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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SONOMA

ALICIA RANILLO, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ENSIGN SONOMA LLC, a California limited liability company, and DOE 1 through and including DOE 100,

Defendants.

Case No. SCV-258369

PLAINTIFF ALICIA RANILLO'S NOTICE OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS-ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Assigned to Hon. Patrick M. Broderick

Date: June 14, 2019
Time: 9:00 a.m.
Place: Sonoma County Superior Court, Courtroom 16, 3035 Cleveland Avenue, Santa Rosa, California 95403

NOTICE OF MOTION

PLEASE TAKE NOTICE that, on June 14, 2019, at 9:00 a.m., in Courtroom 16 of the above-entitled Court located at 3035 Cleveland Avenue, Santa Rosa, California 95403—or on such other date, at such other time, or at such other place as the Court may designate—Plaintiff Alicia Ranillo will move for an order granting certification of the Settlement Class defined in the class-wide Settlement reached with Defendant Ensign Sonoma, LLC in the within Action, as well as final approval of that Settlement.[1] The Motion will be made, and based upon, this Notice; the concurrently filed Declarations of David S. Harris, Alicia Ranillo and Daniel P. La; the Memorandum of Points and Authorities appended hereto;[2] 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.

Dated: May 31, 2019

NORTH BAY LAW GROUP

David S. Harris
Attorneys for Plaintiff Alicia Ranillo

[1] Capitalized terms used herein have the meanings set forth in the Joint Stipulation of Class Action Settlement, attached as Exhibit 1 to the concurrently filed Declaration of David Harris in Support of Plaintiff's Unopposed Motion for Final Approval of Class-Action Settlement and Motion for Attorneys' Fees, Costs, and an Enhancement Award.

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

MEMORANDUM OF POINTS AND AUTHORITIES

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I. Introduction.

On March 15, 2019, the Court preliminarily approved a class-wide Settlement reached in the within wage-and-hour action. The Settlement represents an outstanding result: an all-cash, non-reversionary $135,000 settlement fund established for 182 Class Members, not a single one of whom has objected to, and only two of whom have opted out of, the Settlement as of the filing of this Motion.[3] In addition, as structured, no Class Member has been required to submit a claim form in order to receive a share of the Settlement's proceeds. In other words, Class Members do not needed to actually "do" anything under the Settlement in order to qualify for sharing in the common fund, other than not exclude themselves. Given the effective 99% participation rate, the Settlement will result in an average individual Settlement Payment of approximately $384.03 — an amount that will compensate Class Members for a significant amount of unpaid wages and penalties. The Settlement therefore is fair, reasonable, and adequate, and it should be finally approved.

As explained in more detail below, after deducting from the $135,000 Maximum Settlement Fund (a) an attorney's fee and costs award to Class Counsel, (b) Administration Costs to the Claims Administrator, (c) a Class Representative Enhancement Award to Plaintiff in recognition of her services obtaining the benefits of the Settlement, and (d) the California Labor and Workforce Development Agency's ("LWDA") share under the Labor Code Private Attorneys General Act ("PAGA") of a civil-penalty payment—all of which are subject to the Court's approval—the remaining Net Settlement Fund will be distributed to the Settlement Class. Assuming that the Court awards Class Counsel the requested award of $45,000 in attorney's fees and $6,000 for litigation costs incurred (which is an amount that is *less than* the actual amount of litigation costs incurred by Class Counsel), Administration Costs of $8,000 to the Claims Administrator, a Class Representative Incentive Award of $5,000 to Plaintiff, and a $1,875.00 PAGA Payment to the LWDA, a total of $69,125 will remain for distribution to the Settlement Class. Since only two individuals have requested exclusion from the Settlement, there are a total of 180 Settlement Class Members, resulting in an average individual Settlement Payment of $384.03 (= $69,125.00 ÷ 180 Settlement Class Members).

[3] The Class Member deadline for submitting objections and exclusion requests closed on May 20, 2019, so it is conceivable that not all submissions have yet been received by the Claims Administrator. In advance of the June 14th hearing, Plaintiff will file a supplemental report with updated statistics.

