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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; 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: January 17, 2025
Time: 9:00 a.m.
Reservation No. 74447962

Action Filed: December 6, 2019

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

PLEASE TAKE NOTICE that on January 17, 2025, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department CX101 of the above-entitled Court, located at 751 West Santa Ana Blvd., Santa Ana, California 92701, Plaintiffs Regina Delgado, Alicia Grijalva, and Javier Terrazas ("Plaintiffs"), individually and on behalf of the certified class and all similarly situated individuals, will and hereby do move this Court for entry of the proposed order filed concurrently herewith:

1. Preliminarily approving the class action settlement for $233,000,000;

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

3. Preliminarily appointing Plaintiffs Regina Delgado, Alicia Grijalva, and Javier Terrazas as the Disney Class Representatives for purposes of settlement;

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

5. Preliminarily approving settlement administration services to be provided by A.B. Data, Ltd., estimated to be no greater than $200,000;

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

7. Directing that the notice be sent by email to Class members and by first class mail when emails are returned; and

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

In a separately filed motion, Plaintiffs will also seek approval of payment to class counsel of reasonable attorneys' fees of up to $34.95 million (15% of the common fund) and reasonable costs and litigation expenses of up to $740,000. In addition, Plaintiffs will seek approval of the payment of a service or enhancement award in the amount of $20,000 to each of the three Disney class

representatives.

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

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

Dated: December 13, 2024

Respectfully submitted,

MCCRACKEN, STEMERMAN & HOLSBERRY, LLP

By: _____
Sarah Grossman-Swenson
Attorneys for Plaintiffs & Plaintiff Class

HADSELL STORMER RENICK & DAI LLP

By: */s/ Randy Renick*
Randy Renick
Attorneys for Plaintiffs & Plaintiff Class

PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL

I. INTRODUCTION

Plaintiffs Regina Delgado, Alicia Grijalva, and Javier Terrazas, on behalf of the Plaintiff Class ("Plaintiffs"),[1] seek preliminary approval of a proposed $233,000,000 non-reversionary wage and hour class action settlement ("Settlement") reached with Defendants The Walt Disney Company and Walt Disney Parks and Resorts US, Inc. ("Disney" or "Disney Defendants"), following the determination in this case that Disney was subject to the Anaheim Living Wage Ordinance ("LWO"). This settlement was made on behalf of a Class of over 51,000 members, and fully compensates all class members for wages, service charges, and retirement contributions owed under the LWO for the time period when Disney's employees were underpaid. Additionally, the settlement provides for payment of interest at 10% on all monies owed to the Class, and for statutory and Private Attorneys General Act ("PAGA") penalties. The allocation of backpay to the Plaintiff Class will be equal to the wages and service charges actually owed to each individual employee, based on their actual hours worked and wages earned. The allocation of statutory and PAGA penalties will be based on the class members' number of work weeks with alleged violations and the number of class members who were owed wages under the LWO when their employment ended. Class members will receive payments based on their payroll records without the need to return a claim form.

The Court has already certified a class of over 51,000 employees who were not paid the hourly wages required by the LWO. The proposed settlement additionally includes resolution of approximately $5.7 million in underpaid service charges throughout the class period; as a result, Plaintiffs now seek certification of an enlarged Settlement Class pursuant to an amended complaint addressing the service charge issue. No other pending actions will be affected by this settlement.

In 2023, the Court of Appeal held that Disney was required to comply with the Ordinance, and the California Supreme Court denied review. The case returned to the trial court for a determination of

[1] Plaintiff Kathleen Grace represents employees employed by Sodexo at the Disney parks in Anaheim. Sodexo provides contracted food services to one of the Disney Defendants. Plaintiff Grace has reached a settlement in principle with Sodexo on behalf of employees of Sodexo, and Plaintiff's motion for preliminary approval of the Sodexo settlement will be filed separately.

the proper remedies, including damages, interest, and penalties. Four days after the Supreme Court's decision, Disney began complying with the LWO prospectively, raising those employees' wages which were below the LWO minimum to the LWO minimum. Prior to settlement, Plaintiffs conducted extensive discovery as to damages, and received detailed payroll and service charge data from Defendants with millions of lines of data, as well as a sworn declaration supporting the service charge data. Plaintiffs' investigation included interviews of class representatives and class members and review of relevant documents, including payroll data, wage statements, applicable collective bargaining agreements, and employment policies. Plaintiffs thoroughly analyzed legal claims and Defendants' potential defenses and legal theories regarding remedies.

