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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SHASTA

MELISSA CLACK, individually, and on behalf of other members of the general public similarly situated; Plaintiff, vs. LAVENDER HILLS ASSISTED LIVING, LLC, a California limited liability company; and DOES 1 through 100, inclusive, Defendants.	Case No.: CVCV21-0197865 (LEAD CASE) *(consolidated with 24CV-0205758)* **NOTICE OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM IN SUPPORT THEREOF** <u>Hearing Information</u>: Date: November 24, 2025 Time: 8:30 AM Dept.: 64 Judge: Hon. Stephen H. Baker
EVELYN MCOMIE, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; Plaintiff, vs. LAVANDER HILLS ASSISTED LIVING, LLC, a California limited liability company; and DOES 1 through 100, inclusive, Defendants.	*[Filed concurrently with: (1) Declaration of Devin Rauchwerger; (2) Declaration of Maria Halwadjian; (3) Declaration of Plaintiff Melissa Clack; (4) Declaration of Plaintiff Evelyn McOmie; (5) Declaration of Lisa Mullins; and (6) [Proposed] Order]*

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on November 24, 2025, at 8:30 AM, or as soon thereafter as this matter may be heard by the Court in Department 64 of the Shasta County Superior Court, located at 1515 Court Street, Redding, CA 96001, Plaintiffs Melissa Clack and Evelyn McOmie, on behalf of themselves and a Settlement Class, will and hereby do move for an Order:

1) Preliminarily approving the proposed class action settlement and PAGA settlement in the above-captioned case;
2) Preliminarily certifying the Settlement Class;
3) Preliminarily approving the appointment of Plaintiffs as Class Representatives;
4) Preliminarily approving the appointment as Class Counsel of Lawyers for Justice, P.C. and Domb & Rauchwerger LLP;
5) Approving appointment of ILYM Group, Inc. as the Settlement Administrator;
6) Approving and directing distribution of notice to the Settlement Class; and
7) Setting a final fairness and approval hearing that is approximately 120 days after the Court grants Preliminary Approval.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which permits settlement of a purported class action, allows the Court to preliminarily certify a class for settlement purposes.

The proposed settlement is fair, adequate, and reasonable and in the best interests of the settlement class as a whole, and the procedures proposed by the parties are adequate to ensure the opportunity of class members to participate in, opt out of, or object to the settlement.

Date: October 29, 2025

Respectfully submitted,
DOMB & RAUCHWERGER LLP

By: ______________________
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Eric Y. Hahn
Attorneys for Plaintiffs, Melissa Clack and Evelyn McOmie, and the Proposed Class

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I. INTRODUCTION

Plaintiff Melissa Clack ("Plaintiff Clack") and Plaintiff Evelyn McOmie ("Plaintiff McOmie") (collectively "Plaintiffs") and Defendant Lavender Hills Assisted Living, LLC, ("Defendant") have reached a proposed class action settlement. Plaintiffs and Defendant (collectively, the "Parties") submit the Stipulation of Class and Representative Action Settlement and Release (the "Settlement" or "Settlement Agreement") to the Court for its preliminary approval. The Settlement Agreement ("SA") is attached to the Declaration of Devin Rauchwerger ("Rauchwerger Decl.") ¶ 2 as **Exhibit 1**.[1]

The Settlement provides for a **non-reversionary** payment of $469,500.00 for which Defendant will be separately responsible for any employer payroll taxes. Approximately $182,625.00 will be available for disbursement to Settlement Class Members (the "Net Settlement Amount"), which does not include the separate Individual PAGA Payments of $17,500.00 that will be paid only to the PAGA Members. There are believed to be approximately 349 Class Members, and the average Individual Settlement Payment will be approximately $523.28 (not including the separate Individual PAGA Payments that will be paid only to the PAGA Members).

The Settlement occurred as a result of extensive arm's length negotiations by experienced counsel after sufficient discovery and investigation into the facts with guidance of multiple mediators, including Hon. Howard R. Broadman (Ret.) and Doug Leach, Esq., two highly experienced and well-respected class action mediators. As detailed below, the Settlement is fair, reasonable, and in the best interests of the Settlement Class.

II. BACKGROUND AND PROCEDURAL HISTORY

A. The Pleadings & Nature of The Action

Defendant Lavender Hills Assisted Living, LLC, operates an assisted living facility for elderly residents who need assistance with their activities of everyday living. (Rauchwerger Decl. ¶ 3.) Defendant is currently headquartered in and operates out of Redding, California. (*Id.*)

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[1] For ease of reference and consistency, defined terms from the Settlement Agreement are utilized below.

