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9 Attorneys for Plaintiffs,
10 MARJORIE SAINT HUBERT,
11 VALERIE MARTINEZ, and THERESE SVENGERT,
12 individually and on behalf of all others similarly situated

13 MARJORIE SAINT HUBERT, VALERIE
14 MARTINEZ, and THERESE SVENGERT,
15 individually and on behalf of all others
16 similarly situated,

17 Plaintiffs,

18 vs.

19 EQUINOX HOLDINGS, INC., a Foreign
20 Corporation; and DOES 1 through 50,
21 inclusive,

22 Defendants.

Case No.: 2:21-cv-00086-VAP-JEMx

CLASS ACTION

**DECLARATION OF OMID NOSRATI,
ESQ. IN SUPPORT OF SECOND
RENEWED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: January 26, 2024

Time: 1:30 p.m.

Dept.: 6A

1
2 **DECLARATION OF OMID NOSRATI, ESQ.**

3 I, Omid Nosrati, declare as follows:

4 1. I am a member in good standing of the State Bar of California and am the
5 principal attorney at the law firm of Nosratilaw, A Professional Law Corporation
6 (formerly known as The Law Office of Omid Nosrati) and I am the attorney of record for
7 Plaintiff in this action. I make this Declaration in support of Plaintiff’s Motion for
8 Preliminary Approval of Class Action Settlement. I have personal knowledge of the
9 following facts and, if called upon to testify as a witness, could and would competently
10 testify thereto.

11 2. On December 1, 2020, Plaintiffs Marjorie Saint Hubert, Valerie Martinez, and
12 Therese Svengert filed a Class Action Complaint in the Superior Court of California,
13 County of Los Angeles.

14 3. On July 8, 2021, Plaintiffs Therese Svengert and Valerie Martinez filed a First
15 Amended Class Action Complaint to add an eighth cause of action for penalties under the
16 Private Attorney General Act of 2004 [Labor Code §2698, et seq.] (“PAGA”). (Doc. 16).

17 4. On January 7, 2022, Defendant filed its motion for partial summary judgment.
18 (Doc.22)

19 5. On January 14, 2022, Plaintiffs filed their Opposition to Defendant’s motion.

20 6. On September 9, 2022, the parties attended a private mediation with mediator
21 Stephen Benardo. Named Plaintiff, Marjorie Saint Hubert, attended the mediation.
22 Through the mediator’s guidance, and after comprehensive investigation by counsel
23 regarding the claims and defenses, the Parties accepted Mr. Benardo’s mediator’s
24 proposal and a settlement was reached on September 15, 2022, which was achieved
25 through good-faith, arm’s-length negotiations.

26 7. Prior to the mediation, the court granted defendant’s motion for partial summary
27 judgment.

28 8. On September 23, 2022, the parties filed a Notice of Settlement. Accordingly,

1 on or about September 26, 2022, the Court vacated the pretrial and trial date.

2 9. On December 6, 2022, the Court notified the parties that the status conference
3 was continued to January 13, 2023 (Doc. 48).

4 10. Between January 17, 2023 and April 14, 2023, the parties were attempting to
5 finalize the terms of the Memorandum of Understanding. One of the principal issues was
6 that Defendant requested a general release from Plaintiff Hubert, while she had an appeal
7 pending before the 9th Circuit (Hubert v. Equinox Holdings, Inc., Case No. 22-55363).
8 The appeal was from a verdict in favor of Defendant in Plaintiff's individual, wrongful
9 termination case before the Honorable Gary Klausner (Hubert v. Equinox Holdings, Inc.,
10 Case No. 2:20-cv-11559-RGK-JEM).

11 11. On or about March 15, 2023 the 9th Circuit affirmed the verdict resulting in
12 further negotiations on the terms of the MOU. The parties intended to report to the court
13 on April 14, 2023 that in light of 9th circuit decision affirming the verdict in favor of
14 Defendant, the Parties should have the Memorandum of Understanding finalized before
15 April 24, 2023 and plan to have a long-form agreement finalized before the end of May
16 2023.

17 12. By July 13, 2023, all the Parties executed a Joint Stipulation of Class Settlement
18 and Release. Attached as Exhibit 1 is a true and correct copy of the Joint Stipulation of
19 Class Settlement and Release.