The Parties extensively briefed remedies-related issues, submitting opening and reply briefs to retired District Court Judge Layn Phillips in advance of mediation. Following a full-day mediation session with Judge Phillips on July 12, 2024, Judge Phillips issued a Mediator's Proposal, which was ultimately accepted by the Parties.

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

II. PROCEDURAL HISTORY

On December 6, 2019, Plaintiffs Kathleen Grace, Regina Delgado, Alicia Grijalva, and Javier Terrazas ("Plaintiffs")[2] filed a wage-and-hour class action on behalf of a class of workers against Defendants The Walt Disney Company and Walt Disney Parks and Resorts US, Inc. ("Disney Defendants") and Defendants Sodexo, Inc. and SodexoMAGIC, LLC ("Sodexo Defendants"). Plaintiffs' Complaint alleged that Disney Defendants and Sodexo Defendants had violated the City of Anaheim's Living Wage Ordinance (adopted in 2018, and codified at Chapter 6.99 of the Anaheim

[2] Plaintiff Thomas Bray was also named in the complaint, but subsequently withdrew as a class representative and named plaintiff.

Municipal Code, referred to as the "LWO"), Labor Code section 203 (waiting time penalties), Labor Code sections 510, 1194 and 1198 (overtime wages), Business and Professions Code section 17200 (the Unfair Competition Law or UCL)[3], and Labor Code section 2698 (the Private Attorneys General Act or PAGA). Plaintiffs sought damages including back wages, as well as restitution, penalties, interest, declaratory and injunctive relief, costs, attorneys' fees, and a jury trial.

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

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

> 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 $15/hour at any time from January 1, 2019, to December 31, 2019; and/or who were not paid 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.

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

On November 1, 2021, the Court granted Defendants' motions for summary judgment. Plaintiffs appealed. On July 13, 2023, the Court of Appeal reversed the grant of summary judgment, explaining that the "sole issue in this appeal is whether Disney benefits from a 'City Subsidy' under the LWO."

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

(*Grace*, *supra*, 93 Cal.App.5th at p. 556.) The Court concluded: "In short, we hold Disney receives a 'City Subsidy' within the meaning of the LWO and is therefore required to pay its employees a living wage." (*Id.* at p. 560.) It 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 Disney Defendants conducted extensive discovery related to damages in 2024, and participated in a mediation with the Honorable Layn Phillips (ret.) on July 12, 2024. Pursuant to a mediator's proposal, the case reached a settlement in principle on July 17, 2024. Plaintiffs and Disney 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."). Concurrently with this motion, Plaintiffs are filing a stipulation to file a proposed Second Amended Complaint, which adds a claim for unpaid service charges under the LWO that is also addressed in the proposed Settlement Agreement. No related cases have been filed, and no other pending actions will be affected by this settlement. (Swenson Decl. ¶ 20.)

III. RELEVANT FACTS, LEGAL CLAIMS, AND DEFENSES

Plaintiffs' proposed 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. It is undisputed that the Disney Defendants must comply with the Living Wage Ordinance following the Supreme Court's denial of review of the Court of Appeal's decision. (*Grace, supra,* 93 Cal.App.5th at p. 560.) On or about October 29, 2023, after the Supreme Court denied review, the Disney Defendants began complying with the Ordinance, paying their employees in compliance with the hourly wage rates set by the Ordinance. They have continued to comply to date. They also adjusted their service charge practices so they are no longer retaining any portion of any service charges, but instead, paying all service charges to employees. The only issues remaining in the case are the proper remedies owed to the Plaintiff Class.

