

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

***MELISSA MOSS V. SARES-REGIS OPERATING COMPANY***

Orange County Superior Court, Case No. 30-2021-02101041-CU-OE-CXC

*A court authorized this notice. This is not a solicitation from a lawyer.*

**PLEASE READ THIS NOTICE CAREFULLY**

**THIS PROPOSED SETTLEMENT MAY EFFECT YOUR LEGAL RIGHTS**

- A proposed class action settlement (“Settlement”) has been reached in the lawsuit titled *Melissa Moss v. Sares-Regis Operating Company*, Orange County Superior Court Case No. 30-2021-01201041-CU-OE-CXC (the “Action”), by Plaintiff Melissa Moss (“Plaintiff”) and Defendant Sares-Regis Operating Company, LP (“SRG” or “Defendant”). The Settlement has been reached on behalf of Plaintiff and the “Class,” defined as: all individuals who worked for SRG as an hourly or non-exempt employee in the State of California from May 7, 2019 to July 8, 2021 (the “Class Period”), and who either (a) earned non-discretionary incentive wages and received a meal or rest period premium during the same workweek at any time during the Class Period (“Meal/Rest Class Members”); or (b) who were paid final wages (upon separation of employment) via a paycard at any time during the Class Period (“Paycard Class Members”).
- You have received this notice because SRG’s records indicate that you are a member of the Class (you are either a Meal/Rest Class Member or a Paycard Class Member, or both).

**OVERVIEW OF YOUR RIGHTS AND OPTIONS UNDER THE SETTLEMENT**

<b>DO NOTHING</b>	If you do nothing (i.e., if you do not submit the enclosed Request for Exclusion form), and the Court grants final approval of the Settlement, you will participate in the Settlement and you will be entitled to receive your proportional share of the Settlement. You will not need to submit a claim to receive an individual settlement payment. You will be bound by the Settlement, including the release of claims described below.
<b>EXCLUDE YOURSELF (“OPT OUT”) FROM THE SETTLEMENT</b>	You may request to be excluded from the class settlement by mailing the enclosed Request for Exclusion to the Claims Administrator, in conformity with the instructions in section 13 of this notice. Any Request for Exclusion must be postmarked on or before March 6, 2023. If you do submit a Request for Exclusion, you will not receive a payment from the class settlement, but you will keep any rights to sue Defendant separately for the same legal claims made in this lawsuit. However, you may not request exclusion from the settlement of the PAGA claim. <b>Important: You cannot ask to be excluded <u>and</u> still get a class settlement payment.</b>
<b>OBJECT TO THE SETTLEMENT</b>	If you wish to comment on or object to the Settlement, you may submit a written objection to the Claims Administrator by mail on or before March 6, 2023 or you may appear at the Final Approval Hearing and give an oral objection. A written objection must comply with the instructions in section 15, below. <b>Important: If you submit a Request for Exclusion, you cannot object to the Settlement.</b>

**OVERVIEW OF THE ACTION AND THE SETTLEMENT**

**1. What is the Action about?**

The Action involves claims under California wage and hour laws. Plaintiff is a former employee of SRG. Plaintiff alleges that SRG violated the California Labor Code and California Business and Professions Code with respect to herself and the Class Members by, *inter alia*, failing to properly calculate meal and rest period premium payments, and by improperly paying departing employees via paycards.

Through the Action, Plaintiff seeks to recover additional amounts that Plaintiff alleges should have been included in meal and rest period premium calculations, statutory penalties, damages, and other related relief. Plaintiff also asserts a representative Private Attorneys General Act of 2004, California Labor Code section 2698, et seq. (“PAGA”) claim predicated on SRG’s alleged violations of the Labor Code. Plaintiff seeks to recover PAGA penalties on behalf of employees and the State of California.

SRG denies all liability in the Action and denies that a class action is proper for any purpose other than the Settlement. Plaintiff and her attorneys (“Class Counsel”) believe that the Settlement is fair, adequate, reasonable, and is in the best interest of the Class.

## 2. Why is this Action a class action?

In a class action, one or more people called the “class representatives” (in this case, Plaintiff Melissa Moss) sue on behalf of people who may have similar claims. Collectively, all of these people with similar claims are referred to as a “class,” or “class members.” In a class action, one court resolves the issues for all class members, except for those who opt out of, or request exclusion from, the class.

## 3. Who is a Class Member?

On November 15, 2022, the Court preliminarily certified the following Classes for settlement purposes: All individuals who worked for SRG as an hourly or non-exempt employee in the State of California from May 7, 2019 to July 8, 2021 (the “Class Period”), and who either (a) earned non-discretionary incentive wages and received a meal or rest period premium during the same workweek at any time during the Class Period (“Meal/Rest Class Members”); or (b) who were paid final wages (upon separation of employment) via a paycard at any time during the Class Period (“Paycard Class Members”).