20 **EXPERIENCE OF CLASS COUNSEL**

21 13. I am a 2001 graduate of Loyola Law School in Los Angeles where I earned my
22 Juris Doctor Degree. I have been a licensed practitioner since 2001 and have been
23 admitted to practice in the following courts: United States District Court, Southern,
24 Central, and Eastern District of California; and all California State Courts.

25 14. For approximately 20 years, I have been practicing employment law matters
26 and have represented numerous employees in employment law and wage and hour
27 actions.

28 15. In 2003, I established my firm, The Law Office of Omid Nosrati which is now,

1 NOSRATILAW, APLC. My firm is dedicated to representing employees in employment
2 law and wage and hour matters.

3 16.I am also a member of the California Employment Lawyers Association
4 (“CELA”), which is an organization comprised of attorneys devoted to representing
5 employees in California. I have also received the honor of Superlawyers® for seven
6 consecutive years.

7 17.I have also acquired class action litigation experience in employment law and
8 wage and hour class actions. I was appointed Class Counsel for the following cases, for
9 which the court granted final approval of the class action settlements: *Vanno Plong v.*
10 *Astro Pak Corporation*, for \$315,000.00 in Los Angeles Superior Court, Case No.
11 BC589515; *Marcos Miller v. Certified Network M, Inc.*, for \$798,000.00 in Los Angeles
12 Superior Court, Case No. BC528195. I was also appointed class counsel and obtained a
13 final approval for \$1,450,000.00 for a class size of approximately 183 members in the
14 class action entitled *Pedro Escobar v. Sole Transport, L.L.C.*, Los Angeles Superior
15 Court, Case No. BC655396. I was also appointed class counsel and obtained a settlement
16 for \$500,000.00 for a class size of approximately 485 members in the class action entitled
17 *Jane Lyter v. Cambridge Sierra Holdings, LLC*, USDC Central District of California,
18 2:17-cv-03435-MWF-AGR. I was also appointed class counsel and obtained final
19 approval for class settlement in the amount of \$325,000.00 *Jacob Misael Vasquez*
20 *Guzman, et al. v. The New Figueroa Hotel, Inc., et al.*, Los Angeles Superior Court, Case
21 No. BC593678. This year, I received preliminary approval for settlement of *Anthony*
22 *Mendez v. Command Packaging, LLC*, Los Angeles Superior Court, Case No.
23 20STCV40910 for \$500,000 and I have also been appointed class counsel and obtained
24 final approval on a class action in *Marvin Morales v. Halcore, et al.*, USDC Case No.
25 2:17-cv-05876-TJH-SK for \$1,065,912.07.

26 18.In addition, the following is a list of other employment law and wage and hour
27 class actions I have pursued: *Noel Saenz v. CSK Auto Inc., et al.*, USDC Central District
28 of California, 2:14-cv-09789-MWF-MAN; *Alexander Cabrera v. Walt Disney Parks and*

1 *Resorts U.S., Inc.*, USDC Central District of California, 2:16-cv-02393-MWF-JPR. I am
2 currently representing plaintiffs in the following class actions;; and *Kelley v. Sprout*
3 *Mortgage, LLC*, Orange County Superior Court, Case No. 30-2022-01246916-CU-OE-
4 CXC.

5 **FAIRNESS OF SETTLEMENT**

6 19. Based on the facts in this case, my experience and opinion there is no conflict
7 between Plaintiff and the putative class members. Each Class Member has the option to
8 opt out of the Settlement. Thus, no conflicts of interest exist between Plaintiff and the
9 Class Members.

10 20. Prior to the mediation, the parties conducted sufficient investigation of the
11 factual allegations, legal claims, and defenses, and engaged in discovery. The Parties had
12 already litigated the issue of the parking reimbursement claim. The court granted
13 summary judgment on that cause of action. This narrowed the issues for settlement.
14 Plaintiff also engaged in other discovery prior to resolving the action, including, but not
15 limited to: (1) pre-litigation investigation; (2) a 30% sample size of class member data for
16 time records, wage statements, total number of class members; (3) various relevant
17 company policies and procedures relating to the claims in Plaintiff's case; (4) the shift
18 count for the class period from 2016 to 2022, (5) a PMQ deposition, (6) written discovery
19 including requests for admissions, three sets of interrogatories, three sets of request for
20 production of documents, and (7) reviewing several thousand pages of documents
21 produced by Defendant, as well as Excel spreadsheets containing approximately 130,000
22 lines of data for a sample of the class members during the class period.

