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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

KATHLEEN GRACE, REGINA DELGADO,
ALICIA GRIJALVA, JAVIER TERRAZAS,
and all others similarly situated,

Plaintiffs,

v.

THE WALT DISNEY COMPANY, WALT
DISNEY PARKS AND RESORTS US, INC.,
SODEXO, INC., SODEXOMAGIC, LLC and
Does 1-100,

Defendants.

Case No. 30-2019-01116850-CU-OE-CXC

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR AN ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AS TO SODEXO
DEFENDANTS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

**[Concurrently filed herewith: Declarations
of Sarah Grossman-Swenson, Randy
Renick, Phillip Johnson, Ph.D., and
Exhibits; [Proposed] Order]**

Judge: Hon. William D. Claster

Dept.: CX101

Date: May 2, 2025

Time: 9:00 a.m.

Reservation No.: 74522220

Action Filed: December 6, 2019

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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD AND ALL INTERESTED
2 PARTIES:

3 PLEASE TAKE NOTICE that on May 2, 2025, at 9:00 a.m., or as soon thereafter as the matter
4 may be heard in Department CX101 of the above-entitled Court, located at 751 West Santa Ana Blvd.,
5 Santa Ana, California 92701, Plaintiff Kathleen Grace, individually and on behalf of the certified class
6 and all similarly situated individuals, will and hereby does move this Court for entry of the Proposed
7 Order filed concurrently herewith:

8 1. Preliminarily approving the class action settlement with Defendants Sodexo, Inc. and
9 SodexoMagic, LLC ("Sodexo Defendants") for \$1,750,000;

10 2. Preliminarily and conditionally certifying the Settlement Class for purposes of settlement;

11 3. Preliminarily appointing Plaintiff Kathleen Grace as the Sodexo Class Representative for
12 purposes of settlement;

13 4. Preliminarily appointing Randy Renick and Cornelia Dai of Hadsell Stormer Renick &
14 Dai LLP and Richard G. McCracken and Sarah Grossman-Swenson of McCracken, Stemerman &
15 Holsberry, LLP as Class Counsel for purposes of settlement;

16 5. Preliminarily approving settlement administration services to be provided by A.B. Data,
17 Ltd., estimated to be no greater than \$19,000;

18 6. Approving as to form and content the proposed Class Notice, attached as Exhibit A to the
19 Settlement Agreement, which is Exhibit 1 to the Declaration of Sarah Grossman-Swenson filed
20 concurrently herewith;

21 7. Directing that the notice be sent by email to Class members and by first class mail when
22 emails are not available or are returned; and

23 8. Scheduling a final approval fairness hearing on the question of whether the proposed
24 settlement should be finally approved as fair, reasonable, and adequate as to the members of the Class.

25 In a separately filed motion, Plaintiffs will also seek approval of payment to Class Counsel of
26 reasonable attorneys' fees of up to \$262,000 (15% of the common fund) and reasonable costs and
27 litigation expenses of up to \$7,500. In addition, Plaintiffs will seek approval of the payment of a service
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1 or enhancement award in the amount of \$20,000 to the Sodexo class representative.

2 This motion is brought pursuant to Rules 3.764 and 3.769 of the California Rules of Court, on
3 the grounds that the Settlement and proposed plan of allocation are fair, reasonable, and adequate, and
4 that all requirements for class certification have been met.

5 This motion is based upon this Notice, the Memorandum of Points and Authorities, the
6 Declarations of Randy Renick and Sarah Grossman-Swenson (Attorneys), the Declaration of Phillip
7 Johnson (Economist), and accompanying exhibits filed herewith, the other records, pleadings, and
8 papers filed in this action, and upon such other documentary and oral evidence or argument as may be
9 presented to the Court at the hearing of this motion.

10 Dated: March 27, 2025

Respectfully submitted,

11 MCCracken, Stemerman & Holsberry, LLP
12

13
14 By: 

15 Sarah Grossman-Swenson
16 *Attorneys for Plaintiffs & Plaintiff Class*

17 HADSELL STORMER RENICK & DAI LLP

18
19 By: /s/ Randy Renick

20 Randy Renick
21 *Attorneys for Plaintiffs & Plaintiff Class*
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1 **PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL**

2 **I. INTRODUCTION**

3 Plaintiff Kathleen Grace, on behalf of the Plaintiff Class ("Plaintiffs"), seeks preliminary
4 approval of a proposed \$1,750,000 non-reversionary wage and hour class action settlement
5 ("Settlement") reached with Defendants Sodexo, Inc. and SodexoMagic, LLC ("Sodexo" or "Sodexo
6 Defendants"), following the determination in this case that Sodexo was subject to the Anaheim Living
7 Wage Ordinance ("LWO").¹ This settlement was made on behalf of a class of over 500 members, and
8 fully compensates all class members for wages owed under the LWO for the time period when Sodexo's
9 employees were underpaid. Additionally, the settlement provides for payment of interest at 10% on all
10 monies owed to the class, and for statutory and Private Attorneys General Act ("PAGA") penalties. The
11 allocation of backpay to the Plaintiff Class will be equal to the wages actually owed to each individual
12 employee, based on their actual hours worked and wages earned. The allocation of statutory and PAGA
13 penalties will be based on the class members' number of work weeks with alleged violations and the
14 number of class members who were owed wages under the LWO when their employment ended. Class
15 members will receive payments based on their payroll records without the need to return a claim form.
16 The Court has already certified a class of over 500 employees who were not paid the hourly wages
17 required by the LWO.

18 In 2023, the Court of Appeal held that Sodexo was required to comply with the Ordinance, and
19 the California Supreme Court denied review. The case returned to the trial court for a determination of
20 the proper remedies, including damages, interest, and penalties. In November 2023, shortly after the
21 Supreme Court's decision, Sodexo began complying with the LWO prospectively, raising those
22 employees' wages which were below the LWO minimum to the LWO minimum. Sodexo also paid
23 retroactive wages to some of its employees in or around November 2023.

