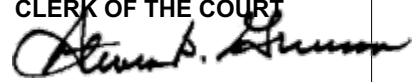


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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

MARIAH MARTIN, on behalf of herself  
and all others similarly situated,

Plaintiff,

vs.

DED OPS NV LLC d/b/a and a/k/a  
WALLFLOWER also d/b/a and a/k/a  
WALLFLOWER CANNABIS HOUSE; H  
& H MANAGEMENT LLC; DOES 1  
through 50; inclusive,

Defendants.

Case No.: A-22-863216-C  
Dept. No.: 1  
HEARING NOT REQUESTED  
(Hearing already set)

**JOINT MOTION FOR FINAL  
APPROVAL OF CLASS  
ACTION SETTLEMENT**

Hearing Date: April 3, 2024  
Hearing Time: 9:30 AM

**JOINT MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

Plaintiff Mariah Martin ("Plaintiff" or "Martin"), on behalf of herself and all others

1 similarly situated and Defendant DED Ops NV LLC d/b/a and a/k/a Wallflower also d/b/a  
2 and a/k/a Wallflower Cannabis House (“Wallflower”) and Defendant H & H Management  
3 LLC (“H&H”) (together “Defendants”) (collectively Plaintiff and Defendants may be  
4 referred to throughout this Motion as the “Parties”), by and through their counsel of  
5 record, hereby submit this Joint Motion for Final Approval of Class Action Settlement.<sup>1</sup>

6 This Joint Motion for Final Approval is based upon the memorandum and points  
7 of authorities in support hereof, the declarations filed in support of this motion and all  
8 accompanying exhibits, pleading papers and records on file herein, all matters upon  
9 which judicial notice may be taken, any oral argument that may be presented, and upon  
10 such other matters the Court deems just and necessary.

11 Dated: March 27, 2024

12 GABROY | MESSER

SUTTON | HAGUE

13 /s/ Christian Gabroy

/s/ Jared Hague

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Wallflower also d/b/a and a/k/a Wallflower  
Cannabis House*

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28 <sup>1</sup> Defendants joins in this Motion only to the extent noted herein and their request for approval of the Settlement analyzed herein.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On December 13, 2023, the Court entered an order granting preliminary approval of class action settlement of the above-captioned case (the “Preliminary Order”). See December 13 Preliminary Order. In addition to approving the overall settlement (the “Settlement”), the Preliminary Order conditionally certified a settlement class, appointed a class representative and class counsel, approved a notice of preliminary approval to class members (“Class Members”), scheduled the final approval hearing, and confirmed the selection of Phoenix Class Action Administration Solutions (“Phoenix”) as the claims administrator. *Id.*

The class administration procedures ordered by the Court have been completed as summarized in the declaration prepared by Jarrod Salinas of Phoenix. See Declaration of Jarrod Salinas Regarding Settlement Notice Administration, hereinafter “Salinas Dec.” or “Salinas Declaration,” attached hereto as Exhibit I. The Notice and all related materials (“Notice Packets”) were distributed to 212 Class Members, and deadlines for those Class Members to submit claim forms, opt out of, or object to the Settlement have passed. See Salinas Dec. at ¶ 6. No objections were received and no Class Members requested exclusion from the Settlement. See *id.* at ¶¶ 11, 12.

**II. SUMMARY OF THE NOTICE AND CLAIMS PROCESS**

A summary of the litigation, terms of the Parties’ settlement agreement (the “Settlement Agreement”), and fairness and adequacy of the Settlement are set forth in the Parties’ Joint Motion for Preliminary Approval and the Declaration of Christian Gabroy in support thereof, filed on November 8, 2023, which the Parties incorporate by reference. On December 29, 2023, Defendants’ counsel provided with the last known addresses of 212 settlement class members (the “Class List”). See Salinas Dec. at ¶ 4. On November 1, 2023, Phoenix conducted a National Change of Address (“NCOA”) search in an attempt to update the class list of addresses as accurately as possible as a search of this database provides updated addresses for any individual who has moved

1 in the previous four (4) years and notified the U.S. Postal Service of their change of  
2 address. *Id.* at ¶ 5. Accordingly, on January 9, 2024, Phoenix mailed Notice Packets to  
3 212 class members in the form approved by the Court (the “Notice Packet”). *Id.* at ¶ 6.  
4 The Notice Packet provided that class members had until February 21, 2024 to submit  
5 claims or written exclusions or objections to the settlement. See Exhibit A to the Salinas  
6 Dec. Ultimately, none of the Notice Packets were deemed undeliverable. *Id.* at 7.

7 To date, Phoenix has received no requests for exclusion. *Id.* at ¶ 11. No objections  
8 to the Settlement were received by Phoenix or counsel. *Id.* at ¶ 12; see *also* Declaration  
9 of Christian Gabroy, Esq. attached hereto as Exhibit II (“Gabroy Dec.”) at ¶ 11. The  
10 largest settlement share is approximately \$2,458.86, and the average settlement share  
11 is \$846.26. See Salinas Dec. at ¶ 15. Thus, Class Members stand to receive  
12 approximately 44.21% of the net settlement fund of \$124,417.29. *Id.* at ¶ 13, 14.

### 13 **III. ARGUMENT**

#### 14 **A. The Court Should Grant The Parties’ Request For Final Approval Of 15 The Settlement**

##### 16 **1. Standard for final approval of a class action settlement.**

17 Nevada Rule of Civil Procedure 23 provides that “a class action must not be  
18 dismissed or compromised without the approval of the court, and notice of the proposed  
19 dismissal or compromise must be given to all members of the class in such manner as  
20 the court directs.” Nev. R. Civ. P. 23(f). Such approval typically involves a two-step  
21 process: (1) preliminary approval of the class settlement and notice to all class members  
22 and (2) a final fairness hearing to determine whether the settlement is fair, reasonable,  
23 and adequate. *Sobel v. Hertz Corp.*, No. 3:06-CV-00545-LRH-RAM, 2011 WL 2559565,  
24 at \*5 (D. Nev. June 27, 2011). A court should approve a class settlement under Rule 23  
25 if it “is fundamentally fair, adequate and reasonable.” See *e.g.*, *Torrisi v. Tucson Elec.*  
26 *Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993) (internal quotation marks omitted); *accord*  
27 *In re Mega Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000) (citation omitted).

28 The Court has plenary authority to approve or reject settlements proposed by the

1 parties. *In re Mega Fin. Corp. Sec. Litig.*, 213 F.3d at 458 (citation omitted). Ninth Circuit  
2 courts consider the following eight factors to assess whether final approval of a class  
3 settlement is warranted: (1) the strength of plaintiffs' case; (2) the risk, expense,  
4 complexity, and likely duration of further litigation; (3) risk of maintaining class action  
5 status through trial; (4) amount offered in settlement; (5) extent of discovery completed  
6 and state of the proceedings; (6) experience and views of counsel; (7) whether there is  
7 a governmental participant; and (8) reaction of class members to the proposed  
8 settlement. See e.g., *Churchill Village v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004);  
9 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).<sup>2</sup> Ninth Circuit courts also  
10 consider whether the settlement is a product of fraud or collusion. *Rodriguez v. West*  
11 *Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009).