23 21. My firm also retained the services of an expert consultant to prepare a damages
24 analysis report in preparation for mediation. The documents that Defendants produced,
25 as well as the detailed damages analysis report prepared, was used in assessing
26 Defendant's potential exposure and the strengths and weaknesses in various claims.

27 22. In addition, my firm conducted an investigation of the factual and legal issues,
28 including: (1) inspecting and analyzing the time record and pay record data; (2)

1 reviewing Defendant’s company policies regarding meal period practices; (3) analyzing
2 the potential class-wide damages; (4) researching and analyzing the applicable law
3 relating to Plaintiff’s claims and Defendant’s potential defenses; (5) communicating with
4 the Named Plaintiffs on numerous occasions regarding the allegations; and (6)
5 communicating with putative class members regarding Plaintiffs’ claims.

6 23. For the meal break claim, the expert consultant analyzed the percentage of
7 shifts over 6 hours, the percentage of shifts for the “close out” periods, and potential
8 violation rate and potential damages. This was based on the sample data provided by
9 Defendant. A similar analysis was done for the rest period claims by analyzing the
10 percentage of the shifts over 3.5 hours, the potential violation rate and damages. The
11 expert consultant also analyzed the potential wage statement violations and waiting time
12 penalties based on the alleged meal and rest break claims.

13 24. Having analyzed the information available in discovery and the damages
14 analysis report prepared for mediation, my firm and I were able to make an informed
15 decision to reach a fair and reasonable settlement, in light of litigation risks. With respect
16 to the meal break claim, the total maximum exposure was estimated at approximately
17 \$136,625.98. I am informed and believe that analysis was performed based on the shift
18 count for the class period for shifts longer than 6 hours as well as for the percentage of
19 those shifts for the “close out” periods. I am informed and believe that for off-clock hours
20 resulting in additional hours worked due to having to work through a meal period, the
21 calculation was based on the estimated violation count, the estimated off-clock hours, and
22 average overtime rate. This amount came to \$90,426,34 for the class period.

23 In regard to the rest break claim, the total maximum exposure was estimated at
24 approximately \$302,071.55. I am informed and believe that analysis was performed
25 based on the shift count and an estimated violation rate for the class period for shifts
26 longer than 3.5 hours. The total estimated violation count was multiplied by the straight
27 time rate for each year of the class period.

28

1 As for the waiting time penalty, the total maximum exposure was estimated at
2 approximately \$333,921.60. I am informed and believe that analysis was performed
3 based on the termination count for the class period. The paystub penalty was calculated to
4 have an estimated maximum exposure of \$94,750. I am informed and believe that
5 analysis was performed based on the employee count, pay periods, and penalty amounts,
6 both for the first violation and subsequent violations. I am informed and believe that
7 regular rate of pay violation analysis was done for the class period with a maximum
8 estimated total exposure of \$763,463.40. All of the above amounts included prejudgment
9 interest.

10 The overarching exposure analysis was based on addressing the written policies on
11 meal and rest periods of Defendant. In the present case, in addition to the analysis
12 already set forth in Plaintiff's original motion, Defendant produced documents in
13 discovery regarding their meal and rest policies, which supports their argument of having
14 legally compliant policies and complying with the requirements under *Brinker*. As an
15 example, an excerpt of their written policy provides in relevant part as follows:

16
17 "It is also your responsibility to take a full, uninterrupted 30-minute break anytime
18 you have a work period that exceeds 4 hours and 59 minutes. Failure to do so will
19 result in a Mealtime Violation.

- 20 • When taking a meal break, using the "Start Meal" option, then select "End Meal"
21 when you return.
22 • Refer to the charts on the next page for further guidance on appropriate meals and
23 breaks."

24
25 If Defendant is able to demonstrate that it had compliant policies relieving
26 employees of all duty, then that could dispense with the meal and rest violation claims
27 entirely, and all the related causes of action for waiting time penalties, regular rate of pay
28 violations, unpaid wages, and pay stub penalty violations. If Defendant can demonstrate

1 that it complied with the requirements under *Brinker*, then there was a substantial risk
2 that Plaintiff and putative class members would not prevail in this action.