As also explained below, pursuant to the Court's approved procedure, the Claims Administrator directly delivered the Notice of the Settlement to the Class, as well as established a website where any Class Member could obtain relevant information regarding the Settlement 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 litigation, this represents a terrific outcome, and the Settlement should be finally approved as fair, reasonable, and adequate.

II. Statement of Facts.

A. Summary of Plaintiff's Claims and of the Case Through Preliminary Approval.

1. Plaintiff's Initiation of this Action.

Plaintiff commenced this Action by filing a putative class-wide Complaint on February 8, 2016, asserting that Defendant had failed to pay proper overtime, provide adequate meal and rest breaks, issue accurate wage statements, and tender all earned wages to former employees upon the termination of their employment. (See generally Class Action Compl.) One month later, on March 15, 2016, Plaintiff filed a First Amended Complaint, adding a civil-penalty claim under PAGA. (See generally First Am. Class Action Compl.) On June 28, 2016, Plaintiff filed a Second Amended Complaint, which is the operative Complaint in this matter. (See June 28, 2016, Second Am. Class Action Compl. ("SAC").)

2. Plaintiff's Alleged Claims.

a. Plaintiff's Unpaid-Overtime Claim.

As alleged in the Second Amended Complaint, Defendant Ensign Sonoma LLC ("Defendant" or "Ensign") is a post-acute care and rehabilitation facility located in Sonoma, California. (SAC ¶ 2.) Defendant employed Plaintiff Alicia Ranillo ("Plaintiff") as a Licensed Vocational Nurse ("LVN") from March 2008 through September 2015. (SAC ¶ 7.)

Plaintiff's overtime claim relates to Defendant's alleged failure to compute the correct regular rate when calculating overtime compensation. In particular, the applicable overtime rate to be used when computing the overtime compensation to be paid to an employee is based on the employee's "regular rate of pay," which is the compensation an employee normally earns for the work he or she performs. The regular rate of pay includes an employee's base pay (*i.e.*, hourly rate), plus any shift-differential

rates earned by the employee during the pay period. Plaintiff contends that Defendant failed to include both regular *and* shift-differential rates (hours worked for early or late shifts) when calculating the regular rate. (Decl. of David Harris in Supp. of Pl.'s Unopposed Mot. for Final Approval of Class-Action Settlement and Mot. for Attorney's Fees, Costs, and Enhancement Award ("Harris Decl.") ¶ 22.)

b. Plaintiff's Meal-Break and Rest-Break Claims.

In addition to the overtime-miscalculation claim, Plaintiff alleges that Defendant failed to provide adequate meal and rest breaks. (SAC ¶¶ 14–21.) Under the Labor Code, "[a]n employer may 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." Cal. Lab. Code § 512(a). Similarly, the applicable California Industrial Welfare Commission's ("IWC") Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest breaks" at a rate of "ten (10) minutes net rest time per four (4) hours [worked] or major faction thereof," so long as the employee works at least "three and one-half (3 ½) hours" per day. 8 Cal. Code Regs. § 11070 subsec. 12. "If an employer fails to provide an employee a meal or rest . . . period in accordance with a state law, including, but not limited to, an . . . order of the [IWC], . . . the employer shall pay the employee one additional hour of pay at the employer's regular rate of compensation for each workday that the meal or rest . . . period is not provided." Cal. Lab. Code § 226.7(c).

With respect to meal periods, "an employer's obligation is to provide a first meal period after no more than five hours of work." Brinker Rest. Corp. v. Super. Ct., 53 Cal. 4th 1004, 1049 (2012). Similarly, with respect to rest periods, "[e]mployees are entitled to 10 minutes' rest for shifts of three and one-half hours to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." Id. at 1029.