24
25
26 ¹ The Court of Appeal ruled on July 13, 2023, that "Disney receives a 'City Subsidy' within the meaning
27 of the LWO and is therefore required to pay its employees a living wage." (*Grace v. The Walt Disney Co.*
28 (2023) 93 Cal.App.5th 549, 560, rev. denied Oct. 25, 2023.) Because of its contracts with Disney, Sodexo
is a business that "benefits from a City Subsidy" within the meaning of the LWO. (See *id.* at p. 552.)

1 Prior to settlement, Plaintiffs conducted extensive discovery as to damages and received detailed
2 payroll data from Defendants with thousands of lines of data. Plaintiffs' investigation included
3 interviews of the Class representative and Class members and review of relevant documents, including
4 payroll data, wage statements, applicable collective bargaining agreements, and employment policies.
5 Plaintiffs thoroughly analyzed legal claims and Defendants' potential defenses and legal theories
6 regarding remedies.

7 The Parties extensively briefed remedies-related issues, submitting briefs to experienced wage-
8 and-hour mediator Steve Pearl. Following a full-day mediation session with Mr. Pearl on July 16, 2024,
9 and follow-up by the mediator over several months, Mr. Pearl issued a Mediator's Proposal, which was
10 ultimately accepted by the Parties, with the terms confirmed on November 1, 2024.

11 The Settlement is an excellent result for the Class and avoids a trial and likely appeals related to
12 the contours of statutory and PAGA penalties. Plaintiffs seek approval of the proposed Settlement as
13 fair, reasonable, and adequate and ask the Court to conditionally certify the Settlement Class and set
14 dates for providing notice of settlement to the Class, requests for exclusion or objection, and the final
15 approval fairness hearing.

16 II. PROCEDURAL HISTORY

17 On December 6, 2019, Plaintiffs Kathleen Grace, Regina Delgado, Alicia Grijalva, and Javier
18 Terrazas ("Plaintiffs")² filed a wage-and-hour class action on behalf of a class of workers against
19 Defendants The Walt Disney Company and Walt Disney Parks and Resorts US, Inc. ("Disney
20 Defendants") and Defendants Sodexo, Inc. and SodexoMagic, LLC ("Sodexo Defendants"). Plaintiffs'
21 Complaint alleged that Disney Defendants and Sodexo Defendants had violated the City of Anaheim's
22 Living Wage Ordinance (adopted in 2018, and codified at Chapter 6.99 of the Anaheim Municipal Code,
23 referred to as the "LWO"), Labor Code section 203 (waiting time penalties), Labor Code sections 510,
24 1194 and 1198 (overtime wages), Business and Professions Code section 17200 (the Unfair Competition
25

26 ² Plaintiff Thomas Bray was also named in the complaint but subsequently withdrew as a class
27 representative and named plaintiff.
28

1 Law or UCL)³, and Labor Code section 2698 (the Private Attorneys General Act or PAGA). Plaintiffs
2 sought damages including back wages, as well as restitution, penalties, interest, declaratory and
3 injunctive relief, costs, attorneys’ fees, and a jury trial.

4 In response to the Complaint, Disney Defendants filed a demurrer, joined by Sodexo Defendants,
5 arguing that the Living Wage Ordinance did not apply to them. Plaintiffs opposed, and the Court
6 overruled the demurrer. The Court held that “even under the Disney Defendants’ definition [of a
7 ‘rebate’], the Credit Enhancement Agreement could be construed as creating a City Subsidy.” (*Grace v.*
8 *The Walt Disney Co.* (2023) 93 Cal.App.5th 549, 555, rev. denied Oct. 25, 2023.)

9 On April 30, 2021, Disney Defendants filed a motion for summary judgment, and Sodexo
10 Defendants joined. On May 10, 2021, Plaintiffs filed a motion for class certification. Following a
11 stipulation of the parties as to certain class issues, the Court certified the following class of Plaintiffs on
12 July 2, 2021:

13 All nonexempt current and former individuals employed by Defendants in Disney
14 theme parks and hotels in Anaheim, California, on or after January 1, 2019, who
15 reside in California, and who were not paid hourly wages of at least \$15/hour at
16 any time from January 1, 2019, to December 31, 2019; and/or who were not paid
17 hourly wages of at least \$16/hour at any time from January 1, 2020, to December
31, 2020; and/or who were not paid hourly wages of least \$17/hour at any time
from January 1, 2021 to the present.

18 On August 13, 2021, the Court issued an Order re Plan of Notice to the Class, and Plaintiffs provided
19 notice to the Class in compliance with the Order.

20 On November 1, 2021, the Court granted Defendants’ motions for summary judgment. Plaintiffs
21 appealed. On July 13, 2023, the Court of Appeal reversed the grant of summary judgment, explaining
22 that the “sole issue in this appeal is whether Disney benefits from a ‘City Subsidy’ under the LWO.”
23 (*Grace, supra*, 93 Cal.App.5th at p. 556.) The Court concluded: “In short, we hold Disney receives a
24 ‘City Subsidy’ within the meaning of the LWO and is therefore required to pay its employees a living
25

26 ³ The UCL claim is duplicative of the LWO claim with regard to remedies, and does not have any
27 independent value nor extend the statute of limitations because underpayments did not start until January
28 1, 2019, when the Living Wage Ordinance went into effect, and the Complaint was filed less than one
year later on December 6, 2019.

wage.” (*Id.* at p. 560.) The Court noted that Sodexo had “derivative” liability because it operated restaurants in Disney’s theme parks. (*Id.* at p. 552.) Because of the Sodexo Defendants’ relationship with Disney, Sodexo is a business that “benefits from a City Subsidy” within the meaning of the LWO under the Court of Appeal’s decision. The Court of Appeal reversed the order granting summary judgment, ordered Defendants to pay Plaintiffs’ costs on appeal, and remanded for further proceedings. Shortly thereafter, Disney Defendants petitioned for review in the California Supreme Court, and Sodexo Defendants joined. On October 25, 2023, the California Supreme Court denied review, and the case was remanded to the trial court for a trial on damages and penalties.