3 Based on the risk analysis, The likelihood of recovery was discounted for
4 settlement purposes as set forth below. Based on the discount of risks, the potential range
5 of recovery would be approximately \$254,437.87 and therefore the settlement of
6 \$225,000.00 is within the range of reasonableness. The discounting of 80%-90% is set
7 forth in greater detail in the memorandum of points and authorities.

8 25. Given the maximum potential exposure and risks of continuing to prosecute the
9 matter further, this Gross Settlement Amount of \$225,000.00 is within the range of
10 reasonableness and will result in a substantial benefit to the putative Class Members.

11 26. While Plaintiff's counsel is confident that Plaintiff could succeed on liability,
12 continued litigation would be costly, time-consuming, and its outcome uncertain as set
13 forth above. From Plaintiff's counsel's view the thrust of the Class Action was
14 allegations for failure to reimburse parking expenses. When summary judgment was
15 granted as to that cause of action, the maximum potential exposure for Defendant was
16 significantly reduced.

17 27. Although Plaintiff's Labor Code Section 2802 claim for parking expenses
18 reimbursement was disposed by summary judgment, Plaintiff, Hubert still had the
19 pending claims regarding meal and rest violations, where Plaintiff alleged that she and
20 the class were regularly not provided with compliant meal periods, particularly during the
21 last three days of each month considered the "close out period". Plaintiff obtained
22 several declarations from putative class members across California that detailed this
23 practice through Defendant's locations. Putative class members asserted that working
24 through meal periods was the most prevalent during the "close out" periods at the end of
25 each month and that there was a pressure to meet sales goals. Plaintiff further alleged that
26 Defendant failed and/or refused to implement a relief system by which Plaintiff and those
27 similarly situated employees or aggrieved employees could receive rest breaks and/or
28 work free rest breaks for every four hours worked, or major fraction thereof.

1 28. During mediation, Defendant also contended that it paid meal premiums for
2 meal break violations totaling nearly 2,000. As for the rest break claim, this was greatly
3 disputed on the merits and could have posed a manageability issue. Another risk that
4 Plaintiff had to take into consideration was that Defendant's policies are facially valid.

5 29. Furthermore, Plaintiff learned that Defendant has California operations
6 administrators who monitor all time punches and their computer program automatically
7 generates a premium payment when there is a meal period violation. Accordingly, even
8 if there were meal period violations, there was a evidence that some meal premium
9 payments were made.

10 30. Other risks in continuing to prosecute the action was that after partial summary
11 judgment was granted, the only Plaintiffs that had PAGA standing were Plaintiffs,
12 Martinez and Svengert. As set forth in the memorandum of points and authorities, since
13 their claims were dismissed, my opinion and analysis was that no PAGA claim remained.
14 The Settlement Agreement does not include a PAGA release and the newly executed
15 Agreement has removed reference to PAGA in paragraph 22.

16 31. If litigation were to proceed, Plaintiff would be required to conduct further
17 discovery and take depositions of key witnesses; move for class certification; oppose
18 Defendant's likely motion for summary judgment; and prepare for trial. *Ibid.*

19 32. Weighed against these considerable risks, this Gross Settlement Amount of
20 \$225,000.00 for the approximately 419 putative Class Members is fair and reasonable,
21 and ensures timely relief and substantial recovery to Plaintiff and the putative Class
22 Members. Therefore, the Settlement warrants preliminary approval.

23 **EXHIBITS**

24 33. Attached as Exhibit 1 is a true and correct copy of the revised Joint Stipulation
25 of Class Settlement and Release. This revised joint stipulation addresses the court's
26 concerns regarding FLSA claims.

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1 34. Attached as Exhibit 2 is a true and correct copy of the revised proposed Class
2 Notice. This revised class notice addresses the court’s concerns regarding FLSA
3 claims.

4 35. Attached as Exhibit 3 is a true and correct copy of the proposed schedule for the
5 notice and final approval.

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7 I declare under penalty of perjury under the laws of the State of California and the
8 United States of America that the foregoing is true and correct.

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11 Executed this 14th day of December 2023, in Los Angeles, California

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13 /s/ Omid Nosrati
14 Omid Nosrati, Esq.
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