## 4. What is SRG’s position?

SRG believes that it has complied with the law in all respects, and denies any liability for the claims asserted by Plaintiff. SRG is not admitting liability of any of the factual and legal allegations asserted in the Action, nor that the Action should proceed as a class action for any purpose other than the Settlement. SRG has agreed to settle the Action as a compromise of disputed claims.

## 5. Why is there a Settlement?

After investigating the claims at issue, and the possible defenses to those claims, both sides have agreed to settle this case in order to avoid the cost and risk of further litigation. In view of the costs and risks that continued litigation would entail, Plaintiff and Class Counsel believe the Settlement is in the best interests of all Class Members.

## 6. Who are the lawyers for the parties?

The law firm of Payne & Fears LLP is serving as Counsel for SRG. The Court has preliminarily appointed Larry W. Lee, Kristen M. Agnew and Nicholas Rosenthal of Diversity Law Group, P.C., and William L. Marder of Polaris Law Group LLP to serve as Counsel for the Class (“Class Counsel”). Class Counsel’s contact information is as follows:

Larry W. Lee  
Kristen M. Agnew  
Nicholas Rosenthal  
Diversity Law Group, PC  
515 S. Figueroa Street, Suite 125  
Los Angeles, California 90071  
Tel: (213) 488-6555

William L. Marder  
Polaris Law Group LLP  
501 San Benito Street, Suite 200  
Hollister, CA 95023  
Tel: (831) 531-4214

## 7. How will the costs of the Action and the Settlement be paid?

Under the Settlement, the Attorneys’ Fees Payment, Litigation Expenses Payment, Claims Administration Payment, PAGA Payment, and the Class Representative Payment, will all be paid out of the Maximum Settlement Amount, as described in section 8, below.

### **THE SETTLEMENT STRUCTURE**

## 8. What does the Settlement provide?

Under the terms of the Settlement, SRG has agreed to pay \$212,500 (the “Maximum Settlement Amount”). The “Net Settlement Amount” means the amount that will be available to be distributed to Settlement Class Members (*i.e.* those Class Members who do not submit a Request for Exclusion), after deducting the following amounts from the Maximum Settlement Amount, subject to Court approval: (1) Attorneys’ Fees Payment of up to 1/3 of the Maximum Settlement Amount (*i.e.*, \$70,762.50 out of \$212,500) to Class Counsel, as an award for attorneys’ fees; (2) Litigation Expenses Payment in an amount of up to \$20,000 to Class Counsel, for reimbursement of actual litigation costs and expenses; (3) Class Representative Payment in an amount of up to \$10,000 to Plaintiff, for her services as the Class Representative; (4) PAGA

Payment in the amount of \$7,500; and (5) Claims Administration Payment in an amount currently estimated not to exceed \$15,000 to the Claims Administrator.

By statute, the Labor and Workforce Development Agency (“LWDA”) will receive seventy-five percent of the PAGA Payment —i.e. the amount of \$5,625. Class Members who worked during the period from May 3, 2020 through July 8, 2021 (the “PAGA Period”) will receive a portion of the remaining twenty-five percent of the PAGA Payment (“Net PAGA Penalties”).

Each Class Member who does not exclude themselves from the Settlement by submitting the enclosed Request for Exclusion form will receive a *pro rata* share of the Net Settlement Amount (a “Settlement Share”). Initially, 4% of the Net Settlement Amount will be evenly distributed amongst the Paycard Class Members. The remainder of the Net Settlement Amount shall be distributed amongst Meal/Rest Class Members on a *pro rata* basis depending on the number of workweeks in which the Class Member earned both non-discretionary incentive wages and received a meal/rest period premium during the Class Period.

**Your estimated Settlement Share is [INSERT].**

For tax purposes, Settlement Shares will be allocated as follows: the actual amount allegedly owed on meal period premiums is allocated to wages, which amounts will be reduced by the employee’s share of applicable payroll taxes, withholdings, and deductions. The balance of each Settlement Share will be allocated to penalties and interest. The employer’s share of taxes and withholdings will be paid separately by Defendant. The portion of the Settlement Share allocated as interest and penalties will not be subject to reduction for taxes or withholdings. The wages portion of the Settlement Share will be subject to reporting on an IRS Form W2, and the portions allocated to interest and penalties will be subject to reporting on an IRS Form 1099. Each Class Member will be responsible for correctly characterizing their respective Settlement Share for tax purposes and for the payment of any other taxes owing on that amount.