A. Damages and Interest

Under the Living Wage Ordinance, Plaintiffs are owed backpay for the time period that they were underpaid. Plaintiffs hired economic expert Phillip Johnson, Ph.D., from Econ One Research, Inc. ("Econ One"), to analyze Disney payroll data from 2018 to 2023, and additional data pertaining to retirement contributions and service charges. (See Johnson Declaration filed herewith at Exh. 1.) Johnson determined that the Plaintiff Class was owed wages for the time period from January 1, 2019 to October 28, 2023, which he is able to attribute to individual employees based on their hours worked and wages paid by date. (See *id.*) Plaintiffs' computation of damages includes backpay for hours worked at a rate less than the LWO minimum; backpay for service charges that were underpaid when Disney retained a portion of service charges instead of paying the full amount to its employees; and employer retirement contributions that were underpaid based on the hourly wage underpayment. Plaintiffs are also entitled to pre-judgment interest at the rate of 10% per year. (Lab. Code § 218.6; Civ. Code § 3289; *Bell v. Farmers Inc. Exchange* (2006) 135 Cal.App.4th 1138.) Following the Court of Appeal decision and denial of petition for review by the Supreme Court, the Disney Defendants were no longer able to contest that hourly damages were owed, but disputed the methods of calculation and raised defenses to the retirement contribution and service charge calculations and the rate of interest, among other disputes and defenses.

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B. Statutory Penalties

Waiting time penalties: Under Labor Code section 203, an employer who willfully fails to pay any wages due to an employee who is discharged or who quits must pay a "waiting time penalty" of up to 30 calendar days at the employee's daily rate of pay. (*Diaz v. Grill Concept Services, Inc.* (2018) 23 Cal.App.5th 859, 867.) Under section 203, an employer's failure to pay is not willful if that failure is due, among other reasons, to uncertainty in the law, or was done in good faith. (*Id.* at p. 868.) Plaintiffs do not contest that the Disney Defendants can assert a defense to statutory waiting time penalties prior to the decision by the Court of Appeal because, until that point, no court had ruled that the Disney Defendants had to comply with the LWO, and in fact this Court had ruled that the Disney Defendants were not subject to the Ordinance. (See *Diaz, supra,* 23 Cal.App.5th at p. 868.) Accordingly, Plaintiffs did not seek statutory penalties from any defendants prior to July 13, 2023.[4] If this case were to proceed to trial, the Disney Defendants would argue, as Sodexo did in its summary adjudication motion, that there was continued uncertainty in the law until the California Supreme Court denied review of this action, and thus no statutory penalties are appropriate until after October 25, 2023, among other disputes and defenses.

Wage Statement Penalties: Under Labor Code section 226(a), the Disney Defendants must provide their employees with accurate wage statements. Wage statements must show "all amounts earned and now owing," not just those amounts actually paid. (*Naranjo v. Spectrum Sec. Svcs.* (2022) 13 Cal.5th 93, 119.)[5] Labor Code section 226(e) provides that a "knowing and intentional failure by an employer to comply" with wage statement requirements entitles an employee to statutory penalties starting at $50 for the initial pay period and $100 for each subsequent pay period, capped at $4000. As with waiting time penalties, wage statement penalties are not available when a party has a good faith

[4] This is consistent with the position that Plaintiffs took in opposing a summary adjudication motion by Sodexo seeking a ruling that statutory penalties were not owed at all due to Sodexo's good faith belief it 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.)

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

defense. (*Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1075.) Again, at any trial in this matter, the Disney Defendants would argue that there was uncertainty in the law until the California Supreme Court denied review, and that the Disney Defendants began complying with the Ordinance just four days later, so no penalties are appropriate, among other disputes and defenses.