According to Plaintiff, Defendant's employees were not authorized to take meal or rest breaks without authorization from their supervisors. (SAC ¶¶ 17 & 21.) To the extent, then, that Plaintiff worked a shift of longer than five hours without taking a meal break—a break that only supervisors could schedule—she was not provided a meal break as required by California law, entitling her to an extra hour of pay. Similarly, Plaintiff contends employees were routinely deprived of their rest breaks because they could not take rest breaks without permission from their supervisors, thereby, once again,

entitling employees to an extra hour of pay. (Harris Decl. ¶ 23.)

c. Plaintiff's Waiting-Time Claim.

In addition, Plaintiff derivatively contends that she is entitled to statutory damages for not receiving all wages upon the termination of her employment. (SAC ¶¶ 22–27.) 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) (emphasis supplied). Because Plaintiff is a former employee, and because, to date, she has not received all of her overtime compensation on account of Defendant's alleged shift-differential overtime payment miscalculation, she contends that she is entitled to the waiting-time damages set forth in section 203.

d. Plaintiff's Wage-Statement Claim.

Plaintiff asserts that her wage statements listed the incorrect employer name during the period of February 6, 2015 through March 2018. (SAC ¶ 24.) According to section 226, pay stubs must list "the name . . . of the legal entity that is the employer." Cal. Lab Code § 226(a)(8). Because Defendant's pay stubs allegedly listed the improper employer name during a portion of the Class Period, Plaintiff contends that Defendant violated section 226. (Harris Dec. ¶¶ 24.)

e. Plaintiff's Civil-Penalty Claim.

Plaintiff's alleges an additional claim under PAGA, section 2698 *et seq.* of the Labor Code, seeking to collect civil penalties for the above-described violations. (SAC ¶¶ 78–83.) PAGA 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. E.g., Iskanian v. CLS Transp. Los Angeles, LLC, 59 Cal. 4th 348, 379 (2014). PAGA "does not, however, [entitle an employee to] recover the full penalty amount," Brown v. Ralphs Grocery Co., 197 Cal. App. 4th 489, 501 (2011); instead, under PAGA, "75 percent [of the penalties] goes to the Labor

and Workforce Development Agency, leaving the remaining 25 percent for the 'aggrieved employees,'" Iskanian, 59 Cal. 4th at 380 (citing Cal. Lab. Code § 2699(i)). Here, Plaintiff seeks such civil penalties on behalf of herself and others for Defendant's alleged Labor Code violations.

f. Plaintiff's Class Allegations.

Plaintiff seeks to collect the alleged unpaid overtime, missed-breaks payments, waiting-time penalties, and wage-statement damages on a class-wide basis, for herself and other similarly situated employees. According to Plaintiff, Defendant had a practice of never including shift-differential pay in the overtime-rate calculation, entitling all employees who worked overtime hours during a pay period in which they earned a shift-differential to additional overtime pay. (SAC ¶ 13.) Similarly, because Plaintiff's meal-and-rest-break policy required supervisors to approve any breaks, in any instance when employees did not receive authorization to take a meal and/or rest break, employees are also entitled to missed-breaks wages. (SAC ¶¶ 14–21.) And, Plaintiff contends that any employee who is entitled to additional overtime is entitled to derivative waiting-time damages. (SAC ¶¶ 22–27.) Furthermore, because a subset of Defendant's wage statements failed to include the proper legal name of the employer, employees are entitled to pay-stub damages irrespective of whether any other violations occurred.[4] (SAC ¶¶ 28-29.)