12 In considering these factors, courts recognize a strong judicial policy favoring  
13 settlements, particularly in the context of complex class litigation. *In re Syncor ERISA*  
14 *Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). Courts are not required to assess whether  
15 the settlement is ideal or the best outcome, but only whether the settlement is fair, free  
16 of collusion, and consistent with Plaintiff's fiduciary obligations to the class. *Hanlon*, 150  
17 F.3d at 1027 (overruled on other grounds).

18 2. Application of the relevant criteria.

19 a. *Relative strength of plaintiff's claims.*

20 In considering the relative strength of plaintiff's claims, courts typically consider  
21 decisions relating to the merits of the plaintiff's claims and whether settlement occurs  
22 before any substantive motions are decided. See e.g., *Pierce v. Rosetta Stone, Ltd.*, No.  
23 C-11-01283 SBA, 2013 WL 5402120, at \*3 (N.D. Cal. Sept. 26, 2013); *Odrick v. Union*

24 \_\_\_\_\_  
25 <sup>2</sup> The Nevada Supreme Court has cited the analogous "federal counterpart" of Federal Rule of  
26 Civil Procedure 23 and its related case law when making determinations under Nevada Rule of  
27 Civil Procedure 23. *Beazer Homes Holding Corp. v. Eighth Judicial Dist. Court of Nev.*, 128 Nev.  
28 Adv. Rep. 66, 291 P.3d 128, 136 n. 4 (2012) citing generally *Wal-Mart Stores, Inc. v. Dukes*, 564  
U.S. 338, 131 S. Ct. 2541, 2558, 180 L. Ed. 2d 374 (2011); *Shuette v. Beazer Homes Holdings*  
*Corp.*, 121 Nev. 837, 847-851 (2005) (citing Rule 23 case law from the Second, Third, Fifth, Sixth,  
Seventh and Eleventh Circuits). Similarly, this Court may evaluate settlement and class  
certification under Nevada Rule of Civil Procedure 23 with analogous federal law.

1 *Bancal Corp.*, No. C 10-5565 SBA, 2012 WL 6019495, at \*3 (N.D. Cal. Dec. 3, 2012).

2 Plaintiff sent Defendants her pre-suit NRS § 608.140 demand with enclosed  
3 confidential draft complaint on December 23, 2022. Plaintiff then filed her complaint  
4 against Defendants in the Eighth Judicial District Court for the State of Nevada in and for  
5 the County of Clark on December 29, 2022. Plaintiff alleges that Defendants failed to:  
6 (1) pay all overtime in violation of NRS §§ 608.140 and 608.018 and (2) timely pay all  
7 wages due and owing in violation of NRS §§ 608.140 and 608.020-050. Plaintiff also  
8 seeks injunctive relief. Plaintiff's legal claims stem from her allegation that Defendants  
9 maintained an unlawful practice of not paying all daily overtime to Plaintiff and all other  
10 similarly situated nonexempt employees who earned less than one and one-half times  
11 the applicable minimum wage. Defendants dispute Plaintiff's factual and legal  
12 allegations.

13 Following the filing of the Complaint, the Parties agreed to explore the possibility  
14 of potential early resolution. To that end, the Parties then engaged in informal discovery.  
15 Defendants' counsel provided Plaintiff's counsel with voluminous and detailed class  
16 data. The Parties then engaged in extensive discussions regarding their respective  
17 positions and the information and data provided to properly evaluate the merits of the  
18 claims alleged. Following the exchange of informal discovery, the parties engaged in a  
19 formal mediation session before Hon. Gene T. Porter (Ret.).

20 Following such extensive discussions regarding the strengths of their respective  
21 positions and with the assistance of the mediator, the Parties reached a proposed class  
22 action settlement through arm's-length negotiations. See Exhibit I to the parties' Joint  
23 Motion for Preliminary Approval.

24 Plaintiff believes her claims are strong but understands that success is far from  
25 guaranteed. Plaintiff is cognizant of such factors as the risk that a class might not be  
26 certified or might be significantly smaller than proposed, the uncertainty on some of the  
27 legal issues, as well as the time, expense, and complexity of further litigation, including  
28 the possibility of appellate proceedings. Defendants maintain that they properly paid all

1 wages mandated by Nevada law and deny that they had any policy of denying such  
2 overtime to employees.

3 Furthermore, while Class Counsel believe that Plaintiff's claims are meritorious,  
4 they are experienced class action litigators and understand that the outcome of class  
5 certification, trial, and any attendant appeals are inherently uncertain, as well as likely to  
6 consume many more months, even years. Having reviewed relevant compensation data  
7 and employment information, counsel for the Parties—all experienced class action  
8 litigators well versed in wage and hour law—arrived at a reasonable resolution through  
9 a protracted, arm's-length, negotiation process with the assistance of an experienced  
10 mediator, which continued into all details of the Settlement Agreement and ancillary  
11 documents.

12 *b. Risk, expense, and complexity of further litigation.*

13 Settlement is preferable to lengthy and expensive litigation with uncertain results.  
14 *Harris v. U.S. Physical Therapy, Inc.*, 2012 WL 6900931, at \*7 (D. Nev. Dec. 26, 2012)  
15 *report and recommendation adopted*, 2013 WL 211085 (D. Nev. Jan. 18, 2013). Here,  
16 without settlement, the Parties would be forced to engage in lengthy discovery and  
17 motion practice. There would be briefing on class certification issues and summary  
18 judgment. Trial would involve extensive testimony from numerous witnesses. And, any  
19 final judgment would likely be appealed, thereby extending the duration of the litigation.

20 Settlement avoids further expense and delay and guarantees a recovery to class  
21 members as touched on in factor (a) directly above. Therefore, the risks associated with  
22 further litigation weigh in favor of final approval, consistent with the established policy  
23 preferring settlement over further time-consuming litigation. *Harris*, 2012 WL 6900931,  
24 at \*7.

25 *c. Risk of maintaining class status.*

26 As discussed in section III.A.2.a, *supra*, Plaintiff faces risk of not obtaining or  
27 maintaining Rule 23 class action status if this litigation proceeds. Thus, this factor, too,  
28 favors final approval of settlement.

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*d. Benefits conferred by the settlement.*

A settlement may be fair and reasonable even if it provides only a fraction of what could have been obtained at trial. See e.g., *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (compromise is essence of settlement); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 & n.2 (2d Cir. 1974) *abrogated on other grounds* (that proposed settlement may amount to only a fraction of potential recovery does not mean the proposed settlement is inadequate and should be disapproved).

Here, the gross settlement fund amount of \$230,000.00 is reasonable when balanced against the possible outcome of further litigation and potential appeals. The largest settlement share is approximately \$2,458.86, and the average settlement share is approximately \$846.26. See Salinas Dec. at ¶ 15. An estimated 44.21% of the settlement class fund will be made in settlement payments to currently employed and formerly employed class members, which represents a reasonable recovery for the class, even without accounting for the risks that class treatment would be denied or that Defendants would prevail on the merits. *Id.* at ¶ 13; *Villegas v. JP Morgan Chase & Co.*, No. CV 09-00261 SBA (EMC), 2012 WL 5878390, at \*6 (N.D. Cal. Nov. 21, 2012) *citing In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (“It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not *per se* render the settlement inadequate or unfair.”)).

