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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 FINAL 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, (3) Declaration of Danielle Howell in Support of Plaintiff's Unopposed Motion, and (4) Declaration of Kevin Lee in Support of Plaintiff's Unopposed Motion

Assigned to the Hon. Patrick Broderick

Date: November 10, 2021
Time: 3:00 p.m.
Place: Sonoma County Superior Court, Hall of Justice, Courtroom 16, 600 Administration Drive, Santa Rosa, California 95403

NOTICE OF MOTION

PLEASE TAKE NOTICE that, on November 10, 2021, at 3:00 p.m., 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 Settlement Class defined in, and final 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, Danielle Howell, and Kevin Lee; 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: October 1, 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 Motions for Final Approval, Fees, Costs, and Service Award.

[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 seeks certification of the Settlement 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

Table of Contents

I. Introduction 1

II. Overview of the Relevant Procedural History, Plaintiff's Claims, and Damages 3

A. The Parties Began Actively Litigating this Case in 2019 3

B. Plaintiff's Claims and Theories 5

1. Plaintiff's On-Site Rest-Period Theory 5

2. Plaintiff's On-Site Meal-Period Theory 6

3. Plaintiff's Alternative Meal-and-Rest-Break Theory 7

4. Plaintiff's Wage-Statement Claim 8

5. Plaintiff's Waiting-Time Claim 8

6. Plaintiff's Civil-Penalty Claim 9

C. Plaintiff's Damage Analysis, and the Court's Preliminary Approval of the Settlement 9

D. Summary of the Settlement's Terms 10

1. The Definition of the Class 10

2. The Relief Provided by the Settlement 10

3. The Settlement's Release 13

E. Summary of the Case Following Preliminary Approval 13

III. The Court's Conditional Certification of the Class Should Be Made Final 15

IV. The Settlement Is More than Fair, Reasonable, and Adequate 17

A. Settlement Negotiations Were Conducted at Arm's Length 17

B. Individual Settlement Shares Will Provide Arguably Complete Relief 18

C. The Settlement Properly Accounts for the Action's Strengths and Weaknesses 18

D. Sufficient Investigation Allowed for an Informed Decision to Settle 20

E. Class Counsel Is Experienced and Competent 20

F. The Response to the Settlement Has Been Overwhelmingly Positive 20

V. Conclusion 20

Table of Authorities

Cases

7-Eleven Owners for Fair Franchising v. Southland Corp.
85 Cal. App. 4th 1135 (2000) 20

Alberts v. Aurora Behavioral Health Care
241 Cal. App. 4th 388 (2015) 16

Augustus v. ABM Sec. Servs., Inc.
2 Cal. 5th 257 (2016) 5, 7

Cal Pak Delivery v. United Parcel Serv., Inc.
52 Cal. App. 4th 1 (1997) 17

Cellphone Fee Termination Cases
186 Cal. App. 4th 1380 (2010) 15

Chavez v. Netflix, Inc.
162 Cal. App. 4th 43 (2008) 11

Clark v. Am. Residential Servs. LLC
175 Cal. App. 4th 785 (2009) 17

Class Pls. v. City of Seattle
955 F.2d 1268 (9th Cir. 1992) 13

Emmons v. Quest Diagnostics Clinical Labs., Inc.
2017 WL 749018 (E.D. Cal. Feb. 27, 2017) 12, 20

Hernandez v. Restoration Hardware, Inc.
4 Cal. 5th 260 (2018) 11, 16

In re Microsoft I–V Cases
135 Cal. App. 4th 706 (2006) 17

Iskanian v. CLS Transp. Los Angeles, LLC
59 Cal. 4th 348 (2014) 9

Jones v. Farmers Ins. Exch.
221 Cal. App. 4th 986 (2013) 16

Jones v. Spherion Staffing LLC
2012 WL 3264081 (C.D. Cal. Aug. 7, 2012) 20

Kullar v. Foot Locker Retail, Inc.
168 Cal. App. 4th 116 (2008) 18

Laffitte v. Robert Half Int'l Inc.
1 Cal. 5th 480 (2016) 11

Lubin v. The Wackenhut Corp.
5 Cal. App. 5th 926 (2016) 15

Martinez v. Joe's Crab Shack Holdings
231 Cal. App. 4th 362 (2014) 16

Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles
186 Cal. App. 4th 399 (2010) 11, 12