C. PAGA Penalties

PAGA provides for a default $100 penalty for an "initial" violation and an increased $200 penalty for a "subsequent" violation. (Lab. Code § 2699(f)(2) (Jan. 1, 2023).) Employers are subject to imposition of only the lower default $100 penalty unless they continue to engage in violations after receiving notice of the violation from the Labor Commissioner or a court, which would make them subject to the higher $200 penalty. (See *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355; Lab. Code § 2699(f)(2).) Where the Labor Code expressly provides for a different civil penalty provision for a violation, that penalty provision provides the penalty under PAGA. For example, the failure to pay overtime wages carries an initial PAGA penalty of $50.00 and a subsequent penalty of $100 per aggrieved employee per pay period. (Lab. Code § 558(a)(1)-(2).) The purpose of PAGA penalties is to "punish the wrongdoer and to deter future misconduct…." (*Kim v. Reins Intl. Cal., Inc.* (2020) 9 Cal.5th 73, 86.) Courts have substantial discretion to award lesser PAGA penalties. (*Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, 1213.) Alleged wage statement violations, overtime violations, and waiting time violations provide a basis for awarding PAGA penalties here. If this case were to proceed to trial, the Disney Defendants would argue that the imposition of PAGA penalties would be unjust because they believed in good faith that they did not have to comply with the Ordinance at least until the Supreme Court denied review on October 25, 2023, on the basis that until July 13, 2023, no court had ruled that the Disney Defendants had to comply with the Ordinance, the Court of Appeal's decision was appealable and subject to reversal until the Supreme Court denied review, and the trial court agreed that the Disney Defendants did not have to comply with the Ordinance as a matter of law—among other disputes and defenses.

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IV. SETTLEMENT TERMS, ALLOCATION PLAN AND PROPOSED SCHEDULE

A. Summary of Settlement Terms

The Settlement Agreement provides for the following terms:

1. **Settlement Class:** The Settlement Class is defined as "all nonexempt current and former individuals employed by Disney 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 or service charges 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 date of the order on the Preliminary Approval Motion."[6] (Swenson Decl. ¶ 2 & Exh. 1 ("Agreement") at § 1.32.)

2. **Settlement Amount:** The total settlement amount is $233,000,000 (TWO-HUNDRED THIRTY-THREE MILLION 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 awards to the named plaintiffs, 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 Disney Defendants. After deductions for fees, costs, administration, and service awards, the net settlement amount will be at least $197,050,000, and the amount distributed to the class after the payment to the LWDA will be at least $179,575,000, of which the amount owed to the Class for full recovery of unpaid wages with interest is $141,499,851.

[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 Court has already certified an almost identical class and approved the appointment of Plaintiffs' counsel as Class Counsel. The only change is the inclusion of employees who were not paid service charges in full; Plaintiffs have identified these individuals through discovery. The proposed Settlement Class meets the basic requirements of a class action and efficiently resolves service charge underpayments while conserving court resources. The Settlement Class is (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.) Plaintiffs are adequate representatives for the new class definition; Plaintiff Javier Terrazas was underpaid service charges from 2019 to 2023. (Swenson Decl. ¶ 19.)

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 no greater than $200,000. (Renick Decl. ¶ 14.)

4. **Requests for Exclusion/Objections/Disputes:** Class members will have 60 days after receiving notice to file written objections with the Court or to request exclusion from the class claims, and to challenge the data used to calculate the individual class member's allocation.

5. All Class Members who do not opt out by timely filing a request for exclusion will release all claims they had against the Disney Defendants arising from the facts alleged in the Second Amended Complaint and occurring during the Class Period.

6. Class Members who are PAGA Aggrieved Employees will be releasing their representative PAGA claims regardless of whether they submit an exclusion request if the Settlement Agreement is approved by the Court. In the event that Class Members elect to exclude themselves from the Class, they will still be entitled to their portion of the PAGA settlement amount, which will be calculated separately.