*e. Extent of discovery completed and stage of the proceedings.*

This Settlement, following sufficient informal discovery and genuine arm’s-length negotiation, is presumed fair. See *City P’ship Co. v. Atlantic Acquisition Ltd. P’ship*, 100 F.3d 1041, 1043 (1st Cir.1996). As discussed in the Joint Motion for Preliminary Approval, the Parties engaged in extensive discussions and informal discovery of the claims and defenses, including reviewing timekeeping and class member data and analyzing the relevant facts and authority. By the time a settlement was reached, the Parties were well versed in the facts and law applicable to the issues and had evaluated the merits of their claims and defenses. See *Tijero v. Aaron Bros., Inc.*, 301 F.R.D. 314,



1 324 (N.D. Cal. 2013). Accordingly, at the time the settlement was reached, the Parties  
2 “ha[d] a clear view of the strengths and weaknesses of their cases.” *In re Warner*  
3 *Commc’ns Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985). Accordingly, this factor  
4 weighs in favor of final approval.

5 *f. Experience and views of Plaintiff’s Counsel.*

6 Because they are closely acquainted with the underlying litigation, significant  
7 “weight is accorded to the recommendation of counsel.” *Nat’l Rural*, 221 F.R.D. at 528  
8 (quoting *In re Paine Webber Ltd. P’ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997)).  
9 Plaintiff is represented by counsel with broad experience in complex employment  
10 litigation. See Gabroy Dec. at ¶¶ 3. Plaintiff’s counsel recommends that the Settlement be  
11 approved because they believe it is fair, reasonable, and adequate to the proposed class  
12 and because it reflects a reasoned compromise that takes into consideration the inherent  
13 risks in all employment class litigation and in particular this action. See Gabroy Dec. at  
14 ¶¶ 8, 10, 16. Given the experience of the attorneys involved in this litigation, the Court  
15 should credit counsels’ view that the settlement is fair, reasonable, and adequate.  
16 *Rodriguez*, 563 F.3d at 967 (parties represented by capable counsel better positioned  
17 than courts to produce a settlement that fairly reflects each party’s expected outcome).  
18 Accordingly, this factor weighs in favor of final approval as well.

19 *g. Presence of a governmental participant*

20 There is no governmental participant in this action. As a result, this factor favors  
21 approval of the settlement.

22 *h. Reaction of the class.*

23 The absence of any objections to a proposed class action settlement raises a  
24 strong presumption that the terms of a proposed settlement are favorable to the class  
25 members. *Nat’l Rural*, 221 F.R.D. at 529; *Williams v. Costco Wholesale Corp.*, No. 02-  
26 cv-2003 IEG (AJB), 2010 WL 2721452, at \*5 (S.D. Cal. July 7, 2010). Here, 100% of the  
27 Notice Packets were successfully mailed. See Salinas Dec. at ¶¶ 8. No objections to the  
28 settlement were received and no class members requested exclusion. See *id.* at ¶¶ 11,

1 12. Out of the 65 Class Members who filed valid claim forms, approximately 44.21% of  
2 the net settlement amount was claimed. See *id.* at ¶13; see also *Lee V. Enterprise*  
3 *leasing Co.-West*, 2015 WL 2345540, \*7 (D. Nev. 2015) (noting 11% rate does not  
4 indicate proposed settlement is not fair, reasonable, and adequate given the lack of  
5 objections and small number of opt-outs, “does not cast doubt on what appears to be a  
6 beneficial settlement for the class members.”).

7 These facts suggest approval of the settlement by the entire class. Therefore, this  
8 factor also favors final approval of the settlement. See *Bolton v. U.S. Nursing Corp.*, No.  
9 C-12-4466 LB, 2013 WL 5700403, at \*2, \*4 (N.D. Cal. Oct. 18, 2013) (approving  
10 settlement where no objections were filed and two of 1,250 class members requested  
11 exclusion from settlement).

12 *i. The negotiation process was free from fraud and collusion.*

13 The Court’s inquiry into what is otherwise a private consensual agreement is  
14 limited to the extent necessary to reach a reasoned judgment that the agreement is not  
15 the product of fraud or collusion between the negotiating parties and that the settlement,  
16 taken as a whole, is fair, reasonable, and adequate to all concerned. *FDIC v. Alshuler*,  
17 92 F.3d 1503, 1506 & n.5 (9th Cir. 1996). Here, the Court preliminarily concluded that  
18 the settlement was “fair, adequate and reasonable” as to all potential settlement class  
19 members. Preliminary Order at ¶ 1. Nothing has changed to alter that conclusion. The  
20 Parties began settlement negotiations only after informally sharing documents and  
21 information, analyzing the records, researching the relevant legal issues, analyzing the  
22 potential recovery, and ultimately negotiating the settlement. Gabroy Dec. at ¶ 6. The  
23 Parties acknowledged the risks on the merits and class issues and determined that  
24 settlement was sensible to avoid these risks and the time and expense required for  
25 further litigation and potential appeals. Gabroy Dec. at ¶ 5-7. Because the Parties were  
26 fully informed and engaged in arm’s-length negotiations, the agreement is free from fraud  
27 and collusion.

28 In short, under the applicable standards for approval of a class action settlement

1 under Nev. R. Civ. P. 23(f), the Settlement meets the standards for final approval.

2 **B. The Claims Administration Expenses Are Reasonable And Should Be**  
3 **Approved.**

4 As described in the Salinas Declaration, the Parties, through their settlement  
5 administrator, successfully implemented the notice procedure approved by the Court.  
6 See generally Salinas Dec. In total, the Claims Administrator has incurred and will incur  
7 \$8,000.00 in costs in furtherance of the administration of the Settlement which is less  
8 than the amount originally approved (\$15,000.00). See Salinas Dec. at ¶ 17. This  
9 \$8,000.00 amount is reasonable and should be approved.

10 **C. The Class Representative Enhancement Award Should Be Approved.**

11 The named plaintiff had requested \$15,000.00 as class representative  
12 enhancement for services she rendered to the class, which is separate from any other  
13 amount the named plaintiff is entitled to receive under the settlement as a member of the  
14 settlement class. Such enhancements are routinely awarded to compensate named  
15 plaintiffs for the services they provide in prosecuting a class action. See, e.g., *Ingram v.*  
16 *Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (enhancement awards of \$30,000  
17 to each named plaintiff for services provided to class), *Van Vranken v. Atl. Richfield Co.*,  
18 901 F. Supp. 294, 300 (N.D. Cal. 1995) (approving \$50,000.00 participation award).