On December 1, 2023, Plaintiffs filed an amended complaint adding a claim for violation of Labor Code section 226, seeking statutory penalties and PAGA penalties for alleged wage statement violations. Both Disney Defendants and Sodexo Defendants answered. The Parties also stipulated to an amended class definition and updated notice to additional class members. On December 18, 2023, the Court adopted the following amended Class definition:

All nonexempt current and former individuals employed by Defendants in Disney theme parks and hotels in Anaheim, California, on or after January 1, 2019, who reside in California, and who were not paid hourly wages of at least the amounts required by Title 6, Chapter 6.99 of the Anaheim Municipal Code at any time from January 1, 2019, to the entry of judgment in this action.

On February 16, 2024, Plaintiffs provided notice to all class members identified by Defendants who fell within the amended class definition. Plaintiffs and Sodexo Defendants conducted extensive discovery related to damages in 2024, and participated in a mediation with Steve Pearl on July 16, 2024. Pursuant to a mediator’s proposal, the case reached a settlement in principle on October 30, 2024. Plaintiffs and Sodexo Defendants have negotiated a long-form settlement agreement, which is attached hereto as Exhibit 1 to the Declaration of Sarah Grossman-Swenson filed herewith (“Swenson Decl.”). No related cases have been filed, and the effect on any other pending actions against Sodexo, if any, will be minimal. (Swenson Decl. ¶¶ 19-20.)

III. RELEVANT FACTS, LEGAL CLAIMS, AND DEFENSES

Plaintiffs’ Second Amended Complaint includes the same claims and seeks the same remedies as their First Amended Complaint, with the addition of a service charge claim that is not applicable to the

1 Sodexo Defendants. It is undisputed that the Sodexo Defendants must comply with the Living Wage
2 Ordinance following the Supreme Court’s denial of review of the Court of Appeal’s decision. (*Grace*,
3 *supra*, 93 Cal.App.5th at p. 560.) On or about November 24, 2023, after the Supreme Court denied
4 review, the Sodexo Defendants began complying with the Ordinance, paying their employees in
5 compliance with the hourly wage rates set by the Ordinance. They have continued to comply to date.
6 The only issues remaining in the case are the proper remedies owed to the Plaintiff Class.

7 **A. Damages and Interest**

8 Under the Living Wage Ordinance, Plaintiffs are owed backpay for the time period that they
9 were underpaid. Plaintiffs hired economic expert Phillip Johnson, Ph.D., from Econ One Research, Inc.
10 (“Econ One”), to analyze Sodexo payroll data from 2018 to 2023. (See Johnson Declaration filed
11 herewith at Exhibit 1.) Johnson determined that the Plaintiff Class was owed wages for the time period
12 from January 1, 2019, to November 24, 2023, which he is able to attribute to individual employees
13 based on their hours worked and wages paid by date. (See *id.*) Plaintiffs’ computation of damages
14 includes backpay for hours worked at a rate less than the LWO minimum and pre-judgment interest at
15 the rate of 10% per year. (Lab. Code § 218.6; Civ. Code § 3289; *Bell v. Farmers Inc. Exchange* (2006)
16 135 Cal.App.4th 1138.) Following the Court of Appeal decision and denial of petition for review by the
17 Supreme Court, the Sodexo Defendants were no longer able to contest that hourly damages were owed
18 but disputed the methods of calculation and the rate of interest, among other disputes and defenses.

19 **B. Statutory Penalties**

20 ***Waiting time penalties:*** Under Labor Code section 203, an employer who willfully fails to pay
21 any wages due to an employee who is discharged or who quits must pay a “waiting time penalty” of up
22 to 30 calendar days at the employee’s daily rate of pay. (*Diaz v. Grill Concept Services, Inc.* (2018) 23
23 Cal.App.5th 859, 867.) Under section 203, an employer’s failure to pay is not willful if that failure is
24 due, among other reasons, to uncertainty in the law, or was done in good faith. (*Id.* at p. 868.) Plaintiffs
25 do not contest that the Sodexo Defendants can assert a defense to statutory waiting time penalties prior
26 to the decision by the Court of Appeal because, until that point, no court had ruled that the Sodexo
27 Defendants had to comply with the LWO, and in fact this Court had ruled that the Sodexo Defendants
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1 were not subject to the Ordinance. (See *Diaz, supra*, 23 Cal.App.5th at p. 868.) Accordingly, Plaintiffs
2 did not seek statutory penalties from any defendants prior to July 14, 2023.⁴ If this case were to proceed
3 to trial, the Sodexo Defendants would argue, as they did in their summary adjudication motion, that
4 there was continued uncertainty in the law until the California Supreme Court denied review of this
5 action, and thus no statutory penalties are appropriate until after October 25, 2023, among other disputes
6 and defenses.

7 **Wage Statement Penalties:** Under Labor Code section 226(a), the Sodexo Defendants must
8 provide their employees with accurate wage statements. Wage statements must show “all amounts
9 earned and now owing,” not just those amounts actually paid. (*Naranjo v. Spectrum Security Services,*
10 *Inc.* (2022) 13 Cal.5th 93, 119 (*Naranjo III*).)⁵ Labor Code section 226(e) provides that a “knowing and
11 intentional failure by an employer to comply” with wage statement requirements entitles an employee to
12 statutory penalties starting at \$50 for the initial pay period and \$100 for each subsequent pay period,
13 capped at \$4000. As with waiting time penalties, wage statement penalties are not available when a
14 party has a good faith defense. (*Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056,
15 1075.) Again, at any trial in this matter, the Sodexo Defendants would argue that there was uncertainty
16 in the law until the California Supreme Court denied review, and that the Sodexo Defendants began
17 complying with the Ordinance shortly thereafter, so no penalties are appropriate, among other disputes
18 and defenses.