Additionally, if you worked during the PAGA Period (May 3, 2020 through July 8, 2021), you may also be entitled to a *pro rata* share of the Net PAGA Penalties. Initially, 4% of the Net PAGA Penalties will be evenly distributed amongst those employees who were paid final wages (upon separation of employment) via a paycard during the PAGA Period. The remainder of the Net PAGA Penalties shall be distributed *pro rata* amongst employees who earned both non-discretionary incentive wages and received a meal/rest period premium during the same workweek. Your Individual PAGA Settlement Pay is **[INSERT]**

Note: The Court has to decide whether to grant final approval of the Settlement. Settlement payments will only be issued if the Court grants final approval of the Settlement. The scheduled date, time, and location of the Final Approval Hearing are described in section 17, below.

**9. What rights will I give up if I do not exclude myself from the Settlement?**

Unless you submit a timely Request for Exclusion, you remain part of the Settlement Class, and that means you cannot sue, continue to sue, or be part of any other lawsuit against Defendant for any legal claims based on the subject matter of this the class settlement. In general, you will be giving up or “releasing” the following claims summarized below:

- If you are a Meal/Rest Period Class Member, you will release all claims for violation of Labor Code sections 201, 202, 203, 226 and 226.7, that accrued during the Class Period and were alleged in the operative Second Amended Complaint.
- If you are a Paycard Class Member, you will release all claims for violation of Labor Code sections 201, 202, 203, 212 and 213, that accrued during the Class Period and were alleged in the operative Second Amended Complaint. Additionally, if you worked during the PAGA Period (May 3, 2020 through July 8, 2021), you will be giving up or “releasing” the following claims:
- If you are a Meal/Rest Period Class Member, you will release claims for penalties under the California Private Attorneys General Act predicated on the violation of Labor Code sections 201, 202, 203, 226 and 226.7, that accrued during the PAGA Period and were alleged in the operative Second Amended Complaint.
- If you are a Paycard Class Member, you will release claims for penalties under the California Private Attorneys General Act predicated on the violation of 201, 202, 203, 221 and 213, that accrued during the PAGA Period and were alleged in the operative Second Amended Complaint.

## YOUR RIGHTS AND OPTIONS UNDER THE SETTLEMENT

### **10. How do I get a cash payment?**

To receive a payment under the Settlement, you do not need to do anything. If you received this Notice, and the Settlement receives final approval from the Court, you will receive your Settlement Share, and if eligible, Individual PAGA Settlement Payment at the same address through which you received this Notice.

Settlement Shares and Individual PAGA Settlement Payments will be paid by the Claims Administrator, who you may reach through the contact information below:

Phoenix Settlement Administration  
P.O. Box 7208  
Orange, CA 92863  
Telephone: (800) 523-5773  
Facsimile: (949) 209-2503  
Email: notice@phoenixclassaction.com

### **11. What if I disagree with the amount of my Settlement Share or Individual PAGA Settlement Payment?**

Your estimated Settlement Share and Individual PAGA Settlement Payment are set forth above. If you disagree with the amount of the Settlement Share and/or and Individual PAGA Settlement Payment listed on this Notice, you may submit a dispute (“Dispute”) to the Claims Administrator. To be valid, a Dispute must: (a) state your full name, mailing address, telephone number, signature, and last four (4) digits of your Social Security number; (b) contain the case name and number of the Action (*Melissa Moss v. Sares-Regis Operating Company*, Orange County Superior Court Case No. 30-2021-01201041-CU-OE-CXC); (c) state that you dispute the amount you are entitled to listed in this Notice; and (d) state the amount you believe should be allocated to you and attach any evidence in support of your contention. Your Dispute must be postmarked no later than March 6, 2023.

Disputes will initially be decided by the Claims Administrator. However, the Court will make a final binding decision on all disputes.

### **12. When will I get my settlement check?**

Class Members who are eligible to receive a Settlement Share or Individual PAGA Settlement Payment check will be mailed their checks only if the Court grants final approval of the Settlement. Even if the Court approves the Settlement at the Final Approval Hearing, there may be appeals. If there are appeals, resolving them could take some time and it will delay settlement payments, so please be patient.

You will only have 180 calendar days from the date that the settlement check is issued to cash or deposit it. If you do not cash or deposit your settlement check within the 180-day period, your settlement check will be sent to the Unclaimed Property Fund maintained by the State Controller’s Office in your name. The funds remitted to the Unclaimed Property Fund will remain your property.

**It is your responsibility to maintain your current address with the Claims Administrator.** If you move, you should mail a letter to the Claims Administrator to provide your updated contact information.