On July 27, 2021, Plaintiff Clack initiated a putative class action by filing a Class Action Complaint for Damages ("Clack Class Complaint") against Defendant in the Superior Court of California for the County of Shasta ("Court"), Case No. CVCV21-0197865 ("Clack Class Action"), on behalf of herself and all other all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California, alleging the following causes of action: (1) failure to pay overtime wages in violation of California Labor Code §§ 510 and 1198; (2) failure to provide meal periods or pay premium pay in lieu thereof in violation of California Labor Code §§ 226.7 and 512(a); (3) failure to provide rest breaks or pay premium pay in lieu thereof in violation of California Labor Code § 226.7; (4) failure to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (5) failure to pay all wages timely upon termination of employment in violation of California Labor Code §§ 201 and 202; (6) failure to timely pay wages during employment in violation of California Labor Code § 204; (7) failure to provide accurate itemized wage statements in violation of California Labor Code § 226(a); (8) failure to keep requisite payroll records in violation of California Labor Code § 1174(d); (9) failure to reimburse necessary business expenses in violation of California Labor Code §§ 2800 and 2802; and (10) unfair business practices in violation of California Business and Professions Code section 17200, et seq. (Declaration of Maria Halwadjian "Halwadjian Decl." ¶ 8.)

On June 5, 2024, Plaintiff McOmie submitted written notice to the LWDA of her intent to pursue civil penalties for various alleged California Labor Code violations against Defendant pursuant to the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), California Labor Code section 2699, et seq ("First McOmie PAGA Letter"). (Halwadjian Decl. ¶ 9.) Plaintiff McOmie alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and of Industrial Welfare Commission ("IWC") Wage Order Nos. 4-2001 and 5-2001. (*Id.*)

On August 15, 2024, Plaintiff McOmie initiated a PAGA representative action by filing a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("McOmie PAGA Complaint") against Defendant in the Shasta County Superior

Court, Case No. 24CV-0205758 ("McOmie PAGA Action") (together with "Clack Class Action", the "Litigation"), thereby asserting a single claim for civil penalties pursuant to PAGA based on alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Order Nos. 4-2001 and 5-2001. (Halwadjian Decl. ¶ 10.)

On September 16, 2024, Plaintiff McOmie submitted a second written notice to the LWDA stating her intent to pursue civil penalties for the same alleged California Labor Code violations against Janet Coulter, Mark Coulter, and Robert O'Brien who are individuals against whom Plaintiff McOmie alleged she could assert the same legal claims as Defendant ("Second McOmie PAGA Letter"). (Halwadjian Decl. ¶ 11.)

On May 20, 2025, the Parties filed a joint stipulation seeking an order to consolidate the Clack Class Action and the McOmie PAGA Action. On May 21, 2025, the Court issued an order consolidating the Actions. (Halwadjian Decl. ¶ 12.)

After making a reasonable inquiry, neither the Parties nor their Counsel are aware of any class, representative or other collective action in any other court that asserts claims similar to those asserted in the action being settled. (Rauchwerger Decl. ¶ 4.)

B. <u>Discovery Taken By The Parties</u>

The parties engaged in extensive informal and formal discovery. (Halwadjian Decl. ¶ 15.) Plaintiffs' Counsel propounded multiple sets of formal written discovery, to which Defendant provided responses and objections. (*Id.*) The Parties also conducted additional mediation-related discovery. (*Id.*) In total, Defendant produced thousands of pages of relevant documents and data in this action, including a large sampling of the time sheets and payroll records for the Class. (*Id.*)

Further, the Parties held numerous meetings and informal conferences prior to the mediation wherein they exchanged information, additional class data, and theories of the case. (Halwadjian Decl. ¶ 15.)

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C. Mediation and Settlement

The Parties originally participated in mediation on March 27, 2023 with the Hon. Howard Broadman (Ret.), a respected mediator for wage and hour class actions. (Halwadjian Decl. ¶ 17.) The mediation occurred after an extensive exchange of formal and informal discovery, including mediation data. (*Id.*) The mediation did not result in settlement and litigation continued. (*Id.*)

The parties participated in a second day of mediation on February 12, 2025 with meditator Doug Leach, Esq. (Halwadjian Decl. ¶ 18.) Prior to the second day of mediation, the parties continued to exchange formal and informal discovery. (*Id.*) With Mr. Leach's assistance, the parties were able to reach a global settlement in principle to resolve both the Class and PAGA claims for $469,500.00. (*Id.*)

Thereafter, on March 25, 2025, the Parties executed a Memorandum of Understanding ("MOU") memorializing the essential terms of the agreement. (Halwadjian Decl. ¶ 18; Rauchwerger Decl. ¶ 5.) After the Parties executed the MOU, Lawyers for Justice P.C. associated Domb & Rauchwerger LLP into the case in order to facilitate getting the long form Settlement finalized and approved through the preliminary and final approval processes. (Halwadjian Decl. ¶ 18; Rauchwerger Decl. ¶ 5.)

III. LEGAL ANALYSIS OF SETTLEMENT

A. Two-Step Settlement Process

Any settlement of class litigation must be reviewed and approved by the Court. (Cal. Rules of Court, rule 3.769; Fed. Rules Civ. Proc. 23(e).[2]) This is done in two steps: (1) a preliminary review by the trial court, and (2) a final review after notice has been distributed to the Settlement Class informing them of the terms of the settlement and allowing them to exclude themselves from and/or object to the settlement.

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[2] The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, Plaintiffs cite Federal Rule 23 and federal case law in addition to California law.