19 The enhancement award of \$15,000.00 is reasonable in light of the assistance  
20 the named plaintiff provided. See *In Lo Re v. Chase Manhattan Corp.*, No. 76 Civ. 154  
21 (MJL), 1979 WL 236, at \*6 (S.D.N.Y. May 25, 1979). Specifically, the named plaintiff  
22 provided relevant documents to counsel, frequently communicated with counsel by  
23 telephone and email, reviewed numerous documents including settlement documents,  
24 participated in the negotiation process, provided invaluable assistance to Plaintiff's  
25 counsel in explaining Defendants' alleged compensation policies and procedures,  
26 provided information to assist in the settlement negotiations, and provided information to  
27 potential class members about the litigation and settlement administration process. See  
28 e.g., Gabroy Dec. at ¶ 12. Plaintiff also understood that she had an obligation to place

1 the interests of the class as a whole above her own personal interests in an effort to  
2 advance the case to a favorable outcome on their behalf. In addition, if the Plaintiff did  
3 not prevail, as Class Representative she could have been liable for Defendants' costs.

4 Furthermore, the Settlement Class Members were notified of the requested  
5 enhancement of \$15,000.00 for the named plaintiff and none objected. *See In Lo Re*,  
6 1979 WL 236, at \*6 (no class member objections indicates approval of enhancement  
7 awards). In sum, because of the named plaintiff, this litigation has resulted in a valuable  
8 benefit to the settlement class. Thus, the enhancement should be approved.

9 **D. Class Counsel's Attorneys' Fees And Costs Should Be Approved.**

- 10 1. Class Counsel's fee award is properly calculated as a percentage  
11 of the total Settlement Fund.

12 Nevada Courts may authorize an award of reasonable attorneys' fees and costs  
13 in a certified class action pursuant to the parties' agreement or to the extent otherwise  
14 authorized by law. *See* NRS § 608.140<sup>3</sup>. Here, class counsel's fee request is 1/3 of the  
15 potential gross settlement fund. The requested amount is within the range of the market  
16 rate of 40 to 50 percent in other types of contingency cases. *Newberg on Class Actions*,  
17 (4th Ed. 2002) section 14.6. Therefore, the requested amount is presumptively fair,  
18 reasonable, and appropriate.

- 19 a. *Determination of class counsel fee award in the wage and*  
20 *hour class action context.*

21 "Where a settlement produces a common fund for the benefit of the entire class,  
22 courts have discretion to employ either the lodestar method or the percentage-of-  
23 recovery method." *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th  
24 Cir. 2011). However, courts have observed that the percentage-of-recovery method is  
25 preferable to the lodestar method in common fund cases because: (1) it aligns the  
26 interests of Class Counsel and the class; (2) it encourages efficient resolution of the  
27 litigation by providing an incentive for early, yet reasonable, settlement; and (3) it

28 <sup>3</sup> NRS § 608.140 provides for an award of reasonable attorneys' fees and costs to employee-plaintiffs who  
sue to recover wages.

1 reduces the demands on judicial resources. *In Re Activision Securities Litigation*, 723  
2 F.Supp. 1373, 1378-79 (N.D. Cal. 1989) (Patel, J.); *see also Third Circuit Task Force*  
3 *Report: Court Awarded Attorney Fees*, 108 F.R.D. 237, 255-58 (recommending that  
4 the lodestar method be abandoned in all common fund cases). Similarly, as the Ninth  
5 Circuit observed in *Bluetooth*, “[b]ecause the benefit to the class is easily quantified in  
6 common-fund settlements, we have allowed courts to award attorneys a percentage of  
7 the common fund in lieu of the often more time-consuming task of calculating the  
8 lodestar.” *In re Bluetooth*, 654 F.3d at 942. Under the “common fund” doctrine, “a  
9 litigant or a lawyer who recovers a common fund for the benefit of persons other than  
10 himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”  
11 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The purpose of the common fund  
12 approach is to “spread litigation costs proportionally among all the beneficiaries so that  
13 the active beneficiary does not bear the entire burden alone.” *Vincent v. Hughes Air*  
14 *West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977).

15       There are several reasons why the percentage-of-recovery method makes sense  
16 from an economic perspective. First, contingency fee lawyers work on a mix of cases,  
17 and a profit in one case is often necessary to offset a loss in another. *See, generally,*  
18 *Risks, Reputations and Rewards: Contingency Fee Legal Practice in the United States*  
19 by Herbert M Kritzer (Stanford Law and Politics 2004). “Once one accepts that  
20 contingency lawyers are providing a risk sharing service, it becomes paramount to  
21 incorporate into the analysis of contingency fee practice frameworks that explicitly  
22 consider this element of risk sharing.” *Id.* at 16. Not only is the probability for recovery a  
23 variable at the time the case is initiated, but the maximum amount of recovery itself is  
24 also often unknown. “While much of the literature speaks of going rates and what cases  
25 are worth, evidence suggests that case worth is very slippery; it is not even clear that,  
26 given complete case files, experts agree to an order of magnitude on what a given case  
27 is worth.” *Id.* at 17. In addition, “another element of uncertainty concerns the size of the  
28 investment the lawyer will make. With certain very specific exceptions, a lawyer can

1 seldom know in advance how much time and effort a particular case will require, because  
2 that is largely out of his control.” *Id.*

3 Historically, attorneys’ fee awards have ranged from 20% to 50% of the common  
4 fund, depending on the circumstances of the case. *Newberg on Class Actions*, (4th Ed.  
5 2002) section 14.6, *supra*. Furthermore, in *Boeing*, the Supreme Court specifically  
6 addressed “whether a proportionate share of the fees awarded to lawyers who  
7 represented the successful class may be assessed against the unclaimed portion of the  
8 fund.” *Boeing*, 444 U.S. at 473. The Supreme Court found the total amount of the fund  
9 the proper denominator, approving fees of approximately \$2,000,000.00 on a settlement  
10 valued at \$7,000,000.00 where claims totaled \$706,600 of \$1,544,300 in unconverted  
11 debentures at issue, or 47% of the total. Additionally, the court found that any latent  
12 reversionary right the defendant possessed contingent on the failure of absentee class  
13 members to exercise their present rights of possession did not defeat each class  
14 member’s equitable obligation to share the expenses of the litigation. *Id.* at 481-82. The  
15 reversionary aspect is also present in the instant case.

16 *b. Plaintiff’s fee request is in line with fees awards in wage-hour*  
17 *class actions.*

18 Under these principles, a percentage of the common fund fee award is properly  
19 based on the total settlement value of \$230,000.00 in this case. Class counsel’s request  
20 for 1/3 of this amount (\$76,666.67) is fair compensation for undertaking complex, risky,  
21 expensive, and prolonged litigation solely on a contingency basis. See Gabroy Dec. at  
22 ¶¶ 13, 14. The request is in line with attorneys’ fees awards in other wage-and-hour class  
23 actions. *Newberg on Class Actions*, (4th Ed. 2002) section 14.6, *supra*. Moreover, the  
24 notice of preliminary approval provided to class members plainly disclosed that  
25 \$76,666.67 of the settlement would be allocated to pay attorneys’ fees. No class member  
26 objected to the settlement in general or the attorneys’ fees specifically. This is an  
27 overwhelming indication that the attorneys’ fees and litigation costs sought are fair,  
28

1 reasonable, and appropriate. Accordingly, class counsel's attorneys' fee award should  
2 be approved.

3 2. Nevada law and the *Brunzell* Factors support Class Counsel's Fee  
4 Request.