B. Plan of Allocation

Ordinance Damages and Statutory Penalty Claims:

Each Class Member who does not opt out of the Settlement will receive their share of the wages, service charges, and 401(k) contributions which Plaintiffs allege the Disney Defendants failed to pay during the Class Period before the Disney Defendants came into compliance with the Ordinance. The average total recovery per class member including all categories of backpay, interest, and penalties is $3,488.30. (Swenson Decl. ¶ 18.) 51,256 class members have wage claims, 3,095 class members have service charge claims, 14,663 class members have retirement contribution claims, 23,480 class members have wage statement claims, approximately 6,886 class members have waiting time claims, and 51,225 class members are aggrieved employees with recovery for PAGA claims. (Johnson Decl., Exh. 1, Table 1 & 6 & ¶ 32 fn.14.) The value of each individual claim will be included in the Notice, as described below. The amounts have been calculated using the Disney Defendants' records, including payroll and

service charge data for the Class Period (see Johnson Decl. at Exh. 1, Tables 1-6), and allocated based on those calculations, as follows:

- **$133,394,332 allocated to Claims for Alleged Lost Wages ($102,746,720 and Interest ($30,647,612)**. Each Class Member will receive all of their alleged lost income from wages lower than those required by the Ordinance during the Class Period.
    a. Straight-time hourly income differentials for each Class Member have been calculated as the difference between the hourly rate paid and the Ordinance rate in effect in the pay period when the work was performed, multiplied by the number of straight-time hours worked by the Class Member during the pay period, then totaled for all pay periods in which the Class Member performed work.
    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.
- **$7,430,213 allocated to Claims for Alleged Lost Service Charges ($5,686,193) and Interest ($715,593).** Each Class Member who performed work for which the Disney Defendants collected a service charge but did not pay the entirety to the Class Member during the Class Period will receive all of their alleged lost income from this practice based on hours worked and the services performed by the employees. Each Class Member's share of the allocation includes 10% annual interest from the time the payment was allegedly due until July 1, 2025.
- **$935,454 allocated to Claims for 401(k) Contributions ($715,593) and Interest ($219,861).** Each Class Member who was a participant in the Disney Defendants' 401(k) plan during the Class Period and made elective deferrals will receive a share of this allocation in cash based on the amount of the Disney Defendants matching contributions that Plaintiffs claim was lost because the match was measured against the alleged underpayment of wages due under the Ordinance. Each Class Member's share of the allocation includes 10% annual interest from the time the payment was allegedly due until July 1, 2025.
- **$17,098,860 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").[7] 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.
- **$14,891,141 allocated to Statutory Penalties for Waiting Time Claims.** Each Class Member whose employment with Disney ended between July 14, 2023 and the Date of Preliminary

[7] Disney has weekly pay periods, so each work week constitutes a separate potential alleged violation. The total statutory penalties available for distribution are allocated 46.549% to waiting time penalties and 53.451% to wage statement penalties, consistent with the respective percentages of total potential statutory penalties shown in Johnson Decl., Exh. 1, Table 6. (See Swenson Decl. ¶ 16.)

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 $23,300,000, is allocated to PAGA penalties, of which 75% ($17,475,000) 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% ($5,825,000) 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:[8]

- **$5,049,354 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.
- **$538,521 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.
- **$237,125 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% ($34,950,000) of the $233,000,000 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 $740,000. The cost reimbursement will include any additional allocation calculations that are needed to be performed by Econ One to distribute final settlement monies.

[8] The total PAGA penalties available for distribution are allocated 86.684% to wage statement PAGA penalties, 9.245% to overtime PAGA penalties, and 4.071% to waiting time PAGA penalties, consistent with the respective percentages of the total potential PAGA penalties shown in Johnson Decl., Exh. 1, Table 7. (See Swenson Decl. ¶ 17.)