[4] Plaintiff notes that she brings an additional class-wide claim for unfair competition under section 17200 *et seq.* of the California Business and Professions Code. (SAC ¶¶ 65–77.) This claim, however, is *not* a separate claim for standalone relief; instead, like the waiting-time and wage-statement claims, it is derivative of the underlying claim for miscalculated overtime. In effect, "[s]ection 17200 borrows violations of other laws and treats them as unlawful practices that the unfair competition law makes independently actionable." Cal-Tech Commc'ns, Inc. v Los Angeles Cellular Tel. Co., 20 Cal. 4th 163, 180 (1999) (quotation marks omitted). Section 17200, in other words, "does not proscribe [any] specific practices" in and of itself; furthermore, plaintiffs who prevail under it are "limited to . . . restitution," *i.e.*, they "may not receive damages." Id. Accordingly, based on the allegations in the Second Amended Complaint, Plaintiff contends that Defendant is liable for restitution of unpaid overtime. See Cortez v. Purolator Air Filtration Prods. Co., 23 Cal. 4th 163, 178 (2000) (holding that the recovery of unpaid overtime is "a restitutionary remedy"). Although Defendant's alleged failures to provide proper breaks and wage statements constitute unfair competition, there arguably is no compensatory remedy under section 17200 for such violations, since those amounts are, in a sense, statutory damage amounts as opposed to restitution. Cf. Pineda v. Bank of Am., N.A., 50 Cal. 4th 1389, 1401 (2010) (explaining that waiting-time damages under section 203 are not restitution). Plaintiff's unfair-competition claim therefore "duplicates" her unpaid-overtime claim. The reason she has asserted both claims is that, while Labor Code claims for unpaid overtime are subject to a three-year limitations period, see Cal. Civ. Proc. Code § 338(a), unfair-competition claims are subject to a four-year period, see Cal. Bus. & Prof. Code § 17208. Plaintiff's unfair-competition claim, then, essentially extends the relevant limitations period, allowing her to reach back an additional year. See Cortez, 23 Cal. 4th at 178–79 (explaining that "the language of section 17208 admits of no exceptions" and that "*any*" unfair-competition cause of action "is subject to the four-year period") (emphasis in original).

3. Discovery, Mediation, and Preliminary Approval.

Plaintiff served comprehensive discovery requests on Defendant, directed primarily to Defendant's overtime-calculation, meal-and-rest-break, and wage-statement policies, as well as to the potential damages owing for the alleged violations. (Harris Decl. ¶ 6.) At approximately the same time, Plaintiff's Counsel and Defendant's Counsel began to meet and confer about mediation. (Harris Decl. ¶ 6.)

Plaintiff's Counsel and Defendant's Counsel ultimately agreed to mediate the Action before the Honorable Linda Quinn (Ret.), a seasoned mediator with Judicate West, who has extensive experience with employment litigation. (Harris Decl. ¶ 6 & Ex. 2.) In connection therewith, Defendant's Counsel agreed to provide—and did provide—to Plaintiff's Counsel documents responsive to Plaintiff's formal discovery requests, including documents setting forth Defendant's applicable policies, as well as payroll information covering the applicable statutory period for a statistically significant sample of employees, both current and former. (Harris Decl. ¶ 7.) Plaintiff's Counsel spent many hours reviewing the payroll information and documents that had been provided by Defendant in order to analyze the claims and prepare a damage analysis for mediation. (Harris Decl. ¶ 7.)

Armed with a damage analysis, the parties attended mediation on March 6, 2018. (Harris Decl. ¶ 8.) Although the parties did not settle the case at mediation, with extensive follow-up assistance from Judge Quinn, the Parties ultimately reached an arms' length settlement, which was finalized and memorialized in a long-form Settlement Agreement fully-executed on November 19, 2018. (Harris Decl. ¶ 8.) The Court preliminarily approved that Agreement on March 15, 2019. (See generally Order Granting Conditional Class Certification & Preliminary Approval of Class-Action Settlement ("Preliminary Approval Order").) Plaintiff now seeks final approval of the Agreement.

B. Summary of the Settlement's Terms.

Again, the Settlement establishes a $135,000 Maximum Settlement Fund for the benefit of 182 Class Members, which represents significant payments for unpaid wages and penalties on account of the claims asserted in the instant action. The Settlement therefore should be approved.

1. The Definition of the Class.

Under the Settlement, the Class consists of all individuals Defendant employed as a Licensed

Vocations Nurse between February 8, 2012 through the Preliminary Approval Date, and all non-exempt hourly employees hired between February 8, 2012 and August 21, 2013, through the Preliminary Approval Date. (Harris Decl. Ex. 1 at ¶ II(1).) Again, there are 182 Class Members; however, since two have requested exclusion, there are 180 Settlement Class Members who will share in the Settlement's common fund.