19 C. PAGA Penalties

20 PAGA provides for a default \$100 penalty for an “initial” violation and an increased \$200
21 penalty for a “subsequent” violation. (Lab. Code § 2699(f)(2) (Jan. 1, 2023).) Employers are subject to
22 imposition of only the lower default \$100 penalty unless they continue to engage in violations after

23 ⁴ This is consistent with the position that Plaintiffs took in opposing a summary adjudication motion by
24 Sodexo seeking a ruling that statutory penalties were not owed at all due to Sodexo’s good faith belief it
25 did not have to comply with the LWO: Plaintiffs conceded that statutory penalties were not available at
as a matter of law prior to July 14, 2023. (See Pls. Opp. to Sodexo Summ. Adj. Mot. at p. 1.)

26 ⁵ Plaintiffs amended their complaint in 2023 following their appeal because the 2022 *Naranjo III* decision,
27 which was issued while Plaintiffs’ case was on appeal, supported adding a cause of action under section
28 226 for Defendants’ failure to provide wage statements reflecting earned, but unpaid, LWO wages. (See
Naranjo III, 13 Cal.5th at p. 119.) The Sodexo Defendants disputed that claim.

1 receiving notice of the violation from the Labor Commissioner or a court, which would make them
2 subject to the higher \$200 penalty. (See *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334,
3 355; Lab. Code § 2699(f)(2).) Where the Labor Code expressly provides for a different civil penalty
4 provision for a violation, that penalty provision provides the penalty under PAGA. For example, the
5 failure to pay overtime wages carries an initial PAGA penalty of \$50.00 and a subsequent penalty of
6 \$100 per aggrieved employee per pay period. (Lab. Code § 558(a)(1)-(2).) The purpose of PAGA
7 penalties is to “punish the wrongdoer and to deter future misconduct...” (*Kim v. Reins Intl. Cal., Inc.*
8 (2020) 9 Cal.5th 73, 86.) Courts have substantial discretion to award lesser PAGA penalties. (*Amaral v.*
9 *Cintas Corp.* (2008) 163 Cal.App.4th 1157, 1213.)

10 Alleged wage statement violations, overtime violations, and waiting time violations provide a
11 basis for awarding PAGA penalties here. If this case were to proceed to trial, the Sodexo Defendants
12 would argue that the imposition of PAGA penalties would be unjust because they believed in good faith
13 that they did not have to comply with the Ordinance at least until the Supreme Court denied review on
14 October 25, 2023, on the basis that until July 13, 2023, no court had ruled that the Sodexo Defendants
15 had to comply with the Ordinance, the Court of Appeal’s decision was appealable and subject to reversal
16 until the Supreme Court denied review, and the trial court agreed that the Sodexo Defendants did not
17 have to comply with the Ordinance as a matter of law—among other disputes and defenses.

18 **IV. SETTLEMENT TERMS, ALLOCATION PLAN AND PROPOSED SCHEDULE**

19 **A. Summary of Settlement Terms**

20 The Settlement Agreement provides for the following terms:

21 1. **Settlement Class:** The Settlement Class is defined as “all nonexempt current and
22 former individuals employed by Sodexo, Inc. or any of its subsidiaries, parents, and affiliated entities,
23 including but not limited to SodexoMagic, LLC and who worked in Disney theme parks and hotels in
24 Anaheim, California on or after January 1, 2019, and who were not paid hourly wages of at least the
25 amounts required by Title 6, Chapter 6.99 of the Anaheim Municipal Code at any time from January 1,
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2019, to the order on the motion for preliminary approval.” (Swenson Decl. ¶ 2 & Exh. 1 (“Agreement”)
at § 1.32.)⁶

2. **Settlement Fund:** The total settlement amount is \$1,750,000 (ONE MILLION SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS) and is non-reversionary. This includes payment to the Class, PAGA payment to the State of California Labor and Workforce Development Agency (“LWDA”), service award to the Named Plaintiff, administration and notice-related costs, employees’ share of payroll taxes, interest, attorneys’ fees and reimbursement of reasonable litigation costs and expenses. It does not include the employer’s share of payroll taxes, which shall be paid separately by the Sodexo Defendants. After deductions for fees, costs, administration, and the service awards, the net settlement amount will be at least \$1,441,000, and the amount distributed to the class after the payment to the LWDA will be at least \$1,309,750, of which the amount owed to the Class for full recovery of unpaid wages with interest is \$1,151,217. (Renick Decl. ¶ 10.)

3. **Administration:** A.B. Data, Ltd., shall be responsible for administering the Settlement; administration expenses shall be paid out of the gross settlement amount and are estimated to be \$18,999, and AB Data has stated they will not exceed \$19,000. (Renick Decl. ¶¶ 10, 12.)

4. **Requests for Exclusion/Objections/Disputes:** Class members will have 60 days after receiving notice to file written objections with the Court, to request exclusion from the class claims, and to challenge the data used to calculate the individual Class member’s allocation. (Agreement at §§ 4.2, 5.1-5.2.)

⁶ The Court has broad discretion to certify a class for purposes of a class action settlement. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn.19 [holding that class certification in settlement cases is subject to a “lesser standard of scrutiny”].) Here, the Sodexo Settlement Class is simply a subset of the broader Class including both Disney and Sodexo employees already certified by the Court. The Settlement Class is plainly (1) an “ascertainable class,” and (2) “a well-defined community of interest among class members.” (*Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326.) Plaintiff Grace is an adequate representative for the new class definition; notably, the parties previously entered into a stipulation regarding class representatives wherein the Sodexo Defendants agreed to not oppose Plaintiffs’ class certification motion. (See ROA 286, Notice of Entry of Order Granting Class Certification, 7/2/21.)