B. <u>The Settlement Warrants Preliminary Approval Because It Is Fair And Reasonable.</u>

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial Court. (*Wershba v. Apple Computer* (2009) 91 Cal.App.4th 224, 234-235; *Dunk v. Ford Motor Co.* (1966) 48 Cal.App.4th 1794.) Pursuant to California Rules of Court, rule 3.769(d), parties also may, at the preliminary approval stage, request that the Court provisionally approve certification of the class conditional upon final approval of the settlement. "[P]re-certification settlements are routinely approved if found to be fair and reasonable." (*Wershba v. Apple Computer, supra,* 91 Cal.App.4th at p. 240.) A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. No one factor should be determinative, but rather all factors should be considered. These criteria have been summarized as follows:

> "If the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement."
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> Manual of Complex Litigation, Second § 30.44, at 229.

Moreover, a proposed settlement is presumptively fair and reasonable 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. (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389 (citations omitted).) Here, as discussed above and further below, the Settlement meets all these criteria, including having been reached through an arms-length negotiation by way of a mediator's proposal, having a sufficient investigation conducted to determine the settlement is fair, and being agreed to by counsel who all have extensive experience with class actions. (Rauchwerger Decl. ¶¶ 23-25; Halwadjian Decl. ¶¶ 2-7.) Furthermore, there is no reason to suspect that the amount of class members objecting will be high. (Rauchwerger Decl. ¶ 5.)

C. Due To The Risks Of Continued Litigation, The Settlement Is Fair And In The Best Interests Of The Class.

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel believe that the settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, adequate, and is in the best interest of the Class in light of all known risks, facts and circumstances. (Rauchwerger Decl. ¶ 6.) These risks include: the risk of significant delay in class members receiving any type of funds, particularly if the Defendant were to declare bankruptcy; risks associated with the Court denying certification of the Class, including Defendant's strong arguments that the matters at issue require individualized issues that make class certification inappropriate; the prospect of Defendant obtaining releases from putative class members; and the potential for the Court to reduce PAGA penalties. (*Id.*)

Finally, the Settlement was reached after lengthy negotiations, exchange of documents and information, and with the assistance and supervision of two different mediators, including Hon. Howard R. Broadman (Ret.) and Doug Leach, Esq., who have mediated numerous wage-and-hour class actions, and clearly qualify to oversee serious and informed negotiations conducted by the Parties. (See *Toure v. Amerigroup Corp.* (E.D. N.Y. 2012) 2012 WL 1432302, at *1 ("The assistance of an experienced mediator, Linda Singer, Esq., reinforces that the Settlement Agreement is non-collusive"); *Morales v. Stevco, Inc.* (E.D. Cal. 2011) 2011 WL 5511767, at *11 (concluding that the class action settlement was not collusive because "[t]he parties utilized an impartial mediator, and the matter was 'resolved by means of a mediator's proposal.'").)

D. The *Kullar* Requirements

In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Court of Appeals explained that, although "not exhaustive," a determination of whether a settlement is "fair, adequate and reasonable" should take into account the strength of a plaintiff's case, the risk, expense, complexity and the likely duration of further litigation. (*Id*. at 127-128.) Subsequently, in *Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, the Court of Appeals clarified:

> "[Appellant] misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the Plaintiffs class could recover if it prevailed on all its claims—a number which appears nowhere in the record of this case. But Kullar does not, as [Appellant] claims, require any such explicit statement of value; it requires a record, which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."

(*Id.* at 409 (quoting *Kullar*, 168 Cal.App.4th at 120))

Here, the potential damages for the causes of action asserted in the Action along with the relative risks, complexities, and expenses are detailed below. The key data points and associated documentation upon which Plaintiffs relied in analyzing the exposure are as follows:

- Total Class Size: Approximately 349 individuals.
- Total number of Workweeks for class: 16,738 workweeks.
- Total Former Employees within 3-year SOL: 243.
- Total number of employees within 1-year SOL: 149.
- Total number of PAGA pay periods: 3,381
- Average Regular Rate: $16.18 per hour.

(Rauchwerger Decl. ¶ 7.)

1. <u>Failure to Pay Minimum and/or Overtime Wages</u>

Plaintiffs allege that Defendant's uniform policies, practices and procedures regularly required them to work off the clock, for which they were not paid. (Rauchwerger Decl. ¶ 8.) Plaintiffs allege that Defendant's policies and practices required employees to perform work beyond their scheduled hours, such as before clocking in, after clocking out, and during meal periods. (*Id.*) Plaintiffs allege that Defendant prohibited employees from recording the unauthorized overtime worked. (*Id.*)

To determine Defendant's reasonable exposure to the class for these off-the-clock allegations, Plaintiffs' counsel assumed that employees lost approximately 5 minutes per work shift due to Defendant's policy of not allowing employees to record unauthorized overtime. (Rauchwerger Decl. ¶ 9.) Based on the 16,738 workweeks, and using the average overtime rate of $24.27 per hour, this would mean that employees would have lost approximately

$169,263.03. (*Id.*)