5 The Supreme Court of Nevada has recognized that in determining the amount of  
6 fees to award, a court's "analysis may begin with any method rationally designed to  
7 calculate a reasonable amount, including those based on a 'lodestar' amount or a  
8 contingency fee." See *Schuette v. Beazer Homes Holdings Corp.*, 124 P. 3d 530, 549  
9 (2005). Courts consider four factors to determine whether the requested attorney fee is  
10 reasonable: (i) the qualities of the advocate: his ability, his training, education,  
11 experience, professional standing and skill; (ii) the character of the work to be done: its  
12 difficulty, its intricacy, its importance, time and skill required, the responsibility imposed  
13 and the prominence and character of the parties where they affect the importance of the  
14 litigation; (iii) the work actually performed by the lawyer: the skill, time and attention given  
15 to the work; (iv) the result: whether the attorney was successful and what benefits were  
16 derived. *Schuette*, 124 p.3d at 549, n. 100, citing *Brunzell v. Golden Gate National Bank*,  
17 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

18 i. The qualities of the advocate.

19 Plaintiff's counsel has extensive litigation practice and wage-and-hour practice  
20 experience. Mr. Gabroy has been certified as class counsel in various cases as outlined  
21 in his Declaration in support of the Joint Motion for Preliminary Approval. Thus, the  
22 quality of the attorneys involved in this case, their abilities, training, education,  
23 experience, professional standing, and skill support Plaintiff's fees request.

24 ii. The character of the work to be done.

25 The class action process provides for important public policy goals that have long  
26 been recognized by the judiciary. United States Supreme Court Justice Douglas  
27 reasoned, "The class action is one of the few legal remedies the small claimant has  
28 against those who command the status quo." *Eisen v. Carlisle & Jacquelin*, 417 U.S.

1 156, 186, 94 S. Ct. 2140, 2156, 40 L. Ed. 2d 732 (1974) (Douglas, J, dissenting). This  
2 sentiment holds true here, and is comparable to that of the Las Vegas Sands' former  
3 casino employees who sought damages for failure to provide a statutorily required 60-  
4 day notice before closure:

5 This case involves multiple claims, some for relatively small  
6 individual sums. Counsel for the would-be class estimated  
7 that, under the most optimistic scenario, each class member  
8 would recover about \$1,330. If plaintiffs cannot proceed as a  
9 class, some – perhaps most – will be unable to proceed as  
10 individuals because of the disparity between their litigation  
11 costs and what they hope to achieve.

12 *Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*,  
13 244 F.3d 1152, 1163 (9th Cir), *cert. denied*, 534 U.S. 973,122 S. Ct. 395 (2001) (“Local  
14 Joint Executive Bd.”) (“Class actions ... may permit the plaintiffs to pool claims which  
15 would be uneconomical to litigate individually.”) (citing *Phillips Petroleum Co. v. Shutts*,  
16 472 U.S. 797, 809 (1985)).

17 Cases such as this rely heavily on the intricate analysis of time and clock data,  
18 employee testimony, and actual pay records. Indeed, for low-wage workers, such as  
19 Plaintiff and the fellow employees she represents, each fraction of hour or fraction of  
20 hourly wage can represent the very real possibility of having to choose between paying  
21 the rent on time or going grocery shopping. Furthermore, litigation is time consuming,  
22 stressful, usually expensive, and one of the most serious of matters to both plaintiffs and  
23 defendants. Here, Plaintiff asserted that she was not paid the proper wages according  
24 to Nevada law. This has a very real effect on Plaintiff and the workers she represents  
25 and their ability to support themselves. Thus, the character of the work done, its difficulty,  
26 intricacy, importance, and effect on the Parties in this litigation support Plaintiff's fees  
27 request.

28 iii. The work actually performed and the results achieved.

Plaintiff's Counsel's knowledge of wage and hour law allowed Counsel to  
calculate the potential damages in this case through an intricate review of the time clock  
and pay records in an effort to provide both Parties with a realistic assessment of the



1 value of Plaintiff's claims which was the impetus for resolution of this case. Given that  
2 the Settlement provides recovery for the wages potentially owed, the basis for recovery  
3 is a percentage share of the total fund based upon the number of hours worked by each  
4 class member in comparison to the total number of hours worked by the entire class  
5 during the class period, only releases participating class members' wage and hour  
6 claims, not other potential employment claims, and in exchange for the benefit of a quick  
7 and certain payout, this factor supports Plaintiff's fees request. Gabroy Dec. at ¶¶ 5, 7,  
8 14, 16.

9 Additionally, given these excellent results obtained, no Lodestar crosscheck is  
10 necessary. See *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 571 (9th Cir. 2019)  
11 (no Lodestar crosscheck necessary when the benefit to the class is easily quantified);  
12 *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). Further,  
13 under the percentage-of-recovery method, the Ninth Circuit has held that "(thirty-three  
14 percent) for attorneys' fees is justified because of the complexity of the issues and the  
15 risks." *In re P. Enterprises Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995). Here, the  
16 result remains easily quantified. Specifically, even after subtracting out costs, third party  
17 administrator fees, enhancements, and attorneys' fees and costs, the net class fund of  
18 approximately \$124,417.29 represents over five times the actual amount of overtime  
19 wages allegedly owed. See Gabroy Dec. at ¶ 8.

20 3. Class Counsel's Costs and Expenses Should Be Approved.

21 In the course of this litigation, class counsel has incurred and expects to incur out-  
22 of-pocket costs and expenses of approximately \$5,916.04, which is less than the  
23 \$10,000.00 agreed upon in the Settlement. See Gabroy Dec. at ¶ 15. Given that class  
24 notice plainly disclosed that up to \$10,000.00 would be allocated to pay litigation costs  
25 advanced by class counsel, and that there were no objections to the settlement, the Court  
26 should approve Plaintiff's costs and expenses. To be clear, Plaintiff only requests costs  
27 of such \$5,916.04 amount.  
28

1 **IV. CONCLUSION**

2 Based on the information and reasons provided above, the Parties respectfully  
3 request that the Court enter an order granting final approval of the class action  
4 settlement.

5 Respectfully submitted,

6 Date: March 27, 2024

GABROY | MESSER

7

/s/ Christian Gabroy

8

Christian Gabroy, Esq.

Kaine Messer, Esq.

9

Mark R. Thierman, Esq.

10

Joshua D. Buck, Esq.

Leah L. Jones, Esq.

11

THIERMAN BUCK LLP

12

*Counsel for Plaintiff*

13

Date: March 27, 2024

SUTTON | HAGUE

14

/s/ Jared Hague

15

Jared Hague, Esq.

16

*Counsel for Defendant H & H Management LLC*

17

Date: March 27, 2024

LAXALT LAW GROUP, LTD.

18

/s/ Steve E. Guinn

19

Steve E. Guinn, Esq.

20

*Counsel for Defendant DED Ops NV LLC d/b/a and*

*a/k/a Wallflower also d/b/a and a/k/a Wallflower*

21

*Cannabis House*

22

23

24

25

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28

# EXHIBIT I

1 Christian Gabroy  
Nev. Bar No. 8805  
2 Kaine Messer  
Nev. Bar No. 14240  
3 GABROY | MESSER  
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13 Fax: (775) 703-5027  
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14 josh@thiermanbuck.com  
leah@thiermanbuck.com

15 *Attorneys for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

18 MARIAH MARTIN, on behalf of herself  
and all others similarly situated,  
19  
20 Plaintiff,  
21  
22 vs.  
23 DED OPS NV LLC d/b/a and a/k/a  
WALLFLOWER also d/b/a and a/k/a  
WALLFLOWER CANNABIS HOUSE; H  
& H MANAGEMENT LLC; DOES 1  
24 through 50; inclusive,  
25  
26 Defendants.