Naranjo v. Spectrum Sec. Servs., Inc.
40 Cal. App. 5th 444 (2019) 19

Phillips Petroleum Co. v. Shutts
472 U.S. 797 (1985) 15

Richmond v. Dart Indus., Inc.
29 Cal. 3d 462 (1981) 17

Rose v. City of Howard
126 Cal. App. 3d 926 (1981) 15

Sav-On Drug Stores, Inc. v. Super. Ct.
34 Cal. 4th 319 16

Spann v. J.C. Penney Corp.
314 F.R.D. 312 (C.D. Cal. Jan. 25, 2016) 13

Tran v. Companion Med Trans, LLC
2016 WL 8925146 (C.D. Cal. Jan. 25, 2016) 20

Turner v. Motel 6 Operating L.P.
2018 WL 6977474 (C.D. Cal. Nov. 6, 2018) 12, 20

Wal-Mart Stores, Inc. v. Dukes
564 U.S. 338 (2011) 16

Wershba v. Apple Comput., Inc.
91 Cal. App. 4th 224 (2001) 11, 16

Williams v. Super. Ct.
221 Cal. App. 4th 1353 (2013) 16

Statutes

Cal. Civ. Proc. Code § 382 15

Cal. Civ. Proc. Code § 1542 13

Cal. Lab. Code § 201 9

Cal. Lab. Code § 226 ..... 8, 10, 19

Cal. Lab. Code § 226.7 5

Cal. Lab. Code § 512 7

Cal. Lab. Code § 2699 ..... 4, 9, 11, 20

Rules

Cal. R. Ct. 3.766..... 14

Cal. R. Ct. 3.769..... 14

Regulations

8 Cal. Code Regs. § 11050..... 5, 6, 7, 18

I. Introduction.

On July 9, 2021, the Court preliminarily approved a Settlement reached in the within wage-and-hour class action. The Settlement represents an outstanding result: an ***all-cash***, ***non-reversionary***, ***$1.0 million*** Gross Settlement Amount established for the benefit of 720 Class Members.[3] As of the filing of this Motion, ***not a single Class Member has objected to, and only two Class Members have opted out of, the Settlement***.[4] Under the Settlement, Class Members were ***not required to submit forms*** in order to claim their respective Individual Settlement Shares; in other words, Class Members have not needed to "do" anything in order to share in the $1.0 million common fund, other than not exclude themselves. Given the ***99.72%*** participation rate, as well as the fact that the Settlement calls for Defendant to pay ***all employer-side taxes separately***—i.e., on top of the Gross Settlement Amount—the Settlement will result in an average Individual Settlement Share to Settlement Class Members of approximately $857.18—a striking amount in light of the industry-specific, arguably dispositive defenses raised by Defendant.

As explained in more detail below, Defendant owns and operates twenty-four-hour residential-care facilities in California for the developmentally disabled and the elderly. Plaintiff worked for Defendant as a non-exempt employee. She alleges four underlying liability theories against Defendant:

1. Defendant had a policy requiring Class Members to remain at the worksite 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 derivative statutory damages.

2. Defendant had a policy requiring Class Members to remain at the worksite 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 derivative statutory damages.

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[3] In the Motion for Preliminary Approval, Plaintiff estimated that there were 729 Class Members, based on data provided by Defendant. See, e.g., Mem. of P. & A. in Supp. of Pl.'s Mot. for Preliminary Approval of Class-Action Settlement & for Conditional Class Certification ("Mot. for Preliminary Approval") at 1:3. Upon further review of the Class Data, there are, in fact, only 720 Class Members. Decl. of David Zelenski in Supp. of Pl.'s Unopposed Mots. for Final Approval, Fees, Costs, and Service Award ("Zelenski Decl.") ¶¶ 20, 28–29.