1 5. All Class members who do not opt out by timely filing a request for exclusion will
2 release all claims they had against the Sodexo Defendants arising from the facts alleged in the Second
3 Amended Complaint and occurring during the Class Period. (*Id.* at §§1.26, 1.26.1, 3.1-3.4.)

4 6. Class members who are PAGA Aggrieved Employees will be releasing their
5 representative PAGA claims regardless of whether they submit an exclusion request if the Settlement
6 Agreement is approved by the Court. In the event that Class members elect to exclude themselves from
7 the Class, they will still be entitled to their portion of the PAGA settlement amount, which will be
8 calculated separately. (*Id.* at §1.9.)

9 **B. Plan of Distribution**

10 **Living Wage Ordinance Damages and Statutory Penalty Claims:**

11 Each Class member who does not opt out of the Settlement will receive their share of the wages
12 which Plaintiffs allege the Sodexo Defendants failed to pay during the Class Period before the Sodexo
13 Defendants came into compliance with the Ordinance. The average total recovery per Class member
14 including all categories of backpay, interest, and penalties is \$2,398. (Swenson Decl. ¶ 18.) 544 Class
15 members have wage claims, 138 Class members have wage statement claims, approximately 16 Class
16 members have waiting time claims identified to date, and 547 Class members are aggrieved employees
17 with a recovery for PAGA claims.⁷ (Johnson Decl. at Exh. 1, Tables 1, 4 & 5.) The value of each
18 individual claim will be included in the Notice, as described below. The amounts have been calculated
19 using the Sodexo Defendants' records, including payroll data for the Class Period (see Johnson Decl. at
20 Exh. 1, Tables 1-5), and allocated based on those calculations, as follows:

- 21 • **\$1,151,217 allocated to Claims for Alleged Lost Wages (\$797,475) and Interest (\$353,742).**
22 Each Class member will receive all of their alleged lost income from wages lower than those
23 required by the Ordinance during the Class Period.
 - 24 a. Straight-time hourly income differentials for each Class member have been calculated as
25 the difference between the hourly rate paid and the Ordinance rate in effect in the pay
26 period when the work was performed, multiplied by the number of straight-time hours
27 worked by the Class member during the pay period, then totaled for all pay periods in
28 which the Class member performed work.

27 ⁷ A few Class members were underpaid but then paid backpay sufficient to bring their wages into
28 compliance with the LWO, so they have a wage statement claim but not a wage claim.

- b. Overtime incurred during the Class Period has been recalculated using the higher hourly wage rates provided in the Ordinance, with the difference included in this allocation.
- c. Premium pay and shift differential rates are not considered in these calculations (i.e., they are not credited toward compliance with the LWO).
- d. Each Class member's share of the allocation includes 10% annual interest from the time the payment was due until July 1, 2025.
- **\$87,452 allocated to Statutory Penalties for Wage Statement Claims.** Each Class member will receive a pro rata share of the allocation based on the number of relevant weeks worked with an alleged underpayment of wages during the Class Period ("Work Weeks").⁸ This is calculated by dividing the individual Class member's Work Weeks with an alleged underpayment by the total Work Weeks with an alleged underpayment for the Class and multiplying the allocation by that number.
 - **\$27,331 allocated to Statutory Penalties for Waiting Time Claims.** Each Class member whose employment with Sodexo ended between July 14, 2023, and the Date of Preliminary Approval will receive a per capita share of this allocation. This is calculated by dividing the allocation by the number of class members whose employment ended during this time.

Private Attorney General Act ("PAGA") Penalties

Ten percent of the Settlement, or \$175,000, is allocated to PAGA penalties, of which 75% (\$131,250) will be paid to the California Labor and Workforce Development Agency ("LWDA"), as required by law. (See Renick Decl. ¶¶ 10-12 & Exh. B-D, attaching copies of letters and proof of service of letters and settlement agreement served on LWDA.) The remaining 25% (\$43,750) will be distributed among all "aggrieved employees" under PAGA, including those Class members who opt out of the Settlement ("PAGA Member"), and allocated as follows:⁹

- **\$35,775 allocated to PAGA Penalties for Wage Statement Claims.** Each PAGA Member will receive a pro rata share of the allocation based on their individual relevant Work Weeks with an alleged underpayment of wages during the Class Period. This is calculated by dividing the PAGA Member's total number of Work Weeks with an alleged underpayment by the total number of Work Weeks with an alleged underpayment for the entire Class and multiplying the allocation by that number.

⁸ Sodexo has weekly pay periods, so each work week constitutes a separate potential alleged violation. The total statutory penalties available for distribution are allocated 23.812% to waiting time penalties and 76.188% to wage statement penalties, consistent with the respective percentages of total potential statutory penalties shown in Johnson Decl. at Exh. 1, Table 4. (See Swenson Decl. ¶ 16.)

⁹ The total PAGA penalties available for distribution are allocated 81.773% to wage statement PAGA penalties, 15.193% to overtime PAGA penalties, and 3.034% to waiting time PAGA penalties, consistent with the respective percentages of the total potential PAGA penalties shown in Johnson Decl. at Exh. 1, Table 5. (See Swenson Decl. ¶ 17.)

- **\$6,647 allocated to PAGA Penalties for Overtime Claims.** Each PAGA Member will receive a pro rata share of the allocation based on their individual Work Weeks with allegedly underpaid overtime during the Class Period. This is calculated by dividing the PAGA Member's total number of Work Weeks with allegedly underpaid overtime by the total number of Work Weeks with allegedly underpaid overtime for the entire Class and multiplying the allocation by that number.
- **\$1,328 allocated to PAGA Penalties for Waiting Time Claims:** Each PAGA Member whose employment ended during the Class Period will receive a per capita share of the allocation. This is calculated by dividing the total allocation by the number of Class members whose employment ended during the Class Period.