Case No.: A-22-863216-C  
Dept. No.: 1

**DECLARATION OF JARROD  
SALINAS REGARDING  
SETTLEMENT NOTICE  
ADMINISTRATION**

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**DECLARATION OF JARROD SALINAS**

I, Jarrod Salinas, declare as follows:

1. I am a Case Manager at Phoenix Settlement Administrators (“Phoenix”), the Court-appointed Class Action Settlement Administrator for *Martin v. DED Ops NV LLP* (the “Action”). I have personal knowledge of the facts stated herein and, if called upon to testify, I could and would testify competently to such facts.

2. Phoenix was selected by the Parties to provide notice of the Settlement and perform class administration duties in this Action. Pursuant to the Joint Stipulation of Settlement and Release (“Settlement Agreement” or “Settlement”) for this matter, Phoenix was responsible for: (i) preparing, printing, and mailing the Notice of Class Action Settlement (“Notice”); (ii) responding to inquiries from Class Members; (iii) calculating the number of hours each Class Member worked during the period from December 29, 2019, until December 14, 2023 (“Class Period; (iv) determining the validity of letters indicating a request to be excluded from the Class Settlement (“Requests for Exclusion”), written objections to the Class Settlement (“Objections”), and/or dispute regarding the number of Hours submitted by Class Members; (v) calculating the Net Settlement Amount and the Individual Settlement Shares to Class Members; (vi) calculating and issuing the Individual Settlement Payments and distributing them to Settlement Class Members; (vii) issuing the payment to Class Counsel for attorneys’ fees and costs, the Enhancement Payment to Plaintiff, and the employer/employee payroll taxes to the appropriate taxing authorities; and (viii) such other tasks as set forth in the Settlement Agreement or as the Parties mutually agree or as the Court orders.

3. A toll-free telephone number was included in the Notice and Claim Form (collectively, known as the “Notice Packet”) for the purpose of allowing the Class Members to call Phoenix and to make inquiries regarding the Settlement. The system is accessible twenty-four (24) hours a day, seven (7) days a week, and will remain in operation throughout the settlement process. Callers have the option to speak with a live

1 call center representative in during normal business hours or to leave a message and  
2 receive a return call during non-business hours. The toll-free telephone number included  
3 in the Notice Packet was (800) 523-5773.

4 **NOTIFICATION TO THE CLASS**

5 4. On December 29, 2023, Phoenix received a data file from Defense  
6 Counsel that contained names, last known mailing addresses, Social Security numbers,  
7 and hours worked for each Class Member (“Class List”) during the Class Period. The  
8 final mailing list contained two hundred twelve (212) individuals identified as Class  
9 Members.

10 5. On November 1, 2022, Phoenix conducted a National Change of Address  
11 (“NCOA”) search in an attempt to update the class list of addresses as accurately as  
12 possible. A search of this database provides updated addresses for any individual who  
13 has moved in the previous four (4) years and notified the U.S. Postal Service of their  
14 change of address.

15 6. On January 9, 2024, Phoenix mailed the Notice via U.S. first class mail to  
16 two hundred twelve (212) Class Members on the Class List. A true and correct copy of  
17 the mailed Notice is attached hereto as **Exhibit A**.

18 7. As of the date of this declaration, zero Notices have been returned to  
19 Phoenix.

20 8. As of the date of this declaration, all Notice Packets are considered  
21 deliverable.

22 **CLAIM, DISPUTES, REQUESTS FOR EXCLUSIONS, AND NOTICES OF OBJECTION**

23 9. Phoenix was responsible for receipt of all Claim Forms. As of the date of  
24 this signed declaration, Phoenix has received sixty-five (65) valid Claim Forms from  
25 Class Members. The sixty-five (65) Claim Forms represent approximately 30.5% of the  
26 two hundred twelve (212) Class Members identified.

27 10. As of the date of this declaration, there are no outstanding disputes from  
28 Class Members. The deadline for submitting a dispute was February 21, 2024.

1 11. As of the date of this declaration, Phoenix has received zero (0) Requests  
2 for Exclusion from Class Members. The deadline to request exclusion from the Class  
3 Settlement was February 21, 2024.

4 12. As of the date of this declaration, Phoenix has received zero (0) Notices of  
5 Objection from Class Members. The deadline for objecting to the Class Settlement was  
6 February 21, 2024.

7 **BREAKDOWN OF THE NET SETTLEMENT AMOUNT**

8 13. As of the date of this signed declaration, there are sixty-five (65) Class  
9 Members who submitted timely and valid Claim Forms for participation in the Class  
10 Action Settlement (“Claimants”) who will be paid their portion of the Net Settlement  
11 Amount. These sixty-five (65) Forms received account for approximately 44.21% of the  
12 Net Settlement Amount or \$55,006.60.

13 14. The Net Settlement Amount available to pay Claimants was determined as  
14 follows:

15 <b>Maximum Settlement Amount:</b>	<b>\$230,000.00</b>
16 Less Attorneys’ Fees (Requested)	-\$76,666.67
17 Less Attorneys’ Costs (Requested)	-\$5,916.04
18 Less Class Representative Enhancement Payment (Requested)	-\$15,000.00
19 <u>Less Claims Administration Costs:</u>	<u>-\$8,000.00</u>
20 <b>NET SETTLEMENT AMOUNT</b>	<b>\$124,417.29</b>

21  
22 15. As of the date of this signed declaration, the *average* Individual Settlement  
23 Payment is approximately \$846.26, and the *highest* Individual Settlement Payment is  
24 about \$2,458.86 prior to the deduction of taxes. These amounts are subject to the  
25 approval of the deductions from the Maximum Settlement Amount.

26 16. As of the date of this signed declaration, Defendant’s portion of employer-  
27 side payroll taxes as the Class Members’ current or former employer that will be paid  
28 separate from the Maximum Settlement Amount is approximately \$1,608.95.

1 **CLAIMS ADMINISTRATION COSTS**

2 17. Phoenix's total costs for services in connection with the administration of  
3 this Settlement, including fees incurred and anticipated future costs for completion of the  
4 administration, are \$8,000.00. Phoenix's work in connection with this matter will continue  
5 with the calculation of the settlement checks, issuance, and mailing of those settlement  
6 checks, etc., and to do the necessary tax reporting on such payments. Attached as  
7 **Exhibit B** is a true and correct copy of the invoice stating the Claims Administration  
8 Costs.

9 I declare under penalty of perjury under the laws of the State of California that the  
10 foregoing is true and correct. Executed this 27th day of March, 2024, in Orange,  
11 California.