[4] The Settlement contemplates a sixty-day period for Class Members to submit objections and requests for exclusion to the Settlement, running from the date that the Notice was first distributed to the Class. See Zelenski Decl. Ex. 1 at §§ 19, 37–38. As explained in more detail below, the Settlement Administrator first distributed the Notice on August 16, 2021. Decl. of Kevin Lee in Supp. of Pl.'s Unopposed Mots. for Final Approval, Fees, Costs, and Service Award ("Lee Decl.") ¶ 5. The deadline for submitting objections and requests for exclusion therefore closes on October 15, 2021, meaning that additional submissions may still come in. In advance of the November 10, 2021, hearing, Plaintiff will file a supplemental declaration with updated statistics.

3. Even if Defendant did not have a policy requiring Class Members to remain on site during rest and meal breaks, Defendant understaffed its facilities, making it difficult for Class Members to take timely, complete breaks. Under this theory, Class Members 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 derivative statutory damages.

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

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 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.

In addition, 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, among others, the $1.0 million Gross Settlement Amount is an excellent result. After deducting from the $1.0 million Gross Settlement Amount (a) Class Counsel's attorney's fees and costs, (b) Settlement-Administration Expenses, payable to the Settlement Administrator for its services in distributing the Notice to the Class and for otherwise effectuating the terms of the Settlement, (c) a Service Award to the Class Representative, in recognition of her services in securing the benefits of the Settlement, and (d) the LWDA's share under the California Labor Code Private Attorneys General Act ("PAGA") of a civil-penalty PAGA Payment—all of which are subject to the Court's approval—the remaining Net Settlement Amount will be distributed to the Settlement Class. Assuming that the Court awards Class Counsel the requested fees of $333,333.33 and requested costs of $6,710.06 (which is ***less*** than the $15,000.00 in costs estimated in the Motion for Preliminary Approval), Settlement-Administration Expenses of $12,000.00 to the Settlement Administrator, a Service Award of

$10,000.00 to Plaintiff, and $22,500.00 to the LWDA for its share of the PAGA Payment, a total of $615,456.61 will remain for distribution to the Settlement Class. Since only two Class Members have requested exclusion from the Settlement, there are a total of 718 Settlement Class Members, resulting in an average Individual Settlement Share of $857.18 (= $615,456.61 ÷ 718 Settlement Class Members).

The size of Settlement Class Members' Individual Settlement Shares strongly supports approval. 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 understaffing theory) to approximately $4,186,683.60 as an upper bound (under the on-site theories),[5] while recoverable wage-statement damages for the employer-address violation equal approximately $330,750.00. Thus, while the ***net*** recovery of $857.18 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.

As also detailed below, the Settlement Administrator delivered the Notice of the Settlement to the Class, as well as established a website where any Class Member could download a copy of the Notice and review pertinent case filings. Again, in response to these outreach efforts, there have been ***no*** objections and only ***two*** requests for exclusion, indicating an overwhelmingly positive response by the Class to the Settlement. In light of the risks of continued litigation, this is a terrific outcome, and the Settlement should be finally approved as fair, reasonable, and adequate.

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 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. Id. ¶¶ 2, 9.

[5] 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.

According to Plaintiff, 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 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. Zelenski Decl. ¶ 6 & Ex. 2. The purpose of the notice was to comply with the procedural requirements set forth in Labor Code section 2698 *et seq.* for PAGA claims. 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. Id. ¶ 6.

In the meantime, Defendant filed its own notice with the LWDA, arguing that it had cured the alleged employer-address wage-statement violation.[6] Id. ¶ 7 & Ex. 3. This, in turn, set off 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. Id. ¶ 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 initially provided wage statements had failed to list Defendant's complete address.[7] Id. ¶ 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. Id. ¶ 8 & Ex. 5. Under those agreements, all relevant statutes of limitations and filing deadlines were tolled starting January 23, 2020.[8] Id. In March 2020, the Parties agreed to schedule a formal mediation with Todd

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[6] 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 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).