2. The Relief Provided by the Settlement.

The Settlement calls for Defendant to establish a $135,000 Gross Settlement Fund (Harris Decl. Ex. 1 § II(9)), which translates to an average gross recovery for Settlement Class Members of $750.00 (= $135,000 ÷ 180 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 (2016). Pursuant to this doctrine, the Settlement contemplates that Plaintiff's Attorney's Fees, as well as Settlement Administration Expenses incurred by the Settlement Administrator, are to be deducted from the Gross Settlement Fund. (Harris Decl. Ex. 1 §§ 20, 25.) 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 Fund to the State of California. See Cal. Lab. Code § 2699(i) (stating that civil penalties "*shall* be distributed . . . 75 percent to the [LWDA] for enforcement of labor laws, . . . and 25 percent to the aggrieved employees") (emphasis supplied). The Settlement contemplates such deductions, proposing that a Class Representative Enhancement be paid to Plaintiff for her services as the Class Representative, and that the LWDA receive a PAGA Payment for the civil-penalty claims alleged in the Litigation. (Harris Decl. Ex. 1 §§ 2, 16.)

Here, the Settlement authorizes a Plaintiff's Attorney Fee award of $45,000.00, which is equal to one-third of the Gross Settlement Fund, plus up to $6,000.00 for Plaintiff's Litigation Expenses. (Harris Decl. Ex. 1 § III(13)(a-b).) Although the reasonableness of the Fee and Expense Award is detailed in a

separately filed Motion, Plaintiff here submits, briefly, that this amount is reasonable judged relative to the size of awards in other class actions, as well as to the outstanding results of this Settlement. 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 actual lodestar is more than three times the amount being requested. (See Plaintiff's Mot. for Attorney's Fees, Reimbursement of Costs, and Enhancement Award.) In any event, no one has objected to the contemplated attorney fee and litigation costs award. (Decl. of Daniel P. La with Respect to Notification and Settlement Administration ("La Decl.") ¶ 10.)

There also has been no objection to reimbursing the Claims Administrator for its Administration Costs, to providing Plaintiff with her Class Representative Enhancement Award, or to the LWDA's PAGA Payment. (La Decl. ¶ 10.) Under the Settlement, the Administration Costs are $8,000.00, the Enhancement Award is $5,000.00, and the LWDA's PAGA Payment is $1,875.00. (Harris Decl. ¶ 12.) These amounts comport with what courts typically approve in other wage-and-hour cases. See, e.g., Gong-Chun v. Aetna Inc., No. 1:09-cv-01995-SKO, 2012 WL 2872788, at *4, 17 (E.D. Cal. July 12, 2012) (approving a PAGA payment of $15,000.00 in a $700,000.00 settlement after explaining that "[t]his comports with PAGA settlement awards in other cases"); Aguirre v. DSW, Inc., No. EDCV11-01522 GW (SPx), 2012 WL 11875296, at *3 (C.D. Cal. Nov. 29, 2012) (approving a PAGA payment of $10,000.00 in a $625,000.00 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 Fund, the Net Settlement Fund available for distribution to the Settlement Class comes to $69,125.00 (Harris Decl. ¶ 12.) Under the Settlement, the Net Settlement Fund will be distributed *pro rata* to those Class Members who did not opt out, based on the number of weeks worked by each such individual as compared to the total number of weeks worked by all such individuals. (Harris Decl. ¶ 13.) 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. (Harris Decl. Ex. 1 § III(4).) Assuming, again, that all contemplated deductions are approved in full, the average Individual Settlement Payment equals approximately $384.03 (= $69,125.00 ÷ 180 Settlement Class Members). This amount is *net* of any Employer Payroll Contributions, since Defendant has agreed, under the Settlement, to pay any such amounts *on top* of the $135,000 Gross Settlement Fund. (Harris Decl. Ex. 1 § III(5).)