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14 JARROD SALINAS

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GABROY | MESSER  
170 S. Green Valley Pkwy., Suite 280  
Henderson, Nevada 89012  
(702) 259-7777 FAX: (702) 259-7704



# **EXHIBIT A**

DISTRICT COURT  
CLARK COUNTY, NEVADA

MARIAH MARTIN, on behalf of )  
herself and all others similarly )  
situated , )  
)  
v. )  
)  
DED OPS NV LLC d/b/a and )  
a/k/a WALLFLOWER also d/b/a )  
and a/k/a WALLFLOWER )  
CANNABIS HOUSE; H & H )  
MANAGEMENT LLC. )  
)

A-22-863216-C  
Department 1

**NOTICE OF CLASS ACTION  
SETTLEMENT**

**TO: All hourly paid non-overtime exempt persons employed by Defendants in the state of Nevada who earned less than 1 ½ times the applicable minimum wage and who worked over eight (8) hours a twenty-four (24) hour period and were not paid overtime properly in accordance with Nevada law at any time from December 29, 2019, until December 14, 2023.**

**THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.**

1. YOU ARE HEREBY NOTIFIED that a proposed settlement (“Settlement”) of the above-captioned class action Lawsuit (“Lawsuit”) pending in the Eighth Judicial District Court, Clark County, Nevada (the “Court”), has been reached by the Parties and granted preliminary approval by the Court supervising the Lawsuit.

2. The purpose of this Notice is to describe the Lawsuit, to inform you of the terms of the proposed Settlement, and to inform you of your rights and options in connection with the proposed Settlement. The proposed Settlement will resolve all claims in this Lawsuit. A final fairness hearing will be held on **April 3, 2024, at 9:30 a.m., in Department 1** to determine whether the Settlement should be granted final approval.

3. **Because your rights may be affected, it is extremely important that you read this Notice carefully.** To participate in the Settlement and receive a monetary Settlement Award, you must complete and return a Claim Form **by February 21, 2024**. Unless you choose to exclude yourself (“opt out”) of the Settlement, you will be bound by the Settlement if it is approved by the Court and by any order entered by the Court subject to the conditions in the Parties’ Joint Stipulation of Settlement and Release.

**SUMMARY OF THE LAWSUIT**

4. On December 29, 2022, Plaintiff Mariah Martin, on behalf of herself and all others similarly situated, filed a Lawsuit against Defendants in the Eighth Judicial District Court, Clark County, Nevada, Case No. A-22-863216-C. In the Complaint, Plaintiff alleged that Defendants failed to pay full overtime in violation of NRS § 608.018 and failed to pay all wages due and owing in violation of NRS §§ 608.020 through NRS 608.050 and NRS § 608.140. Defendants deny all allegations asserted in the Lawsuit and further deny that they have violated the law in any respect.

5. After extensive exchange of relevant information and negotiations, the Parties reached a Settlement in good faith that is memorialized in the Joint Stipulation of Settlement and Release (“Agreement”). The terms of the Settlement and the Agreement are generally summarized in this Notice.

6. You have received this Notice because Defendants’ records show you may be a Class Member (as defined in Paragraph 14 herein) whose rights may be affected by this Settlement.

**POSITIONS OF THE PARTIES**

7. Defendants deny liability for all claims that were or could have been brought in the Lawsuit. Defendants have denied that they have violated any wage and hour, overtime, or other law under any federal or state constitution, statute or regulation. Defendants contend that all their employees have been compensated in compliance with the law, the Nevada Constitution, and the Nevada Revised Statutes. Defendants have asserted and continue to assert defenses to the claims in the Lawsuit and have expressly denied and continue to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Lawsuit. Defendants’ entry into this Settlement and the consummation of this Settlement is not an admission of any liability or wrongdoing by Defendants or any person. Defendants specifically deny any liability, wrongdoing, or culpability of any kind whatsoever for the claims alleged and released in the Lawsuit, and further deny that, for any purpose other than settling, the Lawsuit is appropriate for class treatment.

8. Counsel for the Plaintiff (“Plaintiff’s Counsel” or “Class Counsel”) has extensively investigated and researched the facts and circumstances underlying the issues raised in the Lawsuit, and the law applicable thereto.

9. Plaintiff and Plaintiff’s Counsel recognize the expense and length of continued proceedings necessary to continue the Lawsuit against Defendants through trial and through any possible appeals. Plaintiff’s Counsel has also taken into account the uncertainty of the outcome of further litigation, including the risk that the class might not be finally certified under the court rules as well as the difficulties and delays generally inherent in such lawsuits.

10. Plaintiff and Plaintiff's Counsel are also aware of the burdens of proof necessary to establish liability for the claims, of Defendants' defenses thereto, and of the difficulties in establishing damages for the Class Members (as defined in Paragraph 14 herein). Based on the foregoing, Plaintiff's Counsel believes the proposed Settlement is fair, adequate, reasonable, and in the best interests of the Class Members.

11. Although Defendants believe they have meritorious defenses to the Lawsuit, Defendants have concluded that the continued litigation of Plaintiff's claims and defense of this Lawsuit would be lengthy and expensive for all Parties. This Settlement is not an admission of any liability or wrongdoing by any Defendant, Released Parties (as defined in Paragraph 27 herein), or person, which have agreed to settle this Lawsuit and settle this case solely to avoid the uncertainties and costs of litigation and so they can buy their peace.

12. The Court has made no ruling on the merits of the claims and has determined only that certification of the Class for settlement purposes is appropriate under Nevada law.

### PRELIMINARY APPROVAL OF THE SETTLEMENT

13. **Class Counsel.** On **December 14, 2023**, the Court appointed the following attorneys as Plaintiff's Counsel to represent the Class in this Lawsuit: Gabroy | Messer, 170 South Green Valley Parkway, Suite 280, Henderson, Nevada 89012 and Thierman Buck LLP, 7287 Lakeside Drive, Reno Nevada, 89511.

14. **Class Definition.** On **December 14, 2023**, for purposes of the proposed Settlement, the Eighth Judicial District Court, Clark County, Nevada, preliminarily certified a Class consisting of all hourly paid non-exempt persons employed by Defendants in the state of Nevada who earned less than 1 ½ times the applicable minimum wage and who worked over eight (8) hours in a workday at any time from December 29, 2019 until [DATE COURT GRANTS PRELIMINARY APPROVAL] (the "Settlement Class," and each individual within the Settlement Class, a "Class Member").

15. The **Class Period** is December 29, 2019, through December 14, 2023.

16. **Claims Administrator.** The Court has appointed Phoenix Settlement Administrators as Claims Administrator to notify the Class and coordinate the claims process.

17. If you are a member of the Class, you will be bound by the proposed Settlement described below if it is approved, unless you make a written request for exclusion (to "opt out") in the manner described below.

### SUMMARY OF SETTLEMENT TERMS

The following is a summary of the proposed Settlement between the Plaintiff, the Class, and Defendants. The specific and complete terms are described in the Joint Stipulation of Settlement and Release (the "Settlement"), a copy of which is available for your review as set forth at the end of this Notice.

18. **Conditions of the Settlement.** This Settlement is conditioned upon the Court entering an order at or following the final fairness hearing approving the Settlement, as agreed by Plaintiff and Defendants, as fair, reasonable, adequate, and in the best interests of the Class with such order not being subject to any appeal or modification as provided for in the Settlement.