[7] 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 secured for the Class, ***on top of*** the $1.0 million Gross Settlement Amount.

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

Smith, Esq., a seasoned labor and employment mediator, to help facilitate their settlement discussions. Id. ¶ 8.

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, hire date, and, if applicable, termination date; and a computerized random sampling of employees' timekeeping and payroll data. Id. ¶ 9. As explained below, Plaintiff contends that this information helped corroborate the rest-break and meal-break theories underlying Plaintiff's alleged causes of action.

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—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 (3½) 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. Id. ¶ 10. Plaintiff's theory 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. Id. ¶ 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 and 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 contains 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. Id. ¶ 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. Id. ¶ 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—even on day shifts.

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, Defendant is still liable for meal-break and rest-break violations under an understaffing theory. Compl. ¶ 16. Specifically, 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. Id.

As to this theory, Defendant, provided Plaintiff with 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 Class Counsel to estimate the total number of missed, late, or shortened meal periods experienced by the Class. Id.

4. Plaintiff's Wage-Statement Claim.

As alleged in the Complaint, Defendant's failure to provide proper meal and rest periods to 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 each 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 by the employee. Cal. Lab. Code § 226(a). If employees were on call during, 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, each such employee "is [therefore] 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, as alleged by Plaintiff, have not received all of their meal-period and rest-period compensation, 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)).

C. Plaintiff's Damage Analysis, and the Court's Preliminary Approval of the Settlement.

Based on the materials provided by Defendant, 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

(= $3,239,979.60 + $946,704.00 + $1,496,000.00 + $1,793,088.00 + $273,850.00 + $96,800.00).[9]

Armed with a damage analysis, Class Counsel attended a full-day mediation session on July 10, 2020. Id. ¶ 20. The case did not settle during the session, but the mediator facilitated discussions between the Parties over the next month-and-a-half. Id. Ultimately, the Parties accepted the mediator's $1.0 million settlement proposal, which was memorialized in a short-form Memorandum of Understanding and, subsequently, in a long-form Settlement Agreement. Id. The Court preliminarily approved the Settlement Agreement on July 9, 2021. See generally July 9, 2021, Minute Order ("Preliminary Approval Order"). Plaintiff now seeks final approval of the Settlement Agreement.

D. Summary of the Settlement's Terms.

Again, the Settlement establishes a $1.0 million Gross Settlement Amount for the benefit of the Settlement Class. 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 theory even if all of the Settlement's deductions are approved in full. The Settlement therefore should be finally approved.

1. The Definition of the Class.

The Settlement 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," other than those who opt out. Zelenski Decl. Ex. 1 at §§ 1, 22. There are 718 Settlement Class Members. Id. ¶¶ 20, 28–29; Lee Decl. ¶¶ 3, 10, 13.

2. The Relief Provided by the Settlement.

For the benefit of the Settlement Class, the Settlement requires Defendant to establish a $1.0 million Gross Settlement Amount, id. Ex. 1 at §§ 10, 29, which translates to an average gross recovery for the Settlement Class of approximately $1,392.76 (= $1.0 million ÷ 718 Settlement 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

[9] 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 potential damage amount for the derivative wage-statement violations, since derivative wage-statement damages hit the statutory cap.

(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 at §§ 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. Plaintiff has requested $333,333.33 in attorney's fees and $6,710.06 in costs. See generally Pl.'s Unopposed Mot. for Attorneys' Fees, Costs, and Class Representative Service Award ("Mot. for Fees"). Although the reasonableness of the requested fees and costs is detailed in a separately filed Motion, Plaintiff here submits, briefly, that these amounts are reasonable judged relative to the size of awards in other class actions, as well as to the outstanding results of this Settlement in particular, where the average Individual Settlement Share arguably exceeds the unpaid-wage damages. 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"). As also explained in the accompanying Motion, courts routinely apply upward-adjusting multipliers to class counsel's lodestar when approving fee requests, often "rang[ing] from 2 to 4 or even higher." Wershba v. Apple Comput., Inc., 91 Cal. App. 4th 224, 255 (2001), disapproved on other grounds by Hernandez v. Restoration Hardware, Inc., 4 Cal. 5th 260 (2018). Here, however, Class Counsel's lodestar has ***not*** been adjusted upward by ***any*** multiplier. See Mot. for Fees § III.B.2. In any event, no one has objected to the contemplated fees and costs. Lee Decl. ¶ 11.