3. The Settlement's Release.

The proposed release is narrowly tailored and includes a release of the claims asserted in the Second Amended Complaint. And while the proposed Release includes all manner of claims that reasonably could have been alleged based on the facts and claims asserted in the Litigation, this comports with the releases typically 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) ("Here, . . . settlement class members . . . release claims 'of any and every kind that were asserted in the [l]itigation, or that could have been asserted but were not asserted in the [l]itigation . . . on the basis of, connected with, arising out of, or related in whole or in part to any or all of the alleged acts, omissions, facts, matters, transactions, circumstances, and occurrences that were directly or indirectly alleged' in the litigation. Additionally, . . . the [s]ettlement [a]greement contains a waiver of rights under § 1542 of the California Civil Code . . . . [T]he court finds that the release adequately balances fairness to absent class members and recovery for plaintiffs with defendants' business interest in ending this litigation with finality.") (citations omitted).

C. Summary of the Case Following Preliminary Approval.

Again, the Court preliminarily approved the Settlement on March 15, 2019. In connection therewith, the Court approved a template form of Notice for delivery to the Class, and directed the Claims Administrator—CPT Group, Inc. ("CPT")—to effect delivery of the Notice following the procedures outlined in the Settlement. (Preliminary Approval Order at 2:5–16.) As set forth in the Order Granting Preliminary Approval, the Court found that "the Notice and the notification procedures contemplated by the Settlement constitute the best notice practicable under the circumstances, and . . .

are in full compliance with the laws of the State of California, the laws of the United States (to the extent applicable), and the requirements of due process." (Preliminary Approval Order at 2:9-13.)

Pursuant to the Court-approved procedure, on April 4, 2019, CPT mailed the Notice to all 182 Class Members after obtaining from Defendant the Class List—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. (La Decl. ¶¶ 4–6.) Since that time, CPT also has maintained a toll-free telephone number for Class Members to call with any questions, as well as a mailing address to which Class Members can submit any communications concerning the Settlement, including objections and requests for exclusion. (La Decl. Ex. A.) For Notices mailed by CPT that were returned as undeliverable with forwarding addresses, CPT re-mailed Notices to the forwarding addresses. (La Decl. ¶ 7.) For Notices that were returned as undeliverable without forwarding addresses, CPT conducted a locator using one of the most comprehensive databases for lawful Skip-Tracing. (La Decl. ¶ 7.)

Following the above protocols, only nineteen Notices were returned to CPT as undeliverable, and, of those nineteen, CPT could not locate updated addresses for only three, meaning that CPT successfully mailed Notices to more than 98% of the Class. (La Decl. ¶ 8.) 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 Action and Defendant's denials; describing the procedure and Class Member 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. (La Decl. Ex. A.) The Notice also included an estimate of the Class Member's Individual Settlement Payment, as well as a description of how that amount was calculated. (La Decl. Ex. A.) In addition, the Notice explained that Class Members did not need to submit claim forms in order to receive their respective individual Settlement Payments—*i.e.*, this is *not* a settlement where Class Members had to affirmatively do something in response to the Notice in order to participate. (La Decl. Ex. A.) Put

differently still, this is *not* a claims-made settlement where Class Members needed to submit a claim form to receive a share of the Gross Settlement Fund; nor is this a reversionary settlement where unclaimed amounts end up reverting to Defendant. 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 her Individual Settlement Payment.

The content of the Notice, together with the robust procedures for updating mailing addresses, the maintenance of a Settlement website, and the lack of a claims-made procedure, 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 CPT's outreach efforts, only two requests for exclusion have been submitted, and no one has submitted an objection. (La 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 conditionally certified the Class under the Settlement. (Preliminary Approval Order ¶ 2.) Since that time, no new facts have arisen to change that finding. The Court's conditional certification therefore should be made final.