- In addition, Class Counsel will ask the Court to authorize Service Awards of up to $20,000 to each of the three Class Representatives for their services in representing the Class, in addition to the Individual Settlement Awards they will receive as Class Members.
- 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 $200,000. 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 30 calendar days of Plaintiffs filing the Motion for Preliminary Approval	Defendants will produce the Class List and Data to the Settlement Administrator, which shall include for each Class Member: (1) internal personnel number previously provided; (2) full name; (3) most recently known mailing address; (4) all email addresses available. Agreement § 4.1(a).
Within 14 calendar days of entry of the Preliminary Approval Order	Administrator shall provide Notice on a settlement website. Agreement §4.1(d).
Within 60 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).
At least 16 calendar days before Objection deadline (and at least 30 calendar days before Final Approval Hearing)	Plaintiffs' Counsel to file and Settlement Administrator to post 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. Last day to submit disputes to Administrator regarding estimated recovery.
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.
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. Code Civ. P. § 1005. Agreement § 4.3.

Effective Date	One day after Final Approval Judgment has become Final (which is one day after time expires for filing an appeal, or one day after any appeal is completed or dismissed)
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 § 2.4.1 & 2.4.3. Administrator to issue payment to LWDA. Agreement § 2.5.
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 § 2.4.2.

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

The purpose of the preliminary evaluation of a proposed class action settlement is to determine only whether the settlement is within a reasonable range of possible approval, and thus whether notice to the class of the terms and conditions and the scheduling of a formal fairness hearing is warranted. (*Wershba*, *supra*, 91 Cal.App.4th at pp. 234-35.) To make the fairness determination, the Court should consider several factors, including "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, [and] the experience and views of counsel." (*Dunk*, *supra*, 48 Cal.App.4th at p. 1801.)

A. The Strength of Plaintiffs' Case Balanced Against the Amount Offered in Settlement Weighs in Favor of Approval.

Of the factors that the Court must consider in determining fairness, "[t]he most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 130 [citation omitted].)

Plaintiffs have obtained in settlement an amount that will make the entire Plaintiff Class whole, with 10% interest, as well as provide them with significant penalties. While Plaintiffs firmly believe in the strength of their case on penalties, they are mindful of the risks in proceeding to a trial on penalties, and the delay that a trial on penalties would entail. On balance, these factors weigh strongly in favor of the Settlement.

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

Plaintiffs recognize the inherent risks and uncertainty of litigation, including that the Class could receive less in penalties than they were offered in mediation, as well as the significant benefit of providing relief to the Class now. Plaintiffs' claims involved disputed legal and factual issues with regard to proper remedies, which the Parties briefed extensively for mediation. While Plaintiffs firmly believe in the strength of their arguments with respect to statutory penalties and PAGA penalties, substantial discretion is accorded to the Court and jury in awarding penalties. The Disney Defendants' defenses raise a possibility that significantly lower penalties would be awarded. The Disney Defendants have argued that their noncompliance with the Ordinance was done in good faith as they did not have a basis to believe they were subject to the LWO, and such a defense may serve as a complete bar to penalties if accepted by the jury and the Court.

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

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

The total settlement is $233,000,000, which includes payment to the Class members, the Named Plaintiffs' service awards, the LWDA payment for PAGA penalties, attorneys' fees and costs, the

employees' share of payroll taxes, and administration costs. Plaintiffs' counsel will apply for up to fifteen percent of the common fund ($34.5 million) in fees, and for the reimbursement of no more than $740,000 in costs. Plaintiffs intend to seek a service award for each of the three Class Representatives of $20,000, for a total of $60,000. Payment to the LWDA for PAGA penalties will be $17,475,000 (75% of the PAGA Allocation). The Parties expect administration costs will be no greater than $200,000. This means that Class members will share in the sum of at least $179,575,000. (Renick Decl. ¶ 13.)

While the settlement does not provide for injunctive relief, the Disney Defendants have been complying with the hourly requirements in the Ordinance since October 29, 2023, and with the service charge requirements since, at the latest, July 2024. There is no threat that the Disney Defendants will reverse course, and no reason to believe that the Disney Defendants would fail to comply with the LWO in light of the Court of Appeal's decision. Thus, injunctive relief is not necessary to ensure compliance with the Living Wage Ordinance going forward.