### **13. How do I ask the Court to exclude me from the Settlement?**

If you do not wish to participate in the settlement of the class claims, you may opt out of the Settlement by submit the enclosed Request for Exclusion form to the Claims Administrator. To be valid, any Request for Exclusion must: (a) contain your full name, mailing address, telephone number, signature, and last four (4) digits of your Social Security number; (b) contain the case name and number (*Melissa Moss v. Sares-Regis Operating Company*, Orange County Superior Court Case No. 30-2021-01201041-CU-OE-CXC); and (c) be sent to the Claims Administrator at the address listed in section 10, above, postmarked on or before March 6, 2023.

Class Members who fail to submit a valid and timely Request for Exclusion by March 6, 2023 will be bound by all terms of the Settlement (including the release of Released Class Claims) and any judgment entered in the Action if the Court approves the Settlement. The Court will determine the validity of any Request for Exclusion.

Class Members who submit a valid and timely Request for Exclusion will not receive a Settlement Share and will not be bound by the release of the class claims, if the Settlement becomes final. However, if you worked during the PAGA Period, you may not opt-out, or request to be excluded, from the settlement of the PAGA claim and will receive an Individual PAGA Payment, even if you opt-out of the class settlement.

#### **14. If I don't exclude myself, can I sue later?**

No. Unless you exclude yourself, you give up the right to sue the Releasees for the class claims released under the Settlement, as described in Section 9, above.

#### **15. How do I object to the Settlement?**

According to the terms of the Settlement, a "Settlement Class Member" means all Class Members who do not submit a timely and valid Request for Exclusion.

Any Settlement Class Member may object to the Settlement, or any portion thereof, by mailing a written objection ("Objection") to the Claims Administrator. To be timely, an Objection must be mailed to the Claims Administrator, at the address listed in section 10, above, postmarked no later than March 6, 2023.

To be valid, a written objection must: (a) contain your full name, mailing address, telephone number, signature, and last four (4) digits of your Social Security number; (b) contain the case name and number (*Melissa Moss v. Sares-Regis Operating Company*, Orange County Superior Court Case No. 30-2021-01201041-CU-OE-CXC); (c) clearly state that you wish to object to the Settlement and the factual and legal basis for the objection; (d) state whether you intend to appear and argue at the Final Approval Hearing; and (e) state whether you intend to formally intervene and become a party of record in the Action.

Settlement Class Members may also, at their own expense, and whether or not they submit a written objection, appear in person at the Final Approval Hearing in order to object to final approval of this Settlement.

The Court will make the final decision on any objections to the Settlement. A Class Member who fails to meet the requirements for objections, as provided above, may be deemed to have waived any objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the Settlement.

#### **16. What happens if I do nothing?**

If you do nothing, you will still be included in the Settlement if it is approved, and you will be bound by the terms of the Settlement (including the released claims), and you will receive a check for your Settlement Share and, if eligible, Individual PAGA Settlement Payment.

### **THE FINAL APPROVAL HEARING AND FURTHER INFORMATION**

#### **17. When and where will the Court decide whether to approve the settlement?**

The Court will hold a Final Approval Hearing on May 5, 2023 at 9:00 a.m., in Department CX104 at the Orange County Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana, California 92701. The Court may reschedule the Final Approval Hearing without additional notice to Class Members. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and decide whether to grant final approval of the Settlement. If there are objections, the Court will consider them. The Court will also make the final decision on any opt-out requests and disputes. The Court will also decide whether to approve the allocations for the Attorneys' Fees Payment, Litigation Expenses Payment, Claims Administration Payment, PAGA Payment, and the Class Representative Payment.

You are not required to attend the Final Approval Hearing, but you are welcome to attend at your own expense. You may also obtain directions on how to appear by audio or video on the Court's website at <https://www.occourts.org/media-relations/aci.html>. If you submitted a timely and valid objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. If you want to object in person, you must appear at the Final Approval Hearing and present your oral objection at the hearing.

Notice of the final judgment will be posted on <https://www.phoenixclassaction.com/moss-v-sares-regis-operating-company/>

#### **18. How do I get more information?**

This Notice summarizes the terms of the Settlement. The precise terms and conditions of the Settlement are set forth in the Amended Joint Stipulation of Class Action and PAGA Settlement and Release of Claims, which is on file with the Clerk of the Orange County Superior Court. The pleadings and other records that have been filed in this litigation may be examined by accessing the Court's website at <https://www.occourts.org/online-services/case-access/>, or by visiting the office of the Clerk of the Court for the Superior Court of California, County of Orange, located at 751 W. Santa Ana Blvd., Santa Ana, California 92701, during regular business hours. The case number is 30-2021-01201041-CU-OE-CXC.

If you have any questions about the Settlement, you may also contact Class Counsel (see section 6 of this notice) or the Claims Administrator (see section 10 of this notice).

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR SRG'S COUNSEL WITH ANY QUESTIONS.**