To recap, the Settlement Class consists of precisely 180 individuals, all of whom were identified through Defendant's internal employment records, meaning that ascertainability and numerosity still 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 overtime claim, the central issue for all Settlement Class Members

is whether Defendant's company-wide practice of not including shift-differential payments in the overtime-rate calculation violates California's overtime requirements. Similarly, as to the meal-and-rest-break claim, the central issues for all Class Members are whether Defendant's alleged policy of not always providing meal breaks to occur within the first five hours of employees' shifts, and Defendant's alleged policy of not always providing rest breaks to employees, violate California's meal-and-rest-break requirements. Furthermore, because Plaintiff's alleged waiting-time claim is derivative of those violations, the very same overarching question implicated by the underlying overtime claim is central to resolving the waiting-time claim. Finally, as to the paystub claim, the central issue for Class Members is whether Defendant's paystubs listed the name of the legal entity of the employer. These overarching questions need be answered only once for the Class as a whole. The only "individual" or "non-common" questions concern the specific dollar amounts to which each 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 (2004). Common questions therefore 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 their 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 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). Plaintiff and Class Counsel thus-far 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 David S. Harris as Class Counsel, as well as of Alicia Ranillo as the Class Representative (see Preliminary Approval Order at 2:2–3), also should be made final.

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

In connection with conditionally certifying the Class, the Court found that the Settlement "f[ell] within the range of possible approval and therefore m[et] the requirements for preliminary approval." (Preliminary Approval Order at 2:20–22.) 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) (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 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 before a respected neutral, and followed by many months of follow-up settlement negotiations. This supports approval of the Settlement. See, e.g., Kullar v. Foot Locker Retail, Inc., 168 Cal. App. 4th 116, 129 (2008) (explaining that "[t]he court undoubtedly should give considerable weight to . . . the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct," and that "an

agreement reached under these circumstances presumably will be fair to all concerned").

B. The Size of the Individual Settlement Payments Are Substantial.

Again, assuming that the Court approves the requested attorney's fees and costs, enhancement award, the settlement administration costs, and the PAGA Payment, the Net Settlement Fund is $69,125.00 Accordingly, the average individual Settlement Payment is $384.03— an amount that will compensate Class Members for a significant amount of unpaid wages and penalties. This supports approval of the Settlement.

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

Plaintiff recognizes that the alleged violations expose Defendant to additional liability on top of the underlying unpaid-overtime and missed-break amounts. Defendant, however, has strongly disputed liability, and all of Plaintiff's claims are subject to dispositive defenses and face challenges to certify. For instance, Defendant argues that Plaintiff's overtime claim would necessarily require an individualized inquiry, thereby defeating any chance of obtaining class certification. Defendant also points to the fact that any alleged miscomputation of overtime, to the extent it did exist, results in damages that are de minimis. Thus, Defendant argues there are no class-wide damages that would be recoverable for this alleged violation. (Harris Decl. ¶ 25.)

Similarly, with respect to the meal-break and rest-break claims, Defendant argued that there is no common policy or procedure to support a claim for the failure to provide rest and meal breaks and that the only common policy regarding meal and rest breaks is that non-exempt employees are permitted to take them, a policy Defendant contends is articulated in its written break policy. Defendant argued that, in light of its purportedly compliant written break policy, Plaintiff would be unable to secure class certification for the meal and rest break claims. (Harris Decl. ¶ 26.) Defendant further argued that, due to the nature of Defendant's business, there are disparate break practices resulting from a variety of factors, including the job title, nature of the work, location within the facility, management styles and/or employee preferences. Defendant argued that, when faced with similar facts, courts have denied class certification because employees' breaks, in practice, are not uniform. (Harris Decl. ¶ 26.) Defendant also argued that Plaintiff cannot meet its burden to certify the class action because a highly individualized inquiry would have to be made to determine whether a particular missed break was the

personal choice of the employee, or was somehow mandated by Defendant. (Harris Decl. ¶ 26.) Defendant's evidence creates a problem for Plaintiff. See, e.g., Lampe v. Queen of the Valley Med. Ctr., 19 Cal. App. 5th 832, 851 (2018) (stating that "[a] missed . . . break does not constitute a violation if the employee waived the . . . break, or otherwise voluntarily shortened or postponed it") (citing Brinker, 53 Cal. 4th at 1040–41).