Class Counsel's Attorneys' Fees and Costs, Class Representative Service Awards, and Administrative Costs

- Plaintiffs will seek an award of attorneys' fees up to 15% (\$262,500) of the \$1,750,000 Settlement Amount, which is subject to Court approval, and will be supported by a separate fee motion and information enabling the Court to conduct a lodestar cross check, as well as the reimbursement of costs of approximately \$7,500.
- In addition, Class Counsel will ask the Court to authorize a Service Award of up to \$20,000 to the Class Representative for her services in representing the Class, in addition to the Individual Settlement Award she will receive as a Class member.
- The Parties estimate the cost of administering the Settlement, including but not limited to giving notice to the Class, calculating the Individual Settlement Awards, and making the payments authorized under the Settlement, will be no greater than \$19,000. Class Counsel will ask the Court to authorize those costs to be paid to the Settlement Administrator.

C. Proposed Schedule

The following schedule sets forth a proposed sequence for the relevant dates and deadlines to follow preliminary approval. This schedule is also set forth in the proposed order filed concurrently.

Date	Deadline
Within 15 calendar days of the date the Court grants Plaintiffs' Motion for Preliminary Approval	Defendants will produce the Class List and Data to the Settlement Administrator. Agreement § 4.1(a).
Within 14 calendar days of the date Sodexo provides Class List to the Administrator	Administrator shall provide Notice on a settlement website. Agreement §4.1(d).
Within 30 calendar days after entry of the Preliminary Approval Order	Administrator shall e-mail the Notice to all Class members and attempt to correct any e-mails that "bounce back." Agreement § 4.1(b).
Within 14 calendar days after issuance of e-mail Notice	Administrator shall send the Notice via First Class Mail to all individuals for whom the Class List did not include an email, and for whom the e-mail notice bounced back and could not be successfully re-sent. Agreement § 4.1(c).
No later than 14 calendar days	Plaintiffs' counsel to file Motion for Attorneys' Fees and Costs and

Date	Deadline
before Objection deadline	any related filings, and Settlement Administrator shall post the Motion for Attorneys' Fees and Costs and any related filings on the website. Agreement § 9.1.
60 calendar days after Notice is mailed	Last day for members of the Class to submit written objections or requests for exclusion from the settlement (must be postmarked by this date). Agreement § 1.20.
60 calendar days after Notice is mailed	Last day to submit disputes to Administrator regarding estimated allocation, per Plaintiff's proposed Plan of Distribution. Agreement §§ 1.20.
75 calendar days after Notice is mailed	Administrator shall make a final decision on all disputes submitted by members of the Class regarding estimated recovery. Agreement §§ 1.23, 4.2. See Class Notice, Section D (Your Options).
30 calendar days before the Final Approval Hearing	Plaintiffs to file Motion for Final Approval of Class Action Settlement. Agreement § 8.2.
At least 90 calendar days after the Notice Date	Final Approval Hearing. Agreement § 4.3.
Effective Date	One business day following the later of: (a) sixty-five (65) days after the date upon which the Court grants Final Approval of the Settlement; (b) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the fee award or service awards, the date of completion, in a manner that finally affirms and leaves in place the final judgment without any material modification, of all proceedings arising out of the appeal(s) (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand; or (c) the date of final dismissal of any appeal or the final dismissal of any proceeding on petition for review with respect to the final judgment. Agreement § 1.8.
Within 60 calendar days after the Effective Date	Checks / Venmo / PayPal/ ACH sent to Class members with 180 days to cash checks; Administrator to perform an NCOA check and skip-trace for returned and uncashed checks per Agreement with an expiration date of at least 90 days, or 180 days after original issuance, whichever is later. Agreement §§ 2.3.1- 2.3.4. Administrator to issue payment to LWDA. Agreement § 2.4.
Starting 30 calendar days after all checks issued	Administrator sends email to Class Member to remind Class member to cash check before void date. Agreement § 2.3.2.

V. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE.

A class action may not be compromised or settled without approval of the Court. Cal. R. Ct. 3.769. The decision to approve or reject a proposed settlement is committed to the sound discretion of

1 the Court. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 234-35.) Public policy and
2 the law generally favor settlement, particularly in class actions and other complex cases where
3 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. (See
4 *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723, fn.14.)

5 The purpose of the preliminary evaluation of a proposed class action settlement is to determine
6 only whether the settlement is within a reasonable range of possible approval, and thus whether notice
7 to the class of the terms and conditions and the scheduling of a formal fairness hearing is warranted.
8 (*Wershba, supra*, 91 Cal.App.4th at pp. 234-35.) To make the fairness determination, the Court should
9 consider several factors, including “the strength of plaintiffs’ case, the risk, expense, complexity and
10 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
11 offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the
12 experience and views of counsel.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

13 **A. The Strength of Plaintiffs’ Case Balanced Against the Amount Offered in Settlement**
14 **Weights in Favor of Approval.**

15 Of the factors that the Court must consider in determining fairness, “[t]he most important factor
16 is the strength of the case for plaintiffs on the merits, balanced against the amount offered in
17 settlement.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 130 [citation omitted].)
18 Plaintiffs have obtained in settlement an amount that will make the entire Plaintiff Class whole, with
19 10% interest, as well as provide them with significant penalties. While Plaintiffs firmly believe in the
20 strength of their case on penalties, they are mindful of the risks in proceeding to a trial on penalties, and
21 the delay that a trial on penalties would entail. On balance, these factors weigh strongly in favor of the
22 Settlement.