The settlement wholly compensates the Plaintiff Class for all damages incurred, as well as full interest, in addition to a meaningful recovery of highly disputed penalties. This is an outstanding result compared with what Plaintiffs might obtain at trial. As explained above, among other things, the Disney Defendants would argue that Plaintiffs should not be entitled to penalties at all, or at least not until after October 25, 2023, when the California Supreme Court denied review of the Court of Appeal's decision. If the Court rejected the Disney Defendants' argument that penalties are entirely unavailable, but accepted the Disney Defendants' arguments that penalties should not apply until after October 25, 2023, then the net settlement amount exceeds the amount that Plaintiffs could obtain at trial including penalties (which penalties the Disney Defendants would then have argued should be discretionarily reduced by the Court). The net settlement amount of penalties, which settles all penalties exposure, represents recovery of 66% of statutory penalties and 34% of PAGA penalties sought after July 13, 2023, or 193% of statutory penalties and 388% of PAGA penalties sought after October 25, 2023 (see Johnson Decl., Table 7). While Plaintiffs are confident that they would prevail on damages and interest, Plaintiffs' recovery of penalties is by no means certain. The trial court agreed with the Disney Defendants on

summary judgment that they were not obligated to comply with the Living Wage Ordinance, and might not be inclined to award substantial penalties at trial particularly given the Court's considerable discretion in awarding PAGA penalties. Any penalties awarded would be subject to appeal, further prolonging the litigation, and denying the Class payment of wages to which they are entitled after the Court of Appeal's decision and the Supreme Court's declining to review it.

In assessing the value of all of the claims, Plaintiffs' counsel considered the Disney Defendants' defenses to penalties, the chances of prevailing on penalties, applicable case law and regulations, the circumstances of the case, and potential risks and delays. (Renick Decl. ¶ 9; Swenson Decl. ¶ 14.) Further, the Parties had engaged in extensive discovery at the time the case was settled. Plaintiffs engaged a well-respected economic expert to analyze the backpay, interest, and penalties owed to the Plaintiff Class. (Swenson Decl. ¶ 12; Johnson Decl. at Exhs. 1-2.) Plaintiffs' expert analyzed millions of data entries to calculate the damages and penalties potentially owed to the Class. (Swenson Decl. at ¶¶ 11-12; Johnson Decl., Exh. 1.) The Parties had exchanged thoroughly researched opening and reply mediation briefs regarding penalties, and had extensive knowledge about the strengths and weaknesses of each other's cases, which enabled them to negotiate a fair settlement with the assistance of Mediator Layn Phillips. (Swenson Decl. ¶ 13.) The Settlement was the result of a mediator's proposal following arm's-length bargaining and vigorous negotiations in mediation. (*Id.* ¶ 10.)

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

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

The Court's order preliminarily approving a class settlement must include the notice to be given to the class. Cal. R. Ct. 3.769(e). The purpose of providing class notice to class members is to give

"sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement." (*Wershba*, *supra*, 91 Cal. App. 4th at p. 252.) Generally, a class notice "must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members." (*Id.*)

1. The Notice Contains All of the Required Components.

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

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

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

2. The Method of Notice Is Appropriate.

The Settlement Agreement provides the following method for Notice to be provided to the Class

members: The Administrator will maintain a website, which will include the Class Notice, the Motions for Preliminary and Final Approval, and the Motion for Attorneys' Fees and Costs. The Motion for Attorneys' Fees and Costs and any related filings shall be available on the website for a reasonable period of time of no less than 16 calendar days prior to the deadline for Class members to submit a written objection to the Settlement (and at least 30 days before the final approval hearing). (Swenson Decl. ¶ 2 & Exh. 1 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. ¶ 16.)

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. ¶ 18.) 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.* ¶ 19.) The Administrator shall also provide proof of payment of penalties to the LWDA. (*Id.* ¶ 20.) 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 the same Class Representatives previously appointed as Class Representatives with the exception of Plaintiff Kathleen Grace, (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.

Dated: December 13, 2024

Respectfully submitted,

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