The risks related to proving these off-the-clock wage and overtime claims are significant, as it is impossible to discern from the records the exact amount of alleged off-the-clock work that each employee purportedly performed and what they are entitled to; these questions could be viewed as creating individualized issues inappropriate for class certification, particularly since Plaintiffs would bear the burden of establishing liability for alleged off-the-clock work. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1051 [holding "that employees are clocked out creates a presumption they are doing no work, a presumption [plaintiff] and the putative class members have the burden to rebut. As all parties agree, liability is contingent on proof [the employer] knew or should have known off-the-clock work was occurring."]; Rauchwerger Decl. ¶ 10.) Additionally, Defendant contended that off-the-clock work was prohibited and introduced evidence that the employer issued additional pay to employees if it was discovered that any work time had not been recorded on timesheets and paid. (*Id.*)

2. **Failure to Provide Meal & Rest Periods**

Plaintiffs contend that they and the Class Members routinely did not receive lawful and compliant meal periods, nor were they paid meal period premiums when a meal period was missed, short or delayed. (Rauchwerger Decl. ¶ 11.) Furthermore, Plaintiffs contend that Defendant's written meal and rest break policies do not comply with all of the requirements under California law. (*Id.*) The premium owed for failing to provide a legally mandated meal or rest period, providing a short or interrupted meal or rest period, is payment of one hour of wages at the employee's regular rate of pay. The range of this claim depends on the number of meal periods that Class Members were denied as a result of Defendant's policies. (*Id.*)

One of Plaintiffs arguments was that the meal periods appeared synthetic in that over 99% of the meal periods were exactly 30 or 60 minutes in length. (Rauchwerger Decl. ¶ 11.) This means that Plaintiffs cannot exclusively rely on the records themselves for the meal break claim and instead must rely on the testimony of employees regarding either being interrupted during their meal break or being instructed to record a proper meal break when they did not actually take one. (*Id.*) Furthermore, Defendant presented several factual arguments in defense of the meal period claim, including but not limited to the fact that, as a care facility for the elderly, many of Defendant's employees were permitted by Wage Order 5 to work on-duty meal periods. (*Id.*)

To determine Defendant's reasonable exposure for meal break violations, Plaintiffs' Counsel assumed one meal break violation per week, which equates to a penalty amount of $270,820.84. (Rauchwerger Decl. ¶ 12.)

Rest period premiums were calculated in the same fashion as meal periods. (Rauchwerger Decl. ¶ 13.) Estimating that each Class Member did not receive a compliant rest break once per week, and that the hourly rate for each employee is $16.18, Defendant's reasonable exposure to the Class for missed rest breaks is $270,820.84. (*Id.*) However, there are risks to the unrecorded rest period claims because, *inter alia*, employers are not required to record rest periods and such rest periods are paid. Managing meal and rest break claims at trial may be exceedingly difficult. Plaintiffs will depend on sample witness testimony and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. (See *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 31 (explaining "[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling.").)

3. <u>Failure to Reimburse Necessary Business Expenses</u>

Plaintiffs contended that Defendant failed to reimburse Plaintiffs and other hourly paid employees for necessary business expenses such as costs for usage of personal cell phones for work duties and mileage costs. (Rauchwerger Decl. ¶ 14.) California Labor Code section 2802 requires employers indemnify their employees for all necessary expenditures made by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. As with other claims, Defendant presented several factual arguments that it intended to present at trial, including arguments that the employees were not required to use cell phones or drive personal vehicles and that expenses were routinely reimbursed. (*Id.*)

For this claim, Plaintiffs' counsel assumed that Defendant's owed an average of $5 per week for cell phone reimbursement and $5 per week for mileage reimbursement, which equates to $167,380. (Rauchwerger Decl. ¶ 14.)

4. <u>Failure to Provide Accurate Written Wage Statements (Lab. Code § 226 (a))</u>

Plaintiffs contend that due to allegedly working off the clock and lack of premium pay for purportedly noncompliant meal/rest periods and/or accurate calculation and payment of wages, the Class Members' wage statements were not accurate. (See *Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal.5th 93, 117 (Because premium pay for missed meal and rest breaks under Lab. Code, § 226.7 compensated employees for the work performed during a break period and therefore constituted wages within the meaning of Lab. Code, §§ 200, subd. (a), 203, 226, penalties are available for an employer's alleged failure to timely pay or report such payments.).) (Rauchwerger Decl. ¶ 15.) Pursuant to Labor Code section 226(e), statutory damages are "fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000)." As proving actual damages for each employee on a class-wide basis is unlikely, this claim would likely be subject to a one-year statutory period.[3]

There are approximately 149 class members that worked during the one-year statute of limitations. (Rauchwerger Decl. ¶ 16.) If we assume that each employee received an average of $2,000 in penalties, that would equate to a total penalty amount of $298,000. (*Id.*)

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[3] "Courts that have recognized that two limitations periods apply to Section 226 have uniformly found that the $50 and $100 figures recoverable under Section 226(e)(1) are penalties, subject to a one-year limitation period." *Novoa v. Charter Communs., Ltd. Liab. Co.* (E.D. Cal. 2015) 100 F.Supp.3d 1013, 1025 (citing *Taylor v. W. Marine Prods.* (N.D. Cal. Sep. 19, 2014) No. C 13-04916 WHA, 2014 U.S. Dist. LEXIS 133728, at *7; *Sarkisov v. Stonemor Partners* (N.D. Cal. Apr. 3, 2014) *L.P.*, No. C 13-04834 WHA, 2014 U.S. Dist. LEXIS 47021, at *2; *Mouchati v. Bonnie Plants, Inc.* (C.D. Cal. Mar. 6, 2014) No. EDCV 14-00037-VAP (SPx), 2014 U.S. Dist. LEXIS 60855, at *8-9; *Singer v. Becton, Dickinson & Co., Med.-Safe Sys.* (S.D. Cal. July 23, 2008) No. 08cv821 IEG (BLM), 2008 U.S. Dist. LEXIS 56326, at *4-5e.