23 **B. Risk, Expense, Complexity and the Likely Duration of Further Litigation.**

24 Plaintiffs recognize the inherent risks and uncertainty of litigation, including that the Class could
25 receive less in penalties than they were offered in mediation, as well as the significant benefit of
26 providing relief to the Class now. Plaintiffs’ claims involved disputed legal and factual issues with
27 regard to proper remedies, which the Parties briefed extensively for mediation and in Sodexo’s motion
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1 for summary adjudication and opposition thereto. While Plaintiffs firmly believe in the strength of their
2 arguments with respect to statutory penalties and PAGA penalties, substantial discretion is accorded to
3 the Court and jury in awarding penalties. The Sodexo Defendants' defenses raise a possibility that
4 significantly lower penalties would be awarded. The Sodexo Defendants have argued that their
5 noncompliance with the Ordinance was done in good faith as they did not have a basis to believe they
6 were subject to the LWO, and such a defense may serve as a complete bar to penalties if accepted by the
7 jury and the Court. The Sodexo Defendants have also argued that an earlier representative action that
8 was filed Kern County Superior Court and settled in 2019 would bar Plaintiff Grace's overtime claim as
9 a class representative and that Plaintiff's wage statement claim was untimely alleged; if the Court or jury
10 agreed with these defenses, the defenses could bar Plaintiffs' claims for penalties.

11 If the proposed Settlement had not been achieved, continued litigation of the claims would take
12 substantial time and possibly confer no benefit upon the Class. It was likely that the penalties would
13 continue to be fiercely litigated by the Parties, with a number of open legal issues related to statutory
14 and PAGA penalties. Multiple additional years of litigation would delay payment to Class members of
15 money that, after the Supreme Court denied review of the Court of Appeal's decision, there is no longer
16 a basis to dispute is owed. And it would inevitably involve significant additional expenses and fees. By
17 contrast, the Settlement will yield a prompt, certain, and substantial recovery for the Class, without the
18 substantial delay that a trial and appeals would entail.

19 **C. The Settlement Terms Are Fair, Adequate, and Reasonable.**

20 The total settlement is \$1,750,000, which includes payment to the Class members, the Named
21 Plaintiff's service award, the LWDA payment for PAGA penalties, attorneys' fees and costs, the
22 employees' share of payroll taxes, and administration costs. Plaintiffs' counsel will apply for up to
23 fifteen percent of the common fund (\$262,500) in fees, and for the reimbursement of no more than
24 \$7,500 in costs. Plaintiffs intend to seek a service award for the Class Representative of \$20,000.
25 Payment to the LWDA for PAGA penalties will be \$131,250 (75% of the PAGA Allocation). The
26 Parties expect administration costs will be no greater than \$19,000. This means that Class members will
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1 share in the sum of at least \$1,309,750. (Renick Decl. ¶ 10.)

2 While the settlement does not provide for injunctive relief, the Sodexo Defendants have been
3 complying with the hourly requirements in the Ordinance since November 24, 2023. There is no threat
4 that the Sodexo Defendants will reverse course, and no reason to believe that the Sodexo Defendants
5 would fail to comply with the LWO in light of the Court of Appeal's decision. Thus, injunctive relief is
6 not necessary to ensure compliance with the Living Wage Ordinance going forward.

7 The settlement wholly compensates the Plaintiff Class for all damages incurred, as well as full
8 interest, in addition to a meaningful recovery of highly disputed penalties. This is an outstanding result
9 compared with what Plaintiffs might obtain at trial. As explained above, among other things, the Sodexo
10 Defendants would argue that Plaintiffs should not be entitled to penalties at all, or at least not until after
11 October 25, 2023, when the California Supreme Court denied review of the Court of Appeal's decision.
12 If the Court rejected the Sodexo Defendants' argument that penalties are entirely unavailable but
13 accepted the Sodexo Defendants' arguments that penalties should not apply until after October 25, 2023,
14 then the net settlement amount exceeds the amount that Plaintiffs could obtain at trial including penalties
15 (which penalties the Sodexo Defendants would then have argued should be discretionarily reduced by
16 the Court). The net settlement amount of penalties, which settles all penalties exposure, represents
17 recovery of 50% of statutory penalties and 36% of PAGA penalties sought after July 13, 2023 (and
18 203% of PAGA penalties sought after October 25, 2023) (see Johnson Decl. at Exh. 1, Tables 4-5).
19 While Plaintiffs are confident that they would prevail on damages and interest, Plaintiffs' recovery of
20 penalties is by no means certain. The trial court agreed with the Sodexo Defendants on summary
21 judgment that they were not obligated to comply with the Living Wage Ordinance and might not be
22 inclined to award substantial penalties at trial particularly given the Court's considerable discretion in
23 awarding PAGA penalties. Any penalties awarded would be subject to appeal, further prolonging the
24 litigation, and denying the Class payment of wages to which they are entitled after the Court of Appeal's
25 decision and the Supreme Court's declining to review it.

26 In assessing the value of all of the claims, Plaintiffs' counsel considered the Sodexo Defendants'
27 defenses to penalties, the chances of prevailing on penalties, applicable case law and regulations, the
28

1 circumstances of the case, and potential risks and delays. (Swenson Decl. ¶ 14.) Further, the Parties had
2 engaged in extensive discovery at the time the case was settled. Plaintiffs engaged a well-respected
3 economic expert to analyze the backpay, interest, and penalties owed to the Plaintiff Class. (Swenson
4 Decl. ¶ 12; Johnson Decl. at Exhs. 1-2.) Plaintiffs' expert analyzed thousands of data entries to calculate
5 the damages and penalties potentially owed to the Class. (Swenson Decl. at ¶¶ 11-12; Johnson Decl. at
6 Exh. 1.) The Parties had exchanged thoroughly researched mediation briefs regarding penalties and had
7 extensive knowledge about the strengths and weaknesses of each other's cases, which enabled them to
8 negotiate a fair settlement with the assistance of Mediator Steve Pearl. (Swenson Decl. ¶ 13.) The
9 Settlement was the result of a mediator's proposal following arm's-length bargaining and vigorous
10 negotiations in mediation. (*Id.* ¶ 10.)