Plaintiff's wage-statement claim under section 226 also is subject to dispositive defenses. Here, Plaintiff contends that Defendant's pay stubs violate section 226(a) by failing to provide "the name of the legal entity that is the employer." Cal. Lab. Code § 226(a)(8). Specifically, Plaintiff contends the wage statements listed the name of the employer as "*Sonoma Healthcare Center*," which is a "dba" that Defendant stopped using in July 2014 and that instead, for the period of February 6, 2015 to date, Defendant has been utilizing the dba "*Broadway Villa Post-Acute Care & Rehabilitation*" but it failed to list this name on the wage statements it issued to its employees. (Harris Decl. ¶ 26.) Defendant contends, however, that it was using both Broadway Villa Post-Acute Care & Rehabilitation *and* Sonoma Health Center as a dba, which Defendant contends is within its right to do, and even if it were a violation, which Defendant denies, this violation simply amounts to a technical violation that would never lead to meaningful liability. (Harris Decl. ¶ 28.) Defendant contends that in order to recover under Cal. Lab. Code section 226 for a paystub violation there must be a showing of injury to the employee and a knowing and intentional failure by the employer to comply. Defendant argued that this necessarily requires something more than a mere violation of section 226 alone and that instead it must be demonstrated that Defendant knew facts that brought its actions or omissions within the provisions of section 226. Defendant contends that Defendant's paystub claim would fail because Plaintiff cannot show a knowing and intentional violation by Defendant, and that the failure to list the legal name of the employer on the paystub was inadvertent. (Harris Decl. ¶ 26.) As such, compromise of this claim is appropriate.

A similar discount should be applied, for settlement purposes, to Plaintiff's claim for waiting-time penalties. Defendant argued that it correctly calculated the overtime rate. Thus, Defendant argues that to the extent there are no overtime violations, there exist no derivative waiting time penalty claims. (Harris Decl. ¶ 27.) Defendant further argued that even if there was an inadvertent overtime rate

miscalculation – which Defendant vehemently denies – it is at best a technical, derivative violation that would not give rise to waiting time penalties. To this end, Defendant contends that under Cal. Lab. Code section 203, if there exists a good faith dispute that any wages are due and owing to an employee, that precludes the imposition of waiting time penalties under Section 203. (Harris Decl. ¶ 26.) A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact, which, if successful, would preclude any recovery on the part of the employee. Thus, compromise of this claim is appropriate. (Harris Decl. ¶ 26.)

D. Sufficient Investigation Was Conducted to Allow 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. This supports approval of the Settlement.

E. The Class Was Represented by Competent and Experienced Counsel.

Class Counsel specializes in class-wide litigation on behalf of plaintiffs and believes that the Settlement represents an excellent result. (Harris Decl. ¶¶ 3 & 9.) This supports approval.

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

As detailed above, no one has objected to the Settlement, and only two Class Members have opted out. This factor therefore supports final approval.

V. Conclusion.

Based on the foregoing, the Court should certify the Settlement Class, finally approve the Settlement, and order that the Settlement funds be distributed pursuant to the terms of the Agreement.

Dated: May 31, 2019

NORTH BAY LAW GROUP

David S. Harris
Attorney for Plaintiff

PROOF OF SERVICE

I declare under the penalty of perjury that I, J. Michael Solano, am a citizen of the United States and I am employed in the County of Marin. I am over the age of eighteen years and not a party to the within action. My business address is 116 E. Blithedale Avenue, Suite No. 2, Mill Valley, CA 94941.

On the date below, I caused the following documents:

PLAINTIFF ALICIA RANILLO'S NOTICE OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS-ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

to be served on the interested party in said action, who is:

Julie R. Trotter
Delavan J. Dickson
CALL & JENSEN
A Professional Corporation
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660

Attorneys for Defendant Ensign Sonoma LLC

[X] BY UNITED STATES MAIL

I placed a true and correct copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Mill Valley, California, addressed to the parties as set forth above. CCP Sections 1013(a), 2015.5.

I declare under the penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed on May 31, 2019 at Mill Valley, California.

J. MICHAEL SOLANO