There also have been no objections to reimbursing the Settlement Administrator for its

Settlement-Administration Expenses, to providing Plaintiff with a Service Award, or to the LWDA's share of the PAGA Payment. Id. ¶ 11. Settlement-Administration Expenses are $12,000.00, id. ¶¶ 14, 17, the contemplated Service Award is $10,000.00, and the LWDA's share of the PAGA Payment is $22,500.00, Zelenski Decl. Ex. 1 at § 29. These amounts comport with what courts typically approve in other wage-and-hour cases. 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); Munoz, 186 Cal. App. 4th at 412 (disapproving incentive-award multipliers that result in payments of "30 to 44" times the amounts received by unnamed class members).

After deducting these totals from the Gross Settlement Amount, the Net Settlement Amount available for distribution to the Settlement Class comes to $615,456.61. Under the Settlement, the Net Settlement Amount will be distributed pro rata to those Class Members who did 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 Settlement 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. Id. Ex. 1 at § 26. Assuming that all contemplated deductions are approved in full, the average Individual Settlement Share equals approximately $857.18 (= $615,456.61 ÷ 718 Settlement 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. Id. 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 residential-care 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. Id. Ex. 1 at § 29. However, to protect the

Settlement Class during the funding period, the second and third installments of the Gross Settlement Amount have been ***personally guaranteed*** by Defendant's principals. Id.

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 "could have been pled in the Complaint[] ***based on the factual allegations***" therein, on the other hand. Id. Ex. 1 at §§ 18, 45 (emphasis supplied). 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). Furthermore, although Plaintiff herself has agreed to waive section 1542 of the California Code of Civil Procedure, ***none*** of the Class Members are doing so. Zelenski Decl. Ex. 1 at §§ 45–46.

E. Summary of the Case Following Preliminary Approval.

Again, the Court preliminarily approved the Settlement on July 9, 2021. In connection therewith, the Court approved a template form of Notice for delivery to the Class, and directed the Settlement Administrator—Phoenix Settlement Administrators ("Phoenix")—to effect delivery of the Notice following the procedures outlined in the Settlement. Preliminary Approval Order at 4–5. As set forth in the Court's Order, "[t]he proposed [N]otice . . . is sufficient," and "[t]he proposed means of providing [the N]otice appear[] to provide the best possible means for giving actual notice to the putative [C]lass." Id. at 4.

Further to the Court's Order, on August 16, 2021, Phoenix mailed the Notice, in both English and Spanish, to the Class after obtaining from Defendant the Class Data—consisting of contact information compiled from Defendant's employment records—and then running each address through the U.S. Postal Service's National Change of Address database.[10] Lee Decl. ¶¶ 4–5; Zelenski Decl. Ex.

[10] More specifically, Phoenix mailed the Notice on August 16, 2021, to 719 Class Members, which was the Class Member count as of that date. Lee Decl. ¶ 5. On September 14, 2021, Defendant's Counsel advised Class Counsel that there was an individual who had inadvertently been excluded from the Class Data provided by Defendant to Phoenix. Zelenski Decl. ¶ 29. Defendant's Counsel advised that this individual had inadvertently been excluded because the Class consists only of individuals who, during the Settlement Period, were classified at any time as non-exempt, and because the excluded individual had been reclassified during the Settlement Period from non-exempt to exempt. Id. Phoenix