Some hurdles to obtaining class certification would apply to this claim. Defendant contends that the wage statements were accurate in all material respects and that Labor Code section 226 requires "a knowing and intentional failure by an employer to comply with subdivision (a)." (*See* Lab. Code § 226(e); *see also* Lab. Code § 226(e)(3) (For purposes of this subdivision, a "knowing and intentional failure" does not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake.")) In this regard, Defendant contends that any failure to include information on wage statements was an inadvertent or isolated mistake, and Defendant had a reasonable, good faith belief that its employees were being provided wage statements in compliance with Labor Code section 226(a). (*Naranjo v. Spectrum Sec. Servs., Inc.* (2024) 15 Cal.5th 1056, 1065 ["We now conclude that if an employer reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law."].).

5. Failure to Timely Pay All Final Wages

An employer who willfully fails to pay any wages due to a terminated employee at the time of their termination or within 72 hours for employees who quit, may be assessed a waiting time penalty pursuant to California Labor Code section 203. The waiting time penalty is an amount equal to the employee's daily rate of pay for each day the wages remain unpaid, up to a maximum of 30 calendar days. There were approximately 243 separated employees during the three-year statutory period. (Rauchwerger Decl. ¶ 17.) Using the hourly rate of $16.18, the potential exposure for waiting time penalties is $943,617.60 ($16.18/hour x 8 hours/per x 30-day maximum x 243 separated employees). (*Id.*) However, to prevail under Section 203, Plaintiffs must establish not only the underlying violations addressed above and that the wages were paid late, but also that Defendant's failure to timely pay such wages was willful. (Lab. Code § 203(a).) A good faith belief in a legal defense precludes any finding of willfulness. (*Naranjo v. Spectrum Sec. Servs., Inc.* (2023) 88 Cal.App.5th 937, 944–948 [affirming the trial court's ruling that, although meal period premiums were owed to employees, a good faith dispute that such premiums were owed precluded imposing waiting time penalties], affirmed on other grounds in *Naranjo v. Spectrum Sec. Servs., Inc.* (2024) 15 Cal.5th 1056, 1065; *Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54.)

6. <u>Civil Penalties pursuant to the Private Attorney General Act of 2004 ("PAGA") (Lab. Code § 2698 *et seq*.)</u>

PAGA penalties for unpaid minimum wages and meal period violations are $100 per pay period for each initial violation and $200 per pay period for any subsequent violation. (Lab. Code § 2699(f)(2).) Courts have held that there is no "subsequent violation" until an employer has been notified by the Labor Commissioner or a court that its practices are in violation of the law. (*Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355–356; *Amaral v. Cintas* (2008)163 Cal.App.4th 1157). A Court also may award a lesser amount "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Lab. Code § 2699 (e)(2).) The statute of limitations under PAGA is one year.

There are approximately 3,381 pay periods during the PAGA period. (Rauchwerger Decl. ¶ 18.) Assuming that no penalty "stacking" will apply (i.e. the imposition of multiple penalties per pay period) and that the Court will use the violation rate of $100 per pay period, potential PAGA penalties equal $338,100. (*Id.*) Plaintiffs' PAGA claims are also predicated on the violations described above, and thus subject to the same disputes and defenses. (*Id.*) Additionally, PAGA states that a court has discretion to award a lesser amount than the maximum penalty. (Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 528-529 (affirming the trial court's PAGA penalty award of $5 per violation). These uncertainties increased the risks related to the PAGA cause of action.

Pursuant to California Labor Code section 2699(l), the Settlement Agreement, this motion, and all supporting papers have been provided to the Labor and Workforce Development Agency and a proof of service is attached as **<u>Exhibit 2</u>** to the Declaration of Devin Rauchwerger. (Rauchwerger Decl. ¶ 19.) The amount to be paid to the LWDA ($52,500.00 of the $70,000.00

total) comports with PAGA settlement amounts approved by other courts.[4]

7. Unfair Competition (Bus & Prof. Code § 17200 *et. seq.*)

Though Plaintiffs may assert a UCL claim for purported wage violations, remedies are still limited to restitution and injunctive relief. (See *Korea Supply v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1148-51; see also *Cortez v. Purolator Air Filtration Prod. Co.* (2000) 23 Cal.4th 163, 173.) In wage-and-hour class actions, a UCL claim typically has little to no independent value and is instead pled for the purposes of extending the statute of limitations on unpaid wage claims to four years. The unfair competition law's (UCL) four-year limitations period, rather than the shorter periods of limitation applicable to contractual or statutory wage claims, governs a UCL action based on failure to pay wages because the UCL provides that "any" action on "any" UCL cause of action is subject to the four-year period of limitations. (*Cortez v. Purolator Air Filtration Prod. Co.* (2000) 23 Cal.4th 163, 178.)

8. Total Damages.

Based on the above estimates, the total amount of possible damages that the class could be awarded at trial, including PAGA penalties, is approximately $2,204,427.31[5]. (Rauchwerger Decl. ¶ 20.) However, 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's assessment of this case is that payment of $469,500.00 is an excellent result that provides the class with certain recovery over a relatively short period of time with significant savings in costs. (*Id.*)

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[4] *See Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of $7,500 to LWDA out of $6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of $7,500 to LWDA out of $1.25 million common fund settlement); *Hicks v. Toys 'R' Us–Delaware, Inc.* (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving $5,000 PAGA payment in a case involving $4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801 at *14 (approving PAGA penalties of $10,000 as part of $2.5 million settlement).

[5] This takes into account 25% of the total PAGA penalties that would be awarded to the PAGA members, since 75% of the fees go to the LWDA. (Rauchwerger Decl. ¶ 20.)

IV. CLASS CERTIFICATION ANALYSIS

A. The Class Is Properly Certified For Settlement Purposes.

Plaintiffs seek certification of this action for settlement purposes under California Code of Civil Procedure section 382. The California Supreme Court has summarized that:

> "Code of Civil Procedure section 382 authorizes class actions when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court. The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. The "community of interest" requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class Representatives who can adequately represent the class."

(*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (internal citations omitted)).

While Defendant reserves all rights to dispute Plaintiffs' ability to satisfy any of these requirements, the Parties agree that for purposes of settlement, Defendant will not raise such a dispute. (Rauchwerger Decl. ¶ 21.) Therefore, the proposed Settlement Class should be certified for purposes of settlement.

1. The Proposed Class is Numerous and Ascertainable

The class consists of approximately 349 members with specifically identifiable information. (Rauchwerger Decl. ¶ 22.) The requirement of Code of Civil Procedure section 382 that there be "many" parties to a class action suit is indefinite and has been construed liberally. (*Renken v. Compton City School Dist.* (1962) 207 Cal.App.2d 106, 113.) No set number is required as a matter of law for the maintenance of a class action. (*Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030; See also *Bowles v. Superior Court* (1955) 44 Cal.2d 574 (class with 10 members sufficiently numerous); see also *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 (class of 48 members satisfies the numerosity requirement).) Class members are "ascertainable" where they may be readily identified without unreasonable expense or time by reference to official records. (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932.) Here, the class is sufficiently numerous and there is a common interest to many persons as this claim will confer significant benefits to those persons. (Rauchwerger Decl. ¶ 22.) Furthermore, it would be impracticable to bring all of them before the Court on an individual basis. (*Id.*) Moreover, the Class is readily ascertainable as Defendant is in possession of contact information for its current and former employees via regularly maintained employment records. (*Id.*)

2. <u>The Community of Interest Requirement Is Also Satisfied.</u>

"The 'community of interest' requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) Here, the common questions of law and fact clearly exist, as the underlying dispute involves Defendant's employment policies and practices which affected all the employees in the proposed Class. (Rauchwerger Decl. ¶ 22.) Plaintiffs are typical of the class they seek to represent because Plaintiffs worked for Defendant, contend that the alleged violations occurred as a result of a common policy affecting all the putative Class Members, and contend that they had a similar experience to each of the Class Members because they were all subjected to common policies and practices by Defendant. (Declaration of Melissa Clack "Clack Decl." ¶¶ 3-4; Declaration of Evelyn McOmie "McOmie Decl." ¶¶ 3-4.)

B. <u>Class Counsel Has Extensive Experience In Class Actions And Similar Cases.</u>

Class Counsel has extensive experience in similar cases and believe that the proposed Settlement is adequate, reasonable, fair, and in the best interests of all class members. (Rauchwerger Decl. ¶¶ 23-25; Halwadjian Decl. ¶¶ 2-7.)

C. <u>The Class Representatives Are Adequate.</u>

Plaintiffs Clack and McOmie are adequate Class Representatives who have similar, co-extensive interests with the proposed Class Members. (Rauchwerger Decl. ¶ 26.) Plaintiffs have remained intricately involved in this lawsuit and have understood their responsibilities with respect to the class. (Clack Decl. ¶ 5; McOmie Decl. ¶ 5.) Plaintiffs understood from the beginning that they had a duty to look out for the best interests of the Class, and they understood that by taking on this case, they were agreeing to take on significant responsibility, which could include having to be deposed and provide extensive information to respond to discovery requests, as well as potentially testifying at trial. (*Id.*) Plaintiffs have taken their responsibility as Class Representatives seriously and learned the laws as they relate to the payment of wages, requirements for meal and rest periods, and other issues related to this Action. (Clack Decl. ¶ 6; McOmie Decl. ¶ 6.) Moreover, Plaintiffs are unaware of any conflicts between their own interests and goals and the interests and goals of anyone else in the Class. (Clack Decl. ¶ 7; McOmie Decl. ¶ 7.)

D. <u>The Proposed Enhancement Awards To Plaintiffs are Reasonable.</u>

In connection with the final approval hearing, Class Counsel will request approval of the Class Representative Enhancement Award of $7,500.00 to each Plaintiff for their service as Class Representatives and in consideration for a general release of all claims against Defendant. This amount is based on the extent of Plaintiffs' assistance in this lawsuit, including providing relevant information and documents to Class Counsel, answering various questions and providing additional information throughout the entirety of the case, reviewing the complaint and reviewing the settlement agreement and having related discussions. (*See* e.g., Clack Decl. ¶¶ 4-6; McOmie Decl. ¶¶ 4-6.) This amount is also reasonable given that Plaintiffs are providing a general release of all known and unknown claims against Defendants. The requested incentive payment is well within the accepted range of awards for purposes of preliminary approval. (*See*, e.g. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393).

E. <u>Settlement Administration Costs are Reasonable.</u>

The Parties have agreed upon ILYM Group, Inc. to administer the Settlement. (Rauchwerger Decl. ¶ 27.) ILYM Group, Inc. works in the settlement administration business, and costs of administration should not exceed $7,550.00. Plaintiffs respectfully request that the Court approve the appointment of ILYM Group, Inc. as the Settlement Administrator. (See, e.g., Declaration of Lisa Mullins "ILYM Group, Inc. Decl." ¶¶ 2-10.)

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V. THE PROPOSED SETTLEMENT

A. The Settlement Class & Released Claims

Class & Class Size: The "Class," or "Class Members" is defined as: "all current and former hourly-paid or non-exempt employees of Defendant in California employed during the Class Release Period." (SA § 10(e).) The "Class Release Period" means the period from July 27, 2017 through April 14, 2025. (SA § 10(g).) Class Members who do not submit a valid and timely Request for Exclusion from the Class Settlement are referred to as the "Settlement Class Members" or "Settlement Class". (SA § 10(rr).)

Release: The scope of the release for Settlement Class Members is limited only to those claims that were brought or could have been brought by Plaintiffs in this action in connection with the facts alleged in the Actions and the PAGA Notices. (SA §§ 10(jj)-(kk), 13(a)-(b).) Settlement Class Members do not release any other claims, including claims for wrongful termination, unemployment insurance, disability, social security, and workers' compensation, and claims outside of the Class Release Period. (*Id*.) The named Plaintiffs have agreed to a broader release, which only applies to the named Plaintiffs. (SA § 13(c).) Plaintiffs and the State of California with respect to all PAGA employees shall be deemed to have released all PAGA claims, which include all PAGA penalties arising from the California Labor Code or wage orders alleged, or that could have been alleged based on facts contained in the Clack Class Action, the First McOmie PAGA or the Second McOmie PAGA Letter. (SA § 13(b).)

B. The Settlement Payment

Defendant will, through the Settlement Administrator, create a ***non-reversionary*** settlement fund in the amount of Four Hundred Sixty-Nine Thousand, Five Hundred Dollars and Zero Cents ($469,500.00) ("Total Settlement Amount"). (SA §§ 10(ss), 12(a).) The Individual Settlement Shares will be allocated as follows: twenty percent (20%) as wages for which forms W-2 shall be issued and eighty percent (80%) as interest and penalties for which forms 1099 shall be issued. (SA § 15(g).) The employer share of payroll taxes that become due shall be paid separate and apart from the Total Settlement Amount by Defendant. (SA § 12(a).) The Escalator Clause provides if the total number of Workweeks increases by more than

10% for the period of July 27, 2017 through April 14, 2025, the Total Settlement Amount shall be increased on a *pro-rata* basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 10%. (SA § 12(j).)

C. Settlement Payment Distribution Plan

All expenses associated with the Settlement are to be paid from the Settlement's Total Settlement Amount (SA § 10(b).), including up to $164,325.00 to Class Counsel for attorneys' fees (35% of the Total Settlement Amount), and reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement of the Action, supported by declaration, in an amount not to exceed $30,000.00, to Class Counsel for reimbursement of actual litigation expenses incurred (SA §§ 10(b), 12(b).); Settlement Administration Costs up to $7,550.00 to be paid to the qualified Settlement Administrator ILYM Group, Inc. to administer the notice and process payments (SA §§ 10(oo)-(pp), 12(d).); Class Representative Enhancement Awards of $7,500.00 to each Plaintiff for their service as Class Representatives and in consideration for a general release of all claims against Defendant (SA §§ 10(m), 12(c).); and a PAGA Penalty Amount of $70,000.00. (SA §§ 10(bb), 12(e).) Pursuant to California Labor Code section 2699(i), and subject to approval by the Court under California Labor Code section 2699(l), $52,500.00 or 75% of the PAGA Penalty Amount will be paid to the California Labor and Workforce Development Agency, in resolution of the PAGA claims for the Aggrieved Employees. The remaining $17,500.00 of the PAGA Penalty Amount will be paid to the Aggrieved Employees through Individual PAGA Payments. (SA §§ 10(q), 12(g).)

1. Calculating Settlement Class Members' Individual Settlement Payments

All Settlement Class Members will receive an Individual Settlement Payment. After deducting the amount of the fees award, the costs award, the enhancement award to Plaintiffs, the Settlement Administrator expenses that are all finally approved by the Court, and the PAGA penalty amounts, the remaining "Net Settlement Amount" will be distributed to the Settlement Class Members through "Individual Settlement Payments." (SA § 12.)

Individual Settlement Share Payments will be paid from the Net Settlement Amount and will be apportioned by dividing the estimated Net Settlement Amount by the Workweeks for all Class Members during the Class Release Period, the "Class Workweek Value," and then multiplying the Class Workweek Value by the number of Workweeks worked by each Class Member during the Class Release Period. (SA § 12(f)(3).) The estimated Net Settlement Amount will be approximately $182,625.00 (not including the $70,000.00 PAGA Penalty Amount).[6] (Rauchwerger Decl. ¶ 28.) Based on the number of class members, the average Individual Settlement Payment is approximately $523.28. (*Id.*)

The Parties agree that the formula for allocating the Individual Settlement Payments to Settlement Class Members is reasonable and that the payments provided herein are designed to provide a fair settlement to such persons, in light of the uncertainties regarding the calculation of alleged wages, penalties, interest, and expense reimbursement to each Settlement Class Member. (Rauchwerger Decl. ¶ 29.)

2. <u>Calculating PAGA Members' Individual PAGA Payments</u>

Individual PAGA Payments will be calculated and apportioned from the PAGA Member Amount of $17,500.00. The Settlement Administrator will divide 25% of the PAGA Member Amount by the total number of Pay Periods for all PAGA Members during the PAGA Release Period (resulting in the "PAGA Pay Periods Value"), and then multiply the PAGA Pay Periods Value by the number of Pay Periods worked for each PAGA Member during the PAGA Release Period to yield his or her Individual PAGA Payment. (SA § 12(g).)

3. <u>Distributions To Settlement Class</u>

Within ten (10) business days of the funding of Total Settlement Amount, the Settlement Administrator will issue payments due under the Settlement and approved by the Court, as follows: (1) Individual Settlement Payments to the Settlement Class Members; (2) Individual PAGA Payments to the PAGA Members; (3) LWDA Payment to the LWDA; (4)

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[6] The estimated Net Settlement Amount of $182,625.00 is calculated by taking the $469,500.00 Total Settlement Amount and subtracting: the requested attorneys' fees of 35% of the Total Settlement Amount ($164,325.00), reimbursement of litigation costs (in the maximum amount of $30,000.00), a Class Representative Enhancement Awards of $7,500.00 to each named Plaintiff, Settlement Administration Costs of up to $7,550.00, and PAGA Penalty Amount of $70,000.00. (Rauchwerger Decl. ¶ 28.)

Enhancement Awards to Plaintiffs; (5) Attorneys' Fees and Costs to Class Counsel; and (6) Settlement Administration Costs to itself. (SA § 15(c).) The Parties agreed that all funds associated with such checks that have not been cashed, deposited, or otherwise negotiated and which are canceled after the above-referenced 180-day time period, will be transmitted to the following cy pres recipient: Senior Citizens of Shasta County, Inc. ("SCSS" or "Cy Pres Recipient"), in accordance with California Code of Civil Procedure section 384. (SA § 15(e).) Pursuant to Code of Civil Procedure section 384, Plaintiffs will submit the report to the Court and shall seek an amended judgment and an order directing the Settlement Administrator to pay the sum of the unpaid residue or unclaimed or abandoned funds associated with cancelled checks, plus interest that has accrued on those funds (if any), to SCSS. (*Id.*)

D. <u>Notice To The Class Members</u>

Attached to the Declaration of Devin Rauchwerger as **<u>Exhibit 3</u>** is the [Proposed] Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval. (Rauchwerger Decl. ¶ 29; the Request for Exclusion and Objection forms are attached to the Rauchwerger Decl. ¶¶ 30-31 as **<u>Exhibit 4 and 5</u>**, respectively.) To protect the rights of absent class members, the court must provide class members with the best class action settlement notice practicable. (See Cal. Rules of Court, rule 3.769(f); *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12.) The primary purpose of class notice is to provide affected parties with due process rights reasonably calculated to apprise interested parties of the pendency of the action affecting their interests and an opportunity to present their objections. (See *Ryan v. Cal. Interscholastic Fed'n – San Diego Section* (2001) 94 Cal.App. 1048, 1072.) The proposed Notice of Class Action Settlement and Hearing Date for Final Court Approval satisfies these requirements. The proposed Class notices ensure the Settlement Class is alerted to the terms of the Settlement and allows them to protect their rights. The proposed notice plan, calling for first-class mailed notice to all members of the Settlement Class, is consistent with noticed approved by State and Federal Courts and constitutes the best notice practicable. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 966; *Cooper v. Am. Sav. & Loan Ass'n.* (1976) 55 Cal.App.3d 274, 285.)

VI. CONCLUSION

For the foregoing reasons, the Parties respectfully submit that the Settlement's terms are fair, adequate, and reasonable and that it is in the best interest of the Class Members. Under the applicable class action criteria and guidelines, this Class should be conditionally certified, the Settlement should be preliminarily approved, the Class should be notified regarding the Settlement, and the Court should schedule a final approval hearing for 120 days after the Court grants Preliminary Approval.

Dated: October 29, 2025

Respectfully submitted,
DOMB & RAUCHWERGER LLP

By: Devin Rauchwerger

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