11 Also, as set forth above and in the declarations filed herewith, Plaintiffs' counsel are highly
12 experienced in class action and other complex litigation. (Renick Decl. ¶¶ 3-7; Swenson Decl. ¶¶ 3-9.)
13 Plaintiffs' counsel have substantial litigation experience litigating living wage ordinance class actions
14 and wage and hour class actions, and are fully familiar with the legal and factual issues in this case.
15 Plaintiffs' counsel believe that the settlement is fair, reasonable, and adequate. (Swenson Decl. ¶ 14.)
16 These factors support a presumption of fairness as well as a finding that the Settlement is fair,
17 adequate, and reasonable.

18 **D. The Notice to the Class Is Adequate and Proper.**

19 The Court's order preliminarily approving a class settlement must include the notice to be given
20 to the class. Cal. R. Ct. 3.769(e). The purpose of providing class notice to class members is to give
21 "sufficient information to decide whether they should accept the benefits offered, opt out and pursue
22 their own remedies, or object to the settlement." (*Wershba, supra*, 91 Cal. App. 4th at p. 252.)
23 Generally, a class notice "must strike a balance between thoroughness and the need to avoid unduly
24 complicating the content of the notice and confusing class members." (*Id.*)

25 **1. The Notice Contains All of the Required Components.**

26 Rule 3.766(d) provides in pertinent part that "[t]he content of the class notice is subject to court
27 approval." If class members are to be given the right to request exclusion from the class, the notice must
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1 include the following:

2 (1) A brief explanation of the case, including the basic contentions or denials of the parties; (2) A
3 statement that the court will exclude the member from the class if the member so requests by a
4 specified date; (3) A procedure for the member to follow in requesting exclusion from the class;
5 (4) A statement that the judgment, whether favorable or not, will bind all members who do not
6 request exclusion; and (5) A statement that any member who does not request exclusion may, if
7 the member so desires, enter an appearance through counsel.

8 (*Cellphone Termination Fee Cases* (2010) 186 Cal. App. 4th 1380, 1390.) The proposed Notice is set
9 forth as Exhibit A to the Settlement Agreement attached as Exhibit 1 to the Swenson Declaration and
10 meets all of the requirements set forth in the California Rules of Court and in *Wershba*, including: 1) a
11 class definition; 2) a description of the substantive issues and proceedings to date; 3) a neutral
12 description of the proposed settlement; 4) the amount of attorney's fees and costs sought; 5) the right to
13 request to be excluded from the Class and the opt-out procedure and 60-day period for submitting the
14 request for exclusion; 6) the right to challenge the data used to calculate the individual class member's
15 allocation within 60 days of the mailing of the Notice; 7) the right to object within 60 days and the
16 procedure for submitting a written objection; 8) the consequences of remaining a class member; 9) the
17 date, time, and place of the final approval hearing; and 10) contact information for Plaintiffs' counsel.
18 (See Renick Decl. ¶ 13; Swenson Decl. ¶ 2 & Agreement at Exh. A.) Additionally, the Notice will
19 include an estimated value of each individual's claim. (See, e.g., *Kullar, supra*, 168 Cal.App.4th at pp.
20 130-31.) The Class Notice will be translated into Spanish, and both English and Spanish versions will be
21 provided to each Class Member. (Renick Decl. ¶ 14.)

22 **2. The Method of Notice Is Appropriate.**

23 The Settlement Agreement provides the following method for Notice to be provided to the Class
24 members: The Administrator will maintain a website, which will include the Class Notice, the Motions
25 for Preliminary and Final Approval, and the Motion for Attorneys' Fees and Costs. The Motion for
26 Attorneys' Fees and Costs and any related filings shall be available on the website for a reasonable
27 period of time of no less than 14 calendar days prior to the deadline for Class members to submit a
28 written objection to the Settlement (and at least 30 days before the final approval hearing). (Swenson
Decl. ¶ 2 & Agreement at § 9.1.) The Notice contains (1) contact information for Class Counsel; (2) a

website that includes links to the notice and important case documents; and (3) the Court's website for those who wish to review the case docket. (Renick Decl. ¶¶ 13, 15.)

The Administrator shall take specific measures to ensure (a) the highest percentage of Class members receive the Notice; and (b) that it has the most current and accurate addresses for Class members by performing National Change of Address database search for all returned mail and by and conducting skip trace searches on all mail and checks returned as undeliverable so that Class members can participate in the Settlement and share in the money recovered. (Renick Decl. ¶ 16.) The Administrator shall also provide toll-free telephone support and a post office box to facilitate Class member communications; maintain appropriate databases to fulfill its duties; receive, control, and account for all returned Notices, disputes, requests for exclusion and objections; calculate the Class members' payments; and prepare and deliver regular reports to Class Counsel and Counsel for Defendants containing information concerning Notice, administration, and implementation of the Settlement Agreement. (*Id.* ¶ 17.) The Administrator shall also provide proof of payment of penalties to the LWDA. (*Id.* ¶ 18.) In addition to the duties identified above, the Administrator shall prepare final declarations, reports and invoices that accurately describe the notice process, the level of participation, and actions taken to ensure that the best possible notice of the Settlement was provided to Class members. (*Ibid.*)

VI. Conclusion

For all the foregoing reasons, this settlement is fair, adequate and reasonable, and Plaintiffs respectfully request issuance of an order (1) granting preliminary approval of the proposed Settlement Agreement, (2) certifying the proposed Class for settlement purposes pursuant to Rule 3.769(d) of the California Rules of Court, (3) appointing Kathleen Grace as Class Representative, (4) appointing the same Class Counsel previously appointed as Class Counsel, (5) approving the form of the notice and ordering it be provided to the Class, (6) appointing A.B. Data, Ltd., as the Settlement Administrator, (7) setting a final approval fairness hearing date, and (8) setting dates for the filing of Plaintiffs' motions for final approval and for attorneys' fees and costs.

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1 Dated: March 27, 2025

Respectfully submitted,

2 MCCracken, Stemerman & Holsberry, LLP

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5 By: 

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9
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