1 at §§ 3, 34–35. That same day, Phoenix e-mailed the Notice to all Class Members for whom Phoenix had e-mail addresses. Lee Decl. ¶ 5; Zelenski Decl. Ex. 1 at § 35. Phoenix also went live with a website where Class Members could review relevant Settlement materials, including the Settlement Agreement and all of the papers filed in support of the Settlement, and where Class Members could download a copy of the Notice. Lee Decl. ¶ 5; Zelenski Decl. Ex. 1 at § 35. Since that time, Phoenix has maintained a toll-free telephone number for Class Members to call with any questions, as well as a P.O. box and e-mail address to which Class Members could submit any communications concerning the Settlement, including objections and requests for exclusion. Lee Decl. ¶ 5. For Notices mailed by Phoenix that were returned as undeliverable with forwarding addresses, Phoenix re-mailed Notices to the forwarding addresses. Id. ¶ 8. For Notices that were returned as undeliverable without forwarding addresses, Phoenix conducted a locator trace using a comprehensive databases for lawful skip-tracing. See id.

Following the above protocols, only forty-four Notices were returned to Phoenix as undeliverable without forwarding addresses, and, of those, Phoenix could not locate updated addresses for only one, meaning that Phoenix successfully mailed Notices to 99.86% of the Class. See id. ¶¶ 8–9. This direct dissemination of Notice, coupled with both the indirect notice provided by the Settlement website and the comprehensive information set forth in the Notice itself, constitutes the best notice practicable under the circumstances. A review of the Notice demonstrates that it comports with rules 3.766 and 3.769 of the California Rules of Court—i.e., the rules applicable to class-wide settlement notifications—by explaining Plaintiff's contentions in the case and Defendant's denials; describing the procedure and deadline 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. Id. Ex. A. The Notice also included an estimate of the Class Member's Individual Settlement Share, as well as a description of how that amount was calculated. Id. In addition, the Notice explained that Class Members did not need to submit claim forms in order to receive their respective Individual Settlement Shares—i.e., this is not a settlement where Class Members had to affirmatively do something in response to the Notice in order to participate. Id. Put differently still, this

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delivered the Notice to the inadvertently excluded individual by both first-class mail and e-mail on September 14, 2021. Id.; Lee Decl. ¶ 6.

is not a claims-made settlement; nor is this a reversionary settlement where unclaimed amounts end up reverting to Defendant. Zelenski Decl. Ex. 1 at §§ 10, 29. Assuming that the Settlement is finally approved, this means that, so long as a Class Member did not exclude himself or herself from the Settlement, he or she will automatically be mailed a check for his or 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 was 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). In response to Phoenix's outreach efforts, only two requests for exclusion have been submitted, and no one has submitted an objection. Lee Decl. ¶¶ 10–11.

III. The Court's Conditional Certification of the Class Should Be Made Final.

Pursuant to section 382 of the California Code of Civil Procedure, the Court already has found that the Class should be conditionally certified under the Settlement. Preliminary Approval Order at 3–4. Since that time, no new facts have arisen to change that finding. The Court's conditional certification therefore should be made final as to the Settlement Class.

To recap, there are 720 Class Members, only two of whom requested exclusion, meaning that there are 718 Settlement Class Members. All of these individuals were identified through Defendant's internal employment records, meaning that ascertainability and numerosity exist. Lubin v. The Wackenhut Corp., 5 Cal. App. 5th 926, 951 (2016) (explaining that class members are "ascertainable" when "they may be readily identified without reasonable expense or time," for example, by reference "employer[] records"); Rose v. City of Howard, 126 Cal. App. 3d 926, 934 (1981) (holding that a total of forty-two class members is sufficient for numerosity purposes).

Similarly, overarching questions of law or fact predominate 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 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 Settlement 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 everyone: Did Defendant's wage-statement template omit Defendant's complete address? The only "individual" or "non-common" questions concern the specific amounts to which each Settlement Class Member is entitled—and, as a general rule, individualized damage amounts are not a bar to certification. See Sav-On Drug Stores, Inc. v. Super. Ct., 34 Cal. 4th 319, 334. Common questions thus predominate.