19. **Final Fairness Hearing.** A final fairness hearing will be held in the Eighth Judicial District Court, Clark County Nevada, on **April 3, 2024, at 9:30 a.m.**, in the Regional Justice Center, Courtroom 5C, 200 Lewis Ave, Las Vegas, NV 89101, before the Hon. Bitu Yeagar, District Judge. At this hearing, the Court will determine whether the proposed Settlement is fair, adequate, and reasonable, whether it should be approved by the Court, and whether the Lawsuit should be dismissed on the merits with prejudice as a result of the Settlement. The hearing may be adjourned, continued, and/or rescheduled by the Court from time to time as the Court may direct without further notice. You do not need to attend that hearing to participate in the proposed Settlement.

20. **Settlement Fund.** The Settlement Agreement provides that Defendant H & H Management LLC will pay a total not to exceed \$230,000.00 (the "Settlement Fund") to fully resolve all issues in the Lawsuit. After the Court finally approves the Settlement and after deduction of the court-approved deductions from the Settlement Fund, as referenced immediately below, monetary Settlement Awards will be distributed to each member of the Class who: (a) does not opt out; and (b) fully completes and timely mails a valid Claim Form ("Participating Class Members").

21. **Deductions from the Settlement Fund.** The following deductions will be made from the Settlement Fund:

a. **Attorneys' Fees and Expense Award.** As part of the Settlement approval process, Class Counsel (Plaintiff's Counsel) will seek approval from the Court of an award of attorneys' fees of \$76,666.67 for all current and future attorneys' fees and up to \$10,000.00 in costs and expenses incurred in the Lawsuit as the "Class Counsel Award." Class Counsel will not be permitted to petition the Court for any additional payments for fees, costs, or interest. You will not be required to pay Plaintiff's Counsel separately for their representation of the Class in the Lawsuit.

b. **Enhancement Award.** Class Counsel will also seek approval from the Court for the payment of an Enhancement Award to Class Representative Mariah Martin (named Plaintiff) in this Lawsuit, for a total of \$15,000.00, for her prosecution of this case on behalf of the Class. Mariah Martin, as the Class Representative, is the only Class Member eligible for this \$15,000.00 award.

c. **Net Settlement Amount to Be Distributed to Participating Class Members.** The sum expected to remain following the above-referenced deductions and the deduction for the costs of claims administration (up to \$15,000.00) is \$113,333.33, also

referenced as “Net Settlement Amount.” The Net Settlement Amount will be distributed among those Class Members who do not opt out and who timely mail a valid, fully-completed Claim Form, known as “Participating Class Members.”

22. **Settlement Awards to Participating Class Members:** The Claims Administrator will calculate the Settlement Award for each Participating Class Member by utilizing the following formula: the Net Settlement Amount shall be allocated based on the number of hours worked by each Class Member during the Class Period. Any amounts of the Net Settlement Amount allocated to Class Members who do not become Participating Class Members will be reverted to Defendant H & H Management LLC. Within 30 days after the Effective Date of the Settlement, the Claims Administrator will mail Settlement Award checks to Participating Class Members.

23. **Tax Matters.**

a. Under the terms of the Settlement, twenty-five percent (25%) of the Settlement Award to each Participating Class Member will be paid as alleged unpaid wages, from which federal withholding taxes will be deducted and for which employer tax payments will be made, and seventy-five percent (75%) of the Settlement Award to each Participating Class Member will be paid as alleged unpaid penalties and interest, from which federal withholding taxes will not be deducted. IRS Forms W-2 and 1099-MISC, respectively, will issue for the Settlement Award as appropriate.

b. Participating Class Members should consult with their tax advisors concerning any tax consequences of the payments that they receive under the Settlement. Neither the Parties, the Claims Administrator, nor the attorneys for the Parties are providing tax advice.

24. **Uncashed Checks.** As approved by the Court, checks issued to Participating Class Members will be valid for 90 days following issuance. If any check mailed to a Participating Class Member is not cashed or deposited within 90 days after issuance, the check will be cancelled, and the amount of that check will be reverted to Defendant H & H Management LLC.

### RELEASE OF PARTIES AND CLAIMS

25. All payments under this Settlement will be paid specifically in exchange for the release of the Released Parties (as defined in Paragraph 27 herein) from the Class Members’ Released Claims and the Class Representative’s Released Claims respectively and for the covenant not to sue concerning all Released Claims.

26. If the Settlement is approved and if the final fairness hearing dismissing the Lawsuit is entered and the Judgment becomes final, those Class Members who have not validly requested exclusion from the Settlement will be bound by the terms of the proposed Settlement, including releases of parties and the claims set forth at paragraphs 27 and 28 below.

27. **Released Parties.** “Released Parties” collectively means (i) Defendants (ii) Defendants’ respective past, present, and future parents, subsidiaries, joint ventures, and affiliates; (iii) the past, present, and future shareholders, directors, owners, officers, members, managers, agents, employees, attorneys, accountants, investigators, partners, administrators, assigns, insurers, predecessors, successors, licensors, licensees, subsidiaries, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing.

28. **Releases of Claims.**

a. **“Class Members’ Released Claims”** means the claims to be released by Class Members who do not timely file a valid request for exclusion, for any and all applicable local, state, and federal law wage-and-hour claims (including, but not necessarily limited to, contractual or common law claims, waiting time penalty claims, claims arising under the Fair Labor Standards Act, claims arising under the Nevada Revised Statutes Chapter 608, Nevada Administrative Code Chapter 608, and the Nevada Constitution Art. 15 § 16) and all wage-and-hour claims asserted in or that could have been asserted in this dispute, whether known or unknown, arising during the Class Period or during any time that could reasonably be considered to be equitably tolled thereto, and which arose out of or could have arisen out of the facts alleged in this action.

b. There may exist facts and/or damages pertaining to any or all of the Class Members’ Released Claims in paragraph 28.a., above, of which Plaintiff and Class Members have no knowledge, reason to know, or suspicion at the time the Parties sign the Agreement, and that a Class Member may later discover facts different from or in addition to those he or she now knows or believes to be true. The Release at paragraph 28.a. shall apply to all such unknown and unanticipated damages and claims, as well as to those now known or disclosed, based on the facts alleged in Complaint, and, further, that the Release remains in full force and effect in all respects notwithstanding any such different or additional facts.

### PROCEDURE FOR MONETARY RECOVERY

29. **Deadline to Submit Claim Form.** If you want to participate in the Settlement and receive money under the Settlement, you must fully complete, sign, and mail the Claim Form **no later than February 21, 2024**, as set forth in detail below at paragraphs 30-31.

30. **Completing a Claim Form:** A Claim Form is attached. You must complete and sign the Claim Form and mail it to the Claims Administrator at the above address. The completed, signed Claim Form must be postmarked and mailed on or before **February 21, 2024**. Class Members are responsible to maintain a photocopy of the fully completed Claim Form and proof of mailing.

31. A Claim Form is timely and valid only if it is fully completed, signed, and postmarked on or before the deadline specified in paragraphs 29 and 30.

32. If you are a Class Member and you do not choose to exclude yourself from the Settlement, you will be bound by