefore, Plaintiff calculated Defendant's maximum exposure at $10.00/workweek, for a total of approximately $200,860.00 ($20,086 workweeks x $10.00 per workweek). *Id*.

Defendant asserts that, given the wide array of cellular phone plans, any expenses would be *de minimis*. Lidman Decl., ¶ 25. Accordingly, Plaintiff discounted the maximum exposure by 35% for the risk of non-certification, and an additional 45% to account for Defendant's defenses on the merits to arrive at an estimated exposure of approximately $71,807.45. *Id*.

<u>PAGA Civil Penalties</u>: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 26. Plaintiff calculated Defendant's exposure at the initial rate of $100 for a total of $321,100.00. *Id.*; *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision).

Defendant argues that Plaintiff's PAGA claim will fail for the same reasons that her underlying claims will fail. Lidman Decl., ¶ 27; *see Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.").

Defendant also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc*. (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiff discounted the maximum exposure figure by 15% for a risk of being unsuccessful on the merits, and an additional 60% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately $109,174.00. *Id*.

g. **<u>The Settlement Is Within the Range of Possible Approval</u>**

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately $2,259,786.41. Lidman Decl., ¶ 28. The proposed settlement of $758,900.00 therefore represents approximately 33.5% of the reasonably forecasted recovery for the Settlement Class. *Id*. Preliminary approval is appropriate as the settlement will provide tangible monetary relief to Settlement Class Members.

The proposed settlement reflects approximately 33.5% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible monetary compensation for disputed claims. Lidman Decl., ¶ 28. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Thus, Plaintiff submits the settlement is within the range of possible approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

h. **<u>The Experience and Views of Counsel</u>**

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*; Lidman Decl., ¶¶ 2-8; Moore Decl., ¶¶ 2-5; Gose-Hardy Decl., ¶¶ 2-4; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth review of Defendant's timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* Lidman Decl., ¶ 11. The Settlement was also reached with the assistance of an experienced and respected wage and hour class action mediator. Lidman Decl., ¶ 12. This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

i. **<u>Attorneys' Fees and Costs</u>**

California courts recognize an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of one-third of the GSA is well within the range of reasonableness, and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which is currently estimated to be $252,966.66, and up to $20,000.00 in verified costs reimbursement. *See* Settlement, ¶ 4.D.(4); Lidman Decl., ¶ 29. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id*. Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman Decl., ¶ 30. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, drafting written discovery requests, reviewing Defendant's discovery responses, meeting and conferring, analyzing Settlement Class Members' timekeeping data and payroll records, drafting a mediation brief, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. Lidman Decl., ¶ 29. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class Members, preparing the final approval papers, and attending the Final Approval hearing. *Id*.

Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement in light of the substantial risks, significant work undertaken, the extremely positive results obtained for the class, and the efficiency with which the Parties conducted the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar analysis.

j. Administration Costs

Phoenix Settlement Administrator's fees and expenses are estimated not to exceed $8,750.00. *See* Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed concurrently herewith ("Lawrence Decl."). This request is reasonable in light of the proposed class size of approximately 460 Settlement Class Members, the costs and expenses associated with administering the notices and distributing the awards.

k. Class Representative Service Award

"[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Here, as part of the Settlement, Plaintiff will apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of $7,500.00 for her services to the Settlement Class. Lidman Decl., ¶ 31; Settlement, ¶ 4.D.(3); Garay Decl., ¶¶ 7-12. As will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, participating in the mediation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Lidman Decl., ¶ 31; Garay Decl., ¶¶ 7-12; Settlement ¶ 4.D.(4).

l. <u>PAGA Civil Penalties</u>

The parties have agreed to a PAGA award of $30,000.00 and in accordance with California Labor Code section 2699(i). This $30,000.00 represents roughly 3.9% of the $758,900.00 Gross Settlement Amount and is above the typical zero to two percent range for PAGA claims approved by Courts. *See, e.g.*, *In re M.L. Stern Overtime Litig*., No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or $20,000); *Hopson v. Hanesbrands, Inc*., No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or $1,500); *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under which no money was allocated to the PAGA claims). The LWDA will receive 75% of the amount attributable to PAGA penalties – or $22,500.00. Settlement ¶ 4.D.(5).

m. <u>Tax Treatment of Settlement Awards</u>

For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: eighty percent (80%) as penalties and interest, and twenty percent (20%) as wages. Settlement ¶ 5.D. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 and 1099 for the amounts allocated as wages, penalties, and interest. *Id*. Each Settlement Class member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. *Id*.

n. <u>Uncashed Funds</u>

The Settlement provides Settlement Class Members with 180 days from the date the Settlement Administrator mails the checks to cash any and all checks. Settlement ¶ 5.E. Any funds remaining after 180 days will be transferred to the California Secretary of State-Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class member. *Id*. As all settlement funds will be distributed to the Settlement Class Members, there will be no residue and it is unnecessary to designate *cy pres* recipients. Settlement ¶ 4.D.

C. SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide monetary relief to participating Settlement Class Members. The amounts proposed for Class Counsel's attorneys' fees and costs, and the service award are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

D. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE TO SETTLEMENT CLASS MEMBERS

Before the final approval hearing, the Court requires adequate notice of the settlement be given to all class members. This Court should order distribution to the Settlement Class of the proposed Notice Packet (which is comprised of the Notice of Pendency of Class Action and Proposed Settlement and Notice of Individual Settlement Award) by first-class regular U.S. Mail, postage prepaid, using last known mailing address information provided by Defendant. *See* Settlement, ¶ 10, Exh. B.

This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff proposes that the Settlement be administered by Phoenix, an experienced class action settlement administrator. *See generally* Lawrence Decl. and attached exhibits. Class Data will be ascertainable through Defendant's personnel and payroll records, which Defendant will provide to Phoenix within 10 business days of preliminary approval of the Settlement. *See* Settlement ¶ 10.A. Within 10 business days of receipt of the Settlement Class Members' addresses, Phoenix will run the names of all Settlement Class Members through the United States Postal Service Notice of Change of Address database (which provides updated addresses for any individual who has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address), calculate the estimated Settlement Award for each Settlement Class member, and mail the notices to Settlement Class Members. *See* Settlement ¶ 10.B. To the extent that any notices are returned, Phoenix will perform a "skip trace" to track any Class Member's current mailing address. *See* Settlement ¶ 10.F.

The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because it advises Settlement Class Members of the nature of the claims, basic contentions and denials of the parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class member, provides them the opportunity to contest their total workweeks included in the notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Lidman Decl., Exh. 2 (Settlement, Exh. B). The proposed Notice Packet will also notify Settlement Class Members of the final approval hearing date, provide Settlement Class Members the contact information for Class Counsel, and advise Settlement Class Members that they may enter an appearance through counsel if they wish to.

Additionally, as stated in the proposed Notice Packet, any changes to the Final Approval hearing date, time, or location will be posted on the Settlement Administrator's website. *See* Lidman Decl., Exh. 2 (Settlement, Exh. B). Furthermore, the Settlement Administrator will post the notice of final judgment on its website. *Id*. This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class Members.

E. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, this Court should set a hearing for final approval of the Settlement on a date appropriately scheduled to follow the deadline by which Settlement Class Members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

Respectfully submitted,

Dated: August 21, 2025

LIDMAN LAW, APC

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CHERYL GARAY