In addition, 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) (quotation marks omitted). The rationale is that the representative should have claims similar enough to those of the class so that he or she has a motive to litigate on the class' behalf. See Wershba, 91 Cal. App. 4th at 238, disapproved on other grounds by Hernandez, 4 Cal. 5th at 269. Here, Plaintiff clearly has such a motive, since all of her claims arise from the same course of conduct to which all Settlement Class Members were subjected.

Finally, Plaintiff has adequately represented the Settlement Class. Adequacy considers whether a class representative 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 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). Thus far, Plaintiff and Class Counsel have competently discharged their duties and have no apparent conflicts of interest. They therefore satisfy the adequacy requirement.

Since all of the requirements are met, the Court should "finalize" its earlier Order by certifying the Settlement Class. The Court's conditional appointment of Greenstone Law APC and Zelenski Law, PC as Class Counsel, as well as of Danielle Howell as the Class Representative, see Preliminary Approval Order at 3–4, also should be made final.

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

In connection with conditionally certifying the Class, the Court has already found that the Settlement falls within the range of possible approval and therefore meets the requirements for preliminary approval. Together with finally certifying the Settlement Class, the Court should finally approve the Settlement.

As to final approval, a trial court "has 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.

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, ***all*** of the factors support approval of the Settlement.

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

As detailed above, the Settlement was entered into only after Class Counsel had undertaken a comprehensive damage analysis based on Defendant's own payroll records—and then only following a full-day mediation session before 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," and that "an agreement reached under these circumstances presumably will be fair to all concerned").

B. Individual Settlement Shares Will Provide Arguably Complete Relief.

Again, assuming that the Court approves the requested deductions, the Net Settlement Amount is $615,456.61. Accordingly, the average Individual Settlement Share is $857.18. This amount exceeds what the average Settlement 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.

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

Plaintiff recognizes that, in this action, her allegations extend beyond claims of understaffing and the failure to list a complete address on wage statements. However, ***all*** of those further allegations are arguably subject to dispositive defenses. Again, 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, even though multiple employees may have been at the same facility at any given moment, that does not necessarily mean that each such 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 may place all such employees within the wage order's rest-period exemption. Id.

Conceptually, an analogous 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 during their day shifts, all NOC-shift employees are entitled to meal-break damages for each and every day worked. However, according to Defendant, the wage order's free-meal exception ***only*** applies to ***day-shift employees***. Zelenski Decl. ¶ 24. Defendant contends, in other words, 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, since the free-meal requirement is limited to day shifts ***by the regulation's express language***. Id. This may place all NOC-shift employees within the wage order's meal-period exemption. In any event, there is ***no case authority*** reflecting whose interpretation of the wage order—Plaintiff's or Defendant's—is correct. Id.

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 Plaintiff 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 have merit, Settlement Class Members 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 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 PAGA amounts approved in other settlements. See, e.g., Turner, 2018 WL 6977474, at *1, 7; Emmons, 2017 WL 749018, at *5, 9.

D. 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—analyzed comprehensive 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.

E. Class Counsel Is Experienced and Competent.

Class Counsel specializes in wage-and-hour litigation and believes that the Settlement is an excellent result. Zelenski Decl. ¶¶ 3–4, 21–25; Greenstone Decl. ¶¶ 2–8. This supports final approval.

F. The Response to the Settlement Has Been Overwhelmingly Positive.

Again, no one has objected to the Settlement, and only two Class Members have opted out. Likewise, although the LWDA received a copy of the Settlement Agreement four-and-a-half months ago, the LWDA has not voiced any objections or concerns whatsoever. Zelenski Decl. ¶ 27 & Ex. 8. The lack of objections, coupled with the low opt-our rate, reflects a positive response to the Settlement.

V. Conclusion.

The Court should certify the Settlement Class and grant final approval of the Settlement.

/ / / / /

Dated: October 1, 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 201 North Brand Boulevard, Suite 200, Glendale, California 91203.

On **October 1, 2021**, I served the document(s) described as **PLAINTIFF DANIELLE HOWELL'S NOTICE OF UNOPPOSED MOTION FOR FINAL 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 **October 1, 2021**, at Los Angeles, California.

David Zelenski

David Zelenski