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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SONOMA

DANIELLE HOWELL, individually and on behalf of all others similarly situated,

Plaintiff,

v.

JONBEC CARE, INC., a California corporation; and DOES 1–10, inclusive,

Defendants.

Case No. SCV-267909

PLAINTIFF DANIELLE HOWELL'S NOTICE OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS-ACTION SETTLEMENT AND FOR CONDITIONAL CLASS CERTIFICATION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Filed concurrently with (1) Declaration of David Zelenski in Support of Plaintiff's Unopposed Motion, (2) Declaration of Mark Greenstone in Support of Plaintiff's Unopposed Motion, and (3) Declaration of Danielle Howell in Support of Plaintiff's Unopposed Motion

Assigned to the Hon. Patrick Broderick

Date: 8 - 18 - 21, 2021
Time: 3:00pm.m.
Place: Sonoma County Superior Court, Hall of Justice, Courtroom 16, 600 Administration Drive, Santa Rosa, California 95403

3035 CLEVELAND AVE STE 200
SANTA ROSA, CA 95403

NOTICE OF MOTION

PLEASE TAKE NOTICE that, on 8 - 18 - 21, 2021, at 3:00pm., in Courtroom 16 of the above-entitled Court located at 600 Administration Drive, Santa Rosa, California 95403—or on such other date, at such other time, or at such other place as the Court may designate—Plaintiff Danielle Howell will move for an order granting conditional class certification of the Class defined in, and preliminary approval of, the class-wide Settlement reached with Defendant JonBec Care, Inc. in the within Action.[1] The Motion will be made, and based upon, this Notice; the concurrently filed Declarations of David Zelenski, Mark Greenstone, and Danielle Howell; the Memorandum of Points and Authorities appended hereto; the complete record in this action; and such further evidence and argument that may be submitted prior to, or during, the hearing on the Motion.[2]

Dated: May 12, 2021

ZELENSKI LAW, PC
GREENSTONE LAW APC

David Zelenski

Abigail A. Zelenski, David Zelenski
Mark S. Greenstone
Attorneys for Plaintiff

[1] Capitalized terms used herein have the meanings set forth in the Class-Action and PAGA Settlement Agreement, attached as Exhibit 1 to the concurrently filed Declaration of David Zelenski in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class-Action Settlement and for Conditional Class Certification.

[2] The Memorandum of Points and Authorities exceeds fifteen pages in length, which is expressly permitted under the California Rules of Court since the Motion requests, in part, certification of the Class defined in the Settlement Agreement. See Cal. R. Ct. 3.764(c)(2) (stating that "[a]n opening . . . memorandum filed in support of . . . a motion for class certification must not exceed 20 pages").

MEMORANDUM OF POINTS AND AUTHORITIES

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I. Introduction.

Plaintiff requests that the Court preliminarily approve a Settlement reached in the within wage-and-hour action, for the benefit of a putative Class of approximately 729 of Defendant's current and former non-exempt employees. Although this case was only recently filed, the Settlement is the culmination of over a year of pre-filing litigation, extensive investigation, and a formal mediation, and it provides an excellent result meriting preliminary approval.

Defendant owns and operates twenty-four-hour residential-care facilities in California for the developmentally disabled and the elderly. Under the Settlement, Defendant will establish a ***non-reversionary*** $1.0 million Gross Settlement Amount, from which ***all*** Settlement Class Members will ***automatically*** be paid their Individual Settlement Shares without any need to submit claim forms. Defendant will also pay ***all*** employer-side payroll taxes and contributions associated with the Settlement ***separately***—*i.e.*, ***on top of*** the Gross Settlement Amount. The Gross Settlement Amount will result in an average Individual Settlement Share to each Settlement Class Member of approximately $832.88—a striking amount in light of the industry-specific defenses arguably applicable to Plaintiff's claims.

Plaintiff alleges four underlying theories of liability in this action:

1. Defendant had a ***policy*** requiring Class Members to remain on site during day-shift rest breaks, meaning that Class Members were not relieved of all duty during those breaks. Class Members therefore are entitled to an additional hour of pay for each day shift worked, as well as to additional, derivative statutory damages.

2. Defendant also had a ***policy*** requiring Class Members to remain on site during night-shift meal breaks, meaning that Class Members were not relieved of all duty during those breaks. Class Members therefore are entitled to an additional hour of pay for each night shift worked, as well as to additional, derivative statutory damages.

3. Even if Defendant did not have a policy requiring Class Members to remain on site during rest breaks and meal breaks, Defendant understaffed its facilities, making it difficult, in ***practice***, for Class Members to timely take complete breaks. Under this theory, Class Members therefore are entitled to an additional hour of pay for each day that they were not provided a proper meal break, an additional hour of pay for each day that they were not provided a proper rest break, and additional, derivative statutory damages.

4. Irrespective of any breaks-based issues, Defendants' wage statements failed to list its complete address, entitling Class Members to statutory damages.

As explained in more detail below, each of these theories faces significant defenses—especially the on-site rest-break and on-site meal-break theories (theory nos. 1 and 2). Although it is generally true

that employers must relieve their employees of all duty during rest and meal periods, that general rule is subject to an exception for twenty-four-hour residential-care facilities. In order to ensure proper and constant care, these facilities are expressly authorized to require that employees remain on site during breaks, so long as the employees are in "sole charge" of the residents. According to Defendant, this industry-specific defense defeats Plaintiff's on-site rest-period and on-site meal-period claims.

As also explained in more detail below, the California Labor and Workforce Development Agency ("LWDA") has ruled, in response to separate notices filed by Class Counsel and Defendant's Counsel, that Defendant has cured any failure to list its complete address on employees' wage statements. Defendant therefore can argue that Class Members no longer have any injury for Plaintiff's alleged employer-address claim, eliminating any potential wage-statement liability for that violation.

In light of these defenses, the $1.0 million Gross Settlement Amount is an excellent result. Assuming that ***no*** Class Members opt out of and that ***all*** of the contemplated deductions are approved, the Net Settlement Amount for distribution to Settlement Class Members equals approximately $607,166.67. This leads to the $832.88 average Individual Settlement Share to each Settlement Class Member. As detailed below, this result was achieved after a rigorous review by Class Counsel of the evidence relevant to Plaintiff's claims. Although Plaintiff's Complaint was filed in March 2021, the Parties began negotiating nearly ***a year-and-a-half ago***, in 2019; during that time, the Parties agreed to toll all applicable statutes of limitations for the Class' benefit, and they engaged in substantial informal discovery and an all-day mediation so that they could evaluate their respective positions' strength and weaknesses. Indeed, the $1.0 million Gross Settlement Amount was the amount ultimately ***proposed by the mediator*** to settle this case, after the Parties' mediation session had failed to reach a settlement.

This $1.0 million recovery strikes a balance decidedly in Class Members' favor, given the amounts ultimately at stake. As detailed below, the recoverable meal-and-rest-break damages under Plaintiff's theories range from approximately $195,756.00 as a lower bound (under the alternative understaffing theory) to approximately $4,186,683.60 as an upper bound (under the on-site theories),[3] while recoverable wage-statement damages for the employer-address violation equal approximately

[3] As explained below, this is the estimated range for "direct" meal-and-rest-break damages, calculated without reference to "derivative" damages or civil penalties. Derivative damages and civil penalties—which are admittedly more tenuous than direct damages—are discussed and estimated below.

$330,750.00. Thus, while the ***net*** recovery of $607,166.67 is approximately 15% of the potential meal-and-rest-break damages under Plaintiff's on-site theories—theories that are subject to Defendant's strongest defenses—it is ***more than 100% of all*** potential direct meal-and-rest-break damages under her understaffing theory, on the one hand, ***and all*** potential damages for the alleged employer-address-based wage-statement violation, on the other hand, ***combined***. This is a terrific outcome, and the Settlement should be preliminarily approved.

II. Overview of the Relevant Procedural History, Plaintiff's Claims, and Damages.

A. The Parties Began Actively Litigating this Case in 2019.

As alleged in the Complaint, Defendant owns and operates multiple twenty-four-hour residential-care facilities in California for the developmentally disabled and the elderly. (Class-Action Compl. ("Compl.") ¶ 9.) As also alleged in the Complaint, Plaintiff worked for Defendant as a "direct-care staff member"—basically, as an orderly—from approximately March through July 2019. (Compl. ¶¶ 2, 9.) According to Plaintiff, and as explained in more detail below, Defendant failed to provide employees with proper rest periods, meal periods, and wage statements. (See generally Compl.)

Although Plaintiff's Complaint was not filed until March 2021, she and putative Class Counsel commenced matters much earlier, in 2019. Specifically, on November 27, 2019, Plaintiff gave written notice to the LWDA and Defendant of the provisions of the California Labor Code that she contended Defendant had violated in connection with her employment. (Decl. of David Zelenski in Supp. of Pl.'s Unopposed Mot. for Preliminary Approval of Class-Action Settlement and for Conditional Class Certification ("Zelenski Decl.") ¶ 6 & Ex. 2.) The purpose of the notice was to comply with the procedural requirements set forth in California's Private Attorneys General Act ("PAGA"), Labor Code section 2698 *et seq.*, so that she could recover civil penalties for Defendant's alleged violations. The following month, Defendant's Counsel reached out to Class Counsel, and the Parties began to explore the possible early resolution of Plaintiff's claims. (Zelenski Decl. ¶ 6.)

In the meantime, Defendant filed its own notice with the LWDA, arguing that it had cured the alleged employer-address wage-statement violation.[4] (Zelenski Decl. ¶ 7 & Ex. 3.) This, in turn, set off

[4] Under PAGA, an employer may attempt to demonstrate that it has "cured" an alleged failure to list a complete address on its wage statements by demonstrating that it subsequently "provided . . . fully

a series of LWDA filings by the Parties, including oppositions by Plaintiff to Defendant's cure notice, declarations by Defendant in support of the purported cure, and oppositions to those declarations. (Zelenski Decl. ¶ 7 & Ex. 3.) Ultimately, the LWDA concluded that Defendant had sufficiently cured the alleged employer-address violation by retroactively providing corrected wage statements to all current and former employees for the period of time during which the initial wage statements had failed to list Defendant's complete address.[5] (Zelenski Decl. ¶ 7 & Ex. 4.)

At approximately the same time, the Parties began entering into a series of tolling agreements so that they could negotiate in good faith without having to commence formal litigation. (Zelenski Decl. ¶ 8 & Ex. 5.) Under those agreements, all relevant statutes of limitations and filing deadlines, including all filing deadlines applicable to Plaintiff's contemplated PAGA claim, were tolled from January 23, 2020, through August 18, 2020.[6] (Zelenski Decl. ¶ 8 & Ex. 5.) In March 2020, the Parties agreed to schedule a formal mediation with Todd Smith, Esq., a seasoned labor and employment mediator, to help facilitate their settlement discussions. (Zelenski Decl. ¶ 8.)

Of course, in order to make the mediation productive, Class Counsel requested substantial "informal" discovery from Defendant, resulting in Defendant's production of thousands of pages of documents, including, importantly, Defendant's written scheduling, meal-break, and rest-break policies for the entirety of the relevant statutory period; computerized lists of all non-exempt employees who had worked for Defendant at any time since January 23, 2016, along with each such employee's job title, hiring date, and, if applicable, termination date; and a computerized random sampling of employees' timekeeping and payroll data. (Zelenski Decl. ¶ 9.) This information, as explained below, helped to confirm the rest-break and meal-break theories underlying the causes of action alleged in Plaintiff's Complaint.

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compliant, itemized wage statement[s] to each aggrieved employee for each pay period for the three-year period prior to the date of the [employee's] written [PAGA] notice." Cal. Lab. Code § 2699(d).

[5] Defendant's provision of corrected wage statements to all employees—something that only occurred because of Plaintiff's PAGA notice—is an ***additional*** benefit that Plaintiff has obtained for the Class, ***on top of*** the $1.0 million Gross Settlement Amount.

[6] The Settlement Agreement inadvertently specifies a tolling end-date of July 17, 2020. (Zelenski Decl. Ex. 1 at p.1.) July 17, 2020, was the end-date set forth in the Parties' second tolling agreement; the Parties pushed that end-date out to August 18, 2020, in the their third tolling agreement. (Zelenski Decl. Ex. 5.) That end-date was pushed out again in their Memorandum of Understanding, through the filing of the Complaint. (Ex. 6 at § 1.)

B. Plaintiff's Claims and Theories.

1. Plaintiff's On-Site Rest-Period Theory.

The Labor Code provides that "[a]n employer shall not require an employee to work during a . . . rest . . . period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission." Cal. Lab. Code § 226.7(b). The Industrial Welfare Commission's wage order 5—*i.e.*, the wage order applicable here—provides, in turn:

> Every employer shall authorize and permit all employees to take rest periods . . . . The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours.

8 Cal. Code Regs. § 11050 subsec. 12(A). If an employer fails to provide a rest period in accordance with wage order 5, "the employer shall pay the employee one additional hour of pay . . . for each workday that the . . . rest . . . period [wa]s not provided." Cal. Lab. Code § 226.7(c). Plaintiff contends that this includes when an employer requires an employee to remain at the worksite during a rest period. See Augustus v. ABM Sec. Servs., Inc., 2 Cal. 5th 257, 269 (2016).

Notwithstanding the foregoing, wage order 5 sets forth an exception for certain healthcare-industry employees. Specifically, "employees of 24 hour residential care facilities for elderly, blind or developmentally disabled individuals may, without penalty, require an employee to remain on the premises and maintain general supervision of residents during rest periods if the employee is in sole charge of residents." 8 Cal. Code Regs. § 11050 subsec. 12(C).

Here, Plaintiff's Complaint alleges that Defendant had a policy requiring employees to remain at their respective facilities during rest breaks, in order to provide on-call care for residents. (Compl. ¶ 12.) Plaintiff's Complaint further alleges that, although Defendant had a policy of scheduling only one employee to work at each facility during night shifts—also referred to as "NOC shifts"—Defendant also had a policy of scheduling multiple employees to be on site simultaneously during day shifts. (Compl. ¶ 10.) Plaintiff's theory, as articulated in her Complaint, is that all employees who worked a day shift were not provided a proper rest break for each and every such shift worked—so long as that shift was at least three-and-a-half hours in length—since, during day shifts, other employees were at the worksite who could care for the residents. (Compl. ¶ 14.) In other words, under Plaintiff's theory, the wage

order's exemption only shields Defendant from on-site rest-break liability for Class Members who worked NOC shifts since, during NOC shifts, only one employee was at the worksite, in sole charge of the residents.

Again, prior to mediation, Defendant produced substantial informal discovery to Plaintiff, including its written scheduling policies and written rest-break policies for the entire statutory period. According to those policies, Defendant required all employees to remain on site during rest breaks, scheduled only one employee per facility for each NOC shift, and scheduled multiple employees per facility for each day shift. (Zelenski Decl. ¶ 10.) Plaintiff contends that these policies, taken together, violate the Labor Code for day-shift employees since, again, the wage order creates an exemption only for those individuals who are "in sole charge of residents." 8 Cal. Code Regs. § 11050 subsec. 12(C).

2. Plaintiff's On-Site Meal-Period Theory.

Conceptually, the theory underlying Plaintiff's on-site meal-period claim is the mirror image of her on-site rest-period claim. Similar to the rule for rest periods, the Labor Code requires employers to provide employees with meal periods, as follows:

> An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Cal. Lab. Code § 512(a). As with rest periods, if an employer fails to provide an employee with a required meal period, "the employer shall pay the employee one additional hour of pay . . . for each workday that the meal . . . period [wa]s not provided." Id. § 226.7(c). This includes when an employer requires an employee to remain on site during a meal period. Cf. Augustus, 2 Cal. 5th at 269.

Notwithstanding the foregoing—and similar, again, to the rule for rest periods—wage order 5 sets forth exceptions for "employees of 24 hour residential care facilities for the elderly, blind, or developmentally disabled individuals." 8 Cal. Code Regs. § 11050 subsec. 11(E). As relevant here, one of these exceptions provides that such an employee can be required to remain on call during meal breaks if he or she "eats with the residents during residents' meals and the employer provides the same meal at

no charge to the employee," or if he or she "is in sole charge of the resident(s) and, on the day shift, the employer provides a meal at no charge to the employee." Id.

Here, Plaintiff's Complaint alleges that Defendant had a policy requiring employees to remain on site during NOC shifts, including during their meal breaks. (Compl. ¶ 13.) Plaintiff's Complaint further alleges that Defendant had no policy or practice of providing free meals to employees. (Compl. ¶ 15.) Accordingly, Plaintiff's meal-break theory, as articulated in her Complaint, is that all employees who worked a NOC shift were not provided a proper meal break for each and every such shift worked, so long as that shift was at least five hours in length. (Compl. ¶ 15.) In other words, under Plaintiff's theory, the wage order's exemption does not shield Defendant from meal-break liability for NOC-shift employees because Defendant never provided them with any free meals.

As stated above, Defendant produced to Plaintiff its written meal-break policies for the entire statutory period. According to those policies, Defendant required all NOC-shift employees to remain on site during meal breaks, and never provided free meals. (Zelenski Decl. ¶ 10.)

3. Plaintiff's Alternative Meal-and-Rest-Break Theory.

Alternatively, Plaintiff's contends that, even if Defendant's written meal-break, rest-break, and scheduling policies did not exist, or even if they did not lead to any liability under California's meal-break and rest-break rules,[7] Defendant is still liable for meal-break and rest-break violations under an understaffing theory. (Compl. ¶ 16.) In other words, Plaintiff alleges that, due to the press of business, Defendant's employees, in practice, frequently had their breaks interrupted, cut short, delayed, or prevented altogether.

As to this theory, Defendant, provided Plaintiff with all of the timekeeping and payroll records for the entire statutory period—*i.e.*, all clock-in, clock-out, and pay records—for a random sampling of employees. (Zelenski Decl. ¶ 11.) This enabled putative Class Counsel to estimate the total number of missed, late, or shortened meal periods experienced by the Class. (Zelenski Decl. ¶ 11.)

4.. Plaintiff's Wage-Statement Claim.

As alleged in the Complaint, Defendant's failure to provide proper meal and rest periods to

[7] The defenses to Plaintiff's on-site meal-break and rest-break theories are discussed below in section III.B.3 of this Memorandum.

employees also results in so-call "derivative" liability under California's wage-statement statute—section 226 of the Labor Code. (Compl. ¶ 37.) Section 226 requires employers to furnish an employee with an "accurate itemized statement" (*i.e.*, a pay stub) listing, *inter alia*, all "gross wages earned," "net wages earned," and "total hours worked" during the associated pay period. Cal. Lab. Code § 226(a). If employees were on call, or actively working through, their meal or rest breaks, their pay stubs necessarily itemized the incorrect amount of gross wages earned, net wages, earned, and total hours worked. According to Plaintiff, then, each such employee "is entitled to recover . . . fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) . . . for each violation in a subsequent pay period," up to $4,000.00. Id. § 226(e)(1).

Putting these derivative damages to the side, Plaintiff also contends, as discussed above, that Defendant's wage statements failed to list Defendant's complete address (see Compl. ¶ 37), which is another piece of information required by section 226, see Cal. Lab. Code § 226(a). According to Plaintiff, this standalone violation, in and of itself, leads to damages. As to this violation, Defendant provided evidence to the LWDA demonstrating that this violation occurred from April 7, 2017, through April 23, 2019, and again from August 8, 2019, through December 4, 2019. (Zelenski Decl. ¶ 12.)

5. Plaintiff's Waiting-Time Claim.

Similar to the wage-statement claim, Plaintiff asserts a derivative claim for the alleged failure to provide all wages upon the termination of employment to former employees. (Compl. ¶¶ 39–42.) Under section 201 of the Labor Code, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Cal. Lab. Code § 201(a). Similarly, under section 202, "[i]f an employee . . . quits his or her employment, his or her wages shall become due and payable no later than 72 hours thereafter." Id. § 202(a). Section 203, in turn, provides that, "[i]f an employer willfully fails to pay . . . , in accordance with [s]ections 201 [or] 202 . . . , any wages of an employee who is discharged or who quits, the wages of the employee shall continue . . . from the due date thereof at the same rate until paid," up to a maximum of thirty days. Id. § 203(a). Because former employees have not received all of their meal-period and rest-period compensation, Plaintiff contends that they are entitled to the waiting-time damages set forth in section 203. Again, prior to the mediation, Defendant identified all of its former employees within the relevant statutory period.

6. Plaintiff's Civil-Penalty Claim.

Plaintiff's Complaint alleges an additional claim under PAGA, seeking to collect civil penalties for the above-described violations. (Compl. ¶¶ 51–55.) PAGA essentially deputizes citizens "as private attorneys general[] to recover civil penalties for Labor Code violations" on behalf of themselves and other "aggrieved employees"—penalties that otherwise are collectible only by the State. Iskanian v. CLS Transp. Los Angeles, LLC, 59 Cal. 4th 348, 379 (2014). Under PAGA, "75 percent [of the recovered penalties] go[] to the L[WDA], leaving the remaining 25 percent for the 'aggrieved employees.'" Id. at 380 (citing Cal. Lab. Code § 2699(i)).

B. Plaintiff's Damage Analysis.

Based on the information and documents provided by Defendant, putative Class Counsel estimates the following:

- Total rest-period damages under Plaintiff's on-site theory: $3,239,979.60.
- Total meal-period damages under Plaintiff's on-site theory: $946,704.00.
- Total meal-period and rest-period damages under Plaintiff's alternative understaffing theory: $195,756.00.
- Total derivative wage-statement damages stemming from improper meal and rest breaks: $1,496,000.00.
- Total derivative waiting-time damages stemming from improper meal and rest breaks: $1,793,088.00.
- Total rest-period civil penalties: $273,850.00.
- Total meal-period civil penalties: $96,800.00.
- Total standalone wage-statement damages attributable to the failure to list the employer's complete address: $330,750.00.

(Zelenski Decl. ¶¶ 13–19.) Total potential damages therefore range from $195,756.00 to $7,846,421.60 (= $4,186,683.60 + $1,496,000.00 + $1,793,088.00 + $273,850.00 + $96,800.00).[8]

Armed with a damage analysis, Plaintiff attended a full-day mediation session on July 10, 2020. (Zelenski Decl. ¶ 20.) Although the case did not settle during the mediation, the mediator continued to

[8] Standalone wage-statement damages are not included in this total because wage-statement damages are measured by the number of improper statements, not by the number of violations that appear on any given statement. See Cal. Lab. Code § 226(e)(1). Accordingly, the lesser damage amount for the employer-address violation is subsumed by the greater damage amount for the derivative wage-statement violations since derivative wage-statement damages essentially hit the statutory cap.

facilitate discussions between the Parties over the next month-and-a-half. (Zelenski Decl. ¶ 20.) Ultimately, the Parties accepted the mediator's proposal to settle matters in principle for $1.0 million. (Zelenski Decl. ¶ 20.) Given the arguably dispositive defenses applicable to Plaintiff's claims, discussed below, the $1.0 million mediator's proposal—which was memorialized in a short-form Memorandum of Understanding signed by Defendant on September 16, 2020, and, subsequently, in the long-form Settlement Agreement now before the Court (see Zelenski Decl. ¶ 20)—should be approved.

C. Summary of the Settlement's Terms.

Again, the Settlement establishes a $1.0 million Gross Settlement Amount for the benefit of 729 Class Members. Because the total damages that Plaintiff contends are owed for the underlying meal-break violations may top out at $195,756.00, Settlement Class Members will be made more than whole under that alleged theory even if all of the Settlement's deductions are approved in full. The Settlement therefore should be approved.

1. The Definition of the Class.

Under the Settlement, the Class consists of "[a]ll individuals who were employed by Defendant in California as non-exempt employees at any time during the period of January 23, 2016, through September 16, 2020." (Zelenski Decl. Ex. 1 at § 1.) Again, there are about 729 Class Members.

2. The Relief Provided by the Settlement.

For the benefit of the 729 Class Members, the Settlement calls for Defendant to establish a $1.0 million Gross Settlement Amount (Zelenski Decl. Ex. 1 at §§ 10, 29), which translates to an average gross recovery for Class Members of approximately $1,371.74 (= $1.0 million ÷ 729 Class Members).

Of course, under the "common-fund" theory of recovery, it is appropriate for the Settlement's costs to be "spread" across the Class. See, e.g., Laffitte v. Robert Half Int'l Inc., 1 Cal. 5th 480, 489 (2016). Pursuant to this doctrine, the Settlement contemplates that Class Counsel's fees and expenses, as well as the Settlement Administrator's Settlement-Administration Expenses, are to be deducted from the Gross Settlement Amount. (Zelenski Decl. Ex. 1 §§ 13, 23–24, 29.) It also "is established that named plaintiffs are eligible for reasonable incentive payments," payable from common funds, "to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class"—*i.e.*, for conferring a benefit on individuals who otherwise would not have received anything

but for the named plaintiffs' efforts. Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles, 186 Cal. App. 4th 399, 412 (2010). Likewise, because Plaintiff's claims implicate civil penalties under PAGA, it is necessary to allocate a portion of the Gross Settlement Amount to the State of California. See Cal. Lab. Code § 2699(i). The Settlement contemplates such deductions, proposing that Plaintiff receive a Service Award for her services as the Class Representative, and that the LWDA receive its share of a PAGA Payment for the civil-penalty claims alleged in the action. (Zelenski Decl. Ex. 1 at §§ 13, 29.)

Here, the Settlement allows for up to $333,333.33 for attorney's fees, which is equal to one-third of the Gross Settlement Amount, plus reimbursement of actual costs incurred, currently estimated to be $15,000.00. (Zelenski Decl. Ex. 1 at § 29.) The Settlement also allows for a Service Award of up to $10,000.00, as well as a $30,000 PAGA Payment, $22,500.00 of which is to be paid to the LWDA. (Zelenski Decl. Ex. 1 at § 29.) Finally, putative Class Counsel estimates that Administration Costs will not exceed $12,000.00. (Zelenski Decl. ¶ 26 & Ex. 7.) The reasonableness of these amounts will be detailed in a separate motion, to be filed before the period of time closes for Class Members to submit requests for exclusion or objections to the Settlement, so that Class Members may review the legal support for the deductions when deciding how to respond to the Settlement. Suffice it to say, for now, that the contemplated deduction for fees and costs is entirely reasonable judged relative to the size of awards in other class actions, as well as in light of the outstanding results of this Settlement in particular. See, e.g., Chavez v. Netflix, Inc., 162 Cal. App. 4th 43, 66 n.11 (2008) (explaining that "fee awards in class actions average around one-third of the recovery"). The same goes for the Service Award, which comports with the incentive payments made in other cases. See Munoz, 186 Cal. App. 4th at 412 (disapproving of incentive-award multipliers resulting in payments of "30 to 44" times the amounts received by unnamed class members).

With respect to the PAGA Payment, $30,000.00 ***exceeds*** the civil-penalty amounts approved in other wage-and-hour class-wide settlements. See, e.g., Turner v. Motel 6 Operating L.P., No. CV 17-2544 PSG (SSx), 2018 WL 6977474, at *1, 7 (C.D. Cal. Nov. 6, 2018) (approving a $20,000.00 PAGA payment from a $1.36 million class-wide settlement, and explaining that "PAGA claims approved by courts" typically range from "0 to 2 percent" of the class-wide fund) (citing cases); Emmons v. Quest Diagnostics Clinical Labs., Inc., No. 1:13-cv-00474-DAD-BAM, 2017 WL 749018, at *5, 9 (E.D. Cal.

Feb. 27, 2017) (approving a $20,000.00 PAGA payment from a $2.35 million class-wide settlement).

After deducting these totals from the Gross Settlement Amount, the Net Settlement Amount available for distribution to the Settlement Class comes to $607,166.67. Under the Settlement, the Net Settlement Amount will be distributed *pro rata* to those Class Members who do not opt out, based on the number of Workweeks worked by each such individual as compared to the total number of Workweeks across the entire Settlement Class, with ***no reversion*** to Defendant. (Zelenski Decl. Ex. 1 at §§ 10, 26, 29 53.) Furthermore, to treat Class Members equitably in light of the waiting-time claim alleged in the action, any Settlement Class Member who is a former employee will be allocated two additional Workweeks. (Zelenski Decl. Ex. 1 at § 26.) Assuming, again, that all contemplated deductions are approved in full and that no Class Members opt out, the average Individual Settlement Payment equals approximately $832.88 (= $607,166.67 ÷ 729 Class Members). This amount is ***net*** of any Employer Taxes, since Defendant has agreed to pay any such amounts ***on top of*** the Gross Settlement Amount. (Zelenski Decl. Ex. 1 at § 9.) Because the amounts are so significant relative to Defendant's size, and given the impact that the COVID-19 pandemic has had on all businesses—especially those in the healthcare industry—the Settlement allows Defendant to fund the Settlement Amount over time, with $500,000.00 payable within three business days of final approval, $250,000.00 payable within three months of final approval, and the remaining $250,000.00 payable within three months thereafter. (Zelenski Decl. Ex. 1 at § 29.) However, to protect the Class, the second and third installments of Settlement Amount have been personally guaranteed by Defendant's principals. (Zelenski Decl. Ex. 1 at § 29.)

3. The Settlement's Release.

As defined in the Settlement, the Released Claims are limited to those that "aris[e] under California law" and that either "were pled in the Complaint," on the one hand, or "that could have been pled in the Complaint[] based on the factual allegations" therein. (Zelenski Decl. Ex. 1 at § 45.) This limited release comports with the releases approved in class-wide settlements. See, e.g., Class Pls. v. City of Seattle, 955 F.2d 1268, 1287–88 (9th Cir. 1992) (noting that claims not alleged in a complaint may be released if they are based on the same "factual predicate"); Spann v. J.C. Penney Corp., 314 F.R.D. 312, 327–28 (C.D. Cal. Jan. 25, 2016) (same) (internal citations omitted). Indeed, although

Plaintiff herself has agreed to a waiver of section 1542 of the California Code of Civil Procedure, ***none*** of the Class Members are agreeing to such a waiver. (Zelenski Decl. Ex. 1 at §§ 45–46.)

D. Notice to the Class.

Under the Settlement, the proposed Settlement Administrator—Phoenix Settlement Administrators ("Phoenix")—will deliver a Notice to Class Members by U.S. mail and e-mail, in both English and Spanish. (Zelenski Decl. Ex. 1 at §§ 14, 35.) Phoenix will derive contact information from Class Data supplied by Defendant. (Zelenski Decl. Ex. 1 at §§ 3, 34.) Before mailing, Phoenix will update every physical address through the National Change of Address Database, and, if any mailed Notices are returned as undeliverable, Phoenix will re-mail them either to the forwarding address provided by the U.S. Post Office or to an updated address determined by Phoenix through lawful skip-tracing; similarly, if any e-mailed Notices go unopened, Phoenix re-send them. (Zelenski Decl. Ex. 1 at § 35.) In addition, on the date that the Notice is first sent to the Class, Phoenix will establish a Settlement website containing relevant information, including all applicable deadlines, the Settlement Agreement, the Notice, and all papers filed in support of the Settlement. (Zelenski Decl. Ex. 1 at § 35.) Class Members will have sixty days from the date that the Notice is first sent to the Class to exclude themselves from, or object to, the Settlement. (See Zelenski Decl. Ex. 1 § 19.)

A review of the Parties' proposed Notice demonstrates that it comports with rules 3.766 and 3.769 of the California Rules of Court by explaining Plaintiff's contentions in the action and Defendant's denials; describing the procedure for objecting and requesting exclusion; stating that any judgment will bind those who do not opt out; and stating that Class Members have the right to enter an appearance through their own counsel. (Zelenski Decl. Ex. 8.) The Notice also includes an estimate of the Class Member's Individual Settlement Share, as well as a description of how that amount was calculated. (Zelenski Decl. Ex. 8.) In addition, the Notice explains that Class Members do not need to submit claim forms in order to receive their respective Individual Settlement Payments. (Zelenski Decl. Ex. 8.) This point bears stressing: Class Members ***need not do anything*** in response to the Notice in order to receive an Individual Settlement Payment. Put differently, this is ***not*** a claims-made settlement where Class Members must take some sort of action to receive a share of the Gross Settlement Amount. (See Zelenski Decl. Ex. 1 §§ 22, 53–54.) Assuming that the Settlement is ultimately approved, this

means that, so long as a Class Member does not exclude himself or herself from the Settlement, he or she will ***automatically*** be mailed a check for his or her Individual Settlement Share.

The content of the Notice, together with the robust procedures for updating contact information and the maintenance of a Settlement website, demonstrates that the best practicable notice will be provided. See Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 811–12 (1985) (explaining that "best practicable" notice provides a description of the litigation and an explanation of the right to opt out or object); In re Cellphone Fee Termination Cases, 186 Cal. App. 4th 1380, 1390–91 (2010) (upholding a short-form notice that simply directed class members to a website for full details of a settlement).

III. The Court Should Preliminarily Approve the Settlement.

The Court should preliminarily approve the Settlement and order that the Notice be sent to the Class. Because the Court has not yet certified the action to proceed on a class-wide basis, an evaluation of whether the Settlement should be approved takes two steps. First, the Court must determine whether the action meets the certification requirements of California Code of Civil Procedure section 382. If the action does, then Court then must proceed to the second step by evaluating the Settlement's fairness.

A. The Class Should Be Certified.

Section 382 provides that, "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, one or more may sue or defend for the benefit of all." Cal. Civ. Proc. Code § 382. Here, again, the Class consists of approximately 729 of Defendant's current and former non-exempt employees. This Class should be certified under section 382. Section 382 requires "the existence of an ascertainable and sufficiently numerous class," along with "a well-defined community of interest." Brinker Rest. Corp. v. Super. Ct., 53 Cal. 4th 1004, 1021 (2012). The Class meets these requirements.

1. Ascertainability and Numerosity.

"The ascertainability requirement is a due process safeguard, ensuring that notice can be provided to putative class members." Sotelo v. MediaNews Grp., Inc., 207 Cal. App. 4th 639, 648 (2012) (internal quotation marks omitted). Class members are "ascertainable" when, for instance, "they may be readily identified without reasonable expense or time," id., as by reference to "employer[] records," Lubin v. The Wackenhut Corp., 5 Cal. App. 5th 926, 951 (2016). Here, the Settlement

contemplates the identification of all Class Members from Defendant's internal employment records. (Zelenski Decl. Ex. 1 at § 3.) The Class therefore is ascertainable.

The Class likewise is sufficiently numerous. Numerosity exists when a class is so "'numerous' in size that 'it is impracticable to bring [all class members] before the court.'" Hendershot v. Ready to Roll Transp., Inc., 228 Cal. App. 4th 1213, 1222 (2014) (quoting Cal. Civ. Proc. Code § 382). Although there is "[n]o set number . . . required as a matter of law for the maintenance of a class action," a class consisting of at least "42 [individuals] . . . is quantitatively sufficient." Rose v. City of Howard, 126 Cal. App. 3d 926, 934 (1981). Since the Class consists of 729 employees, it satisfies numerosity.

2. Community of Interest.

The community-of-interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) [a] class representative[] with claims or defenses typical of the class; and (3) [a] class representative[] who can adequately represent the class." Brinker, 53 Cal. 4th at 1021 (internal quotation marks omitted). All three of these requirements are met here.

First, an overarching question of law or fact predominates over all other questions as to each of the underlying claims at issue in this case, with each question capable of resolution "'in one stroke.'" Williams v. Super. Ct., 221 Cal. App. 4th 1353, 1368 (2013) (quoting Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011)). As to the meal-and-rest-break claims predicted on the on-site theory, the central issue for all Class Members is whether Defendant's ***policies*** requiring ***all*** employees to remain on site during day-shift rest breaks and night-shift meal breaks violate the Labor Code. Similarly, as to Plaintiff's alternative meal-and-rest-break claims that, as a matter of ***practice***, Class Members could not take breaks because of the press of business, California courts have recognized that understaffing can provide the linchpin for certification—especially in the healthcare industry. See Alberts v. Aurora Behavioral Health Care, 241 Cal. App. 4th 388, 407–08 (2015). Furthermore, because Plaintiff's alleged waiting-time and wage-statement claims, in large measure, are derivative of those violations, the very same overarching questions implicated by the underlying meal-and-rest-break claims are central to resolving the waiting-time and wage-statement claims. These overarching questions need only be answered once for the Class as a whole. The same goes for Plaintiff's standalone wage-statement allegations concerning the failure to list an employer name, since the same fundamental question applies

to all Class Members: Did Defendant's wage-statement template omit Defendant's complete address? The only "individual" or "non-common" questions concern the specific dollar amounts to which each Class Member is entitled—and, "[a]s a general rule[,] if the defendant's liability can be determined by facts common to all members of the class, [the] class will be certified even if members must individually prove their damages," Brinker, 53 Cal. 4th at 1022 (internal quotation marks omitted), *i.e.*, individualized damage amounts are ***not*** a bar to certification, see Sav-On Drug Stores, Inc. v. Super. Ct., 34 Cal. 4th 319, 334 (2004) ("Nor is it a bar to certification that individual class members may ultimately need to itemize their damages."). Common questions therefore predominate.

Second, Plaintiff's individual claims are typical of those of the Class. The "test of typicality is whether other [class] members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff[], and whether other class members have been injured by the same course of conduct." Martinez v. Joe's Crab Shack Holdings, 231 Cal. App. 4th 362, 375 (2014) (internal quotation marks omitted). That a named plaintiff has claims that are not "identical" to those of the class that he or she seeks to represent is immaterial; instead, it is sufficient that the representative has similar-enough claims giving him or her a motive to litigate on behalf of all class members. See Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 238 (2001) (explaining that "[t]he fact that the class representatives had not personally incurred all of the damages suffered by each different class member does not necessarily preclude their providing adequate representation to the class" and that "differences in situation or interest among class members . . . should not bar class suit") (internal quotation marks omitted) (ellipsis in original), disapproved on other grounds by Hernandez v. Restoration Hardware, Inc., 4 Cal. 5th 260, 269 (2018). Here, Plaintiff clearly has such a motive, since all of her claims arise from the same course of conduct to which all Class Members were subjected.

Third, Plaintiff can, and will, adequately represent the Class. Adequacy considers whether a named plaintiff has "an understanding of his [or her] fiduciary obligation owed to the class," Jones v. Farmers Ins. Exch., 221 Cal. App. 4th 986, 998 (2013), whether he or she has suffers from any "conflict that goes to the very subject matter of the litigation," Richmond v. Dart Indus., Inc., 29 Cal. 3d 462, 470 (1981), and whether his or her counsel is sufficiently qualified, Cal Pak Delivery v. United Parcel Serv., Inc., 52 Cal. App. 4th 1, 12 (1997). Both Plaintiff and Class Counsel are adequate. Plaintiff has no

conflict of interest with any Class Member, as she shares their presumable desire to be made whole under the Labor Code. (Decl. of Danielle Howell in Supp. of Pl.'s Unopposed Mot. for Preliminary Approval of Class-Action Settlement and for Conditional Class Certification ("Howell Decl.") ¶¶ 7–8.) She also is committed to pursuing the Class' claims, and her motivation in pursuing this action has been to collect amounts owed to both herself and her fellow Class Members. (Howell Decl. ¶¶ 7–8.) As to Class Counsel, their qualifications are set forth in the concurrently filed Declarations of David Zelenski and Mark Greenstone. (Zelenski Decl. ¶¶ 3–4; Decl. of Mark Greenstone in Supp. of Pl.'s Unopposed Mot. for Preliminary Approval of Class-Action Settlement and for Conditional Class Certification ("Greenstone Decl.") ¶¶ 2–5.) Those Declarations should assure the Court that the interests of the unnamed Class Members will be vigorously represented. Class Counsel, in fact, has recovered millions of dollars employees in myriad wage-and-hour cases (see Zelenski Decl. ¶¶ 3–4; Greenstone Decl. ¶ 3), and the Court can rest assured that Class Counsel will adequately discharge its responsibilities here.

B. The Settlement Is More than Fair, Reasonable, and Adequate.

The next inquiry concerns whether the Settlement falls within the range of possible approval. In this regard, courts "ha[ve] broad discretion" to "determine whether a class action settlement is fair and reasonable," based on "the application of several well-recognized factors":

> The list . . . includes the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.[9]

Clark v. Am. Residential Servs. LLC, 175 Cal. App. 4th 785, 799 (2009) (internal quotations marks and citations omitted). A "presumption of fairness" exists "when the settlement is the result of arm's length negotiation," when an investigation has taken place "that [is] sufficient to permit counsel . . . to act intelligently," and when "counsel are experienced in similar litigation." In re Microsoft I–V Cases, 135 Cal. App. 4th 706, 723 (2006). Here, the factors all support approval of the Settlement.

1. Settlement Negotiations Were Conducted at Arm's Length.

As detailed above, the Settlement was entered only after Class Counsel had undertaken a

[9] Because the Settlement has not yet been preliminarily approved and the Notice has not yet gone out, it is premature to gauge the LWDA's and the Class' responses to the Settlement.

comprehensive damage analysis based on Defendant's own records—and then only following mediation with a respected neutral. This supports approval of the Settlement. See, e.g., Kullar v. Foot Locker Retail, Inc., 168 Cal. App. 4th 116, 129 (2008) (explaining that "[t]he court undoubtedly should give considerable weight to . . . the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct," and that "an agreement reached under these circumstances presumably will be fair").

2. Individual Settlement Shares Will Provide Complete Relief.

Again, assuming that the Court approves the requested deductions, the Net Settlement Amount is $607,166.67. Accordingly, the average Individual Settlement Payment is $832.88. This amount exceeds what the average Class Member is owed in terms of direct damages for understaffing-based missed breaks and the employer-address wage-statement violation ***combined***. This supports approval.

3. The Settlement Properly Accounts for the Action's Strengths and Weaknesses.

Plaintiff recognizes that the alleged violations expose Defendant to liability on top of the underlying missed-break amounts. However, ***all*** of Plaintiff's claims are arguably subject to dispositive defenses. For instance, recall that twenty-four-hour residential care facilities are permitted to require employees to remain on site during rest periods "if the employee is in sole charge of residents." 8 Cal. Code Regs. § 11050 subsec. 12(C). Under Plaintiff's on-site rest-period theory, all day-shift employees are entitled to rest-break damages for each and every day worked because, according to Defendant's own scheduling policies, day-shift employees were not the only ones working at any given facility, meaning that they were not "in sole charge of residents." However, the problem Plaintiff faces is that, although multiple employees may have been at the same facility at any given moment, that does not necessarily mean that each employee was not in "sole charge" of the specific residents assigned to him or her. (Zelenski Decl. ¶ 24.) According to Defendant, any given day-shift employee at any given facility may have been in sole charge of a ***subset*** of the facility's residents, which arguably places all such employees within the wage order's rest-period exemption. (Zelenski Decl. ¶ 24.)

Conceptually, virtually the same defense applies to Plaintiff's on-site meal-period theory. Again, "employees of 24 hour residential care facilities for the elderly, blind, or developmentally disabled individuals" are permitted to require employees to remain on call during meal breaks if they are "in sole

charge of the resident(s) and, on the day shift, the employer provides a meal at no charge to the employee." 8 Cal. Code Regs. § 11050 subsec. 11(E). Here, Plaintiff's theory is that all NOC-shift employees were required, by Defendant's own policies, to remain on site during their meal breaks. Because Defendant scheduled, under its own further policies, only one NOC-shift employee per facility, and because all such employees were never provided any free meals from Defendant (on account of the fact that Defendant had a policy of never providing free meals to employees in the first place), all NOC-shift employees are entitled to meal-break damages for each and every day worked. The problem here is that, according to Defendant, the wage order's free-meal exception ***only*** applies to ***day-shift employees***. (Zelenski Decl. ¶ 24.) In other words, Defendant contends that, if an employee is working a NOC shift, he or she can be required to remain on site during a meal break so long as he or she is in sole charge of the residents, regardless of whether any free meals are provided, since the free-meal requirement is limited to day shifts ***by the regulation's express language***. (Zelenski Decl. ¶ 24.) This arguably places all NOC-shift employees within the wage order's meal-period exemption. In any event, there is ***no case authority*** reflecting whose interpretation—Plaintiff's or Defendant's—of the wage order is correct. (Zelenski Decl. ¶ 24.)

Plaintiff's waiting-time and wage-statement claims under sections 203 and 226 of the Labor Code are also potentially subject to dispositive defenses. Of course, if Plaintiff's underlying meal-and-rest-period claims fail, her derivative waiting-time and wage-statement claims necessarily fail. Regardless, even if the underlying meal-and-rest-period claims were successful, that does not automatically mean that she is entitled to recover penalties ***wholly derivative*** of those underlying claims. See Naranjo v. Spectrum Sec. Servs., Inc., 40 Cal. App. 5th 444, 474 (2019) ("hold[ing] that section 226.7 actions do not entitle employees to pursue derivative penalties in sections 203 and 226"), review granted, 455 P.3d 704 (2020). And, even if those underlying claims are correct, the Class still must demonstrate that they suffered "injuries" on account of the wage-statement violations. Cal. Lab. Code § 226(e)(1). Not only may this be fatal to Plaintiff's derivative wage-statement claim, it also may eliminate all relief for her non-derivative contention that Defendant failed to list its complete address on its pay stubs, given that the LWDA has concluded that all affected employees have received "cures."

Finally, the potential PAGA civil penalties must be evaluated, for the purpose of settlement, in

light of ***all*** of the above defenses. As explained above, based on the data provided by Defendant, Class Counsel calculates the total potential civil-penalty liability to equal approximately $370,650.00 (= $273,850.00 in potential rest-period civil penalties + $96,800.00 in potential meal-period civil penalties). That calculation, however, assumes that Defendant will lose on ***all*** of its defenses. Furthermore, even if Plaintiff were to prevail on her underlying missed-breaks theories, she ultimately may not be able to recover civil penalties on top of her underlying statutory damages. See, e.g., Tran v. Companion Med Trans, LLC, No. SA CV 14-1418-DOC (ANx), 2016 WL 8925146, at *9 (C.D. Cal. Jan. 25, 2016) (explaining that an award of civil penalties on top of statutory damages would result in a "duplicative recovery"); Jones v. Spherion Staffing LLC, No. LA CV11-06462 JAK (JCx), 2012 WL 3264081, at *9 (C.D. Cal. Aug. 7, 2012) (explaining that a plaintiff "cannot advance claims" for strictly derivative wage-statement and waiting-time penalties, since to do so "would result in an improper, multiple recovery"). In any event, courts have discretion to "award a lesser [civil-penalty] amount" if "to do otherwise would result in an award that is unjust, arbitrary, or confiscatory." Cal. Lab. Code § 2699(e)(2). Here, again, the PAGA Payment contemplated by the Settlement ***exceeds*** the civil-penalty amounts approved in other wage-and-hour settlements. See, e.g., Turner, 2018 WL 6977474, at *1, 7; Emmons, 2017 WL 749018, at *5, 9. This supports approval of the Settlement.

4. Sufficient Investigation Allowed for an Informed Decision to Settle.

The law is clear that costly discovery need not be conducted before a class-wide settlement is reached. 7-Eleven Owners for Fair Franchising v. Southland Corp., 85 Cal. App. 4th 1135 (2000). Having said that, Class Counsel—as detailed above—has analyzed comprehensive policies and payroll records, and was able to reasonably estimate overall damages during the roughly year-and-a-half-long settlement negotiations. This supports approval of the Settlement.

5. Class Counsel Is Experienced and Competent.

Class Counsel, who specializes in wage-and-hour litigation, believes that the Settlement is an excellent result. (Zelenski Decl. ¶¶ 3–4; Greenstone Decl. ¶¶ 6–9.) This supports approval.

IV. Conclusion.

For the foregoing reasons, the Court should certify the Class and grant preliminary approval of the $1.0 million Settlement.

Dated: May 12, 2021

ZELENSKI LAW, PC
GREENSTONE LAW APC

David Zelenski

Abigail A. Zelenski, David Zelenski
Mark S. Greenstone
Attorneys for Plaintiff

PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of eighteen years and am not a party to the within action; and my business address is 595 Lincoln Avenue, Suite 200, Pasadena, California 91103.

On **May** 12**, 2021**, I served the document(s) described as **PLAINTIFF DANIELLE HOWELL'S NOTICE OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS-ACTION SETTLEMENT AND FOR CONDITIONAL CLASS CERTIFICATION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the party(ies) in this action by delivering a true copy(ies) addressed as follows:

Colin P. Calvert
ccalvert@fisherphillips.com
Sarah G. Bennett
sbennett@fisherphillips.com
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614

☐ **BY U.S. MAIL:** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, an envelope(s) containing the document(s) would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Los Angeles, California in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if the postal-cancellation date or postage-meter date is more than one day after the date of deposit for mailing.

☐ **BY OVERNIGHT DELIVERY OR EXPRESS MAIL:** I enclosed the document(s) in an envelope(s) or package(s) allowed by an overnight-delivery carrier and/or by the U.S. Post Office for express mail, and addressed to the person(s) at the address(es) above. I placed the envelope(s) or package(s) for collection and overnight delivery or express mail at an office or a regularly utilized drop-box of the overnight-delivery carrier, or I dropped it off at the U.S. Post Office.

☐ **BY HAND DELIVERY:** I caused the document(s) to be delivered by hand to at least one of the individuals listed above.

XXX **BY ELECTRONIC SERVICE:** I caused the document(s) to be delivered by e-mail to the individuals listed above, and, to my knowledge, the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed on **May** 12**, 2021**, at Los Angeles, California.

David Zelenski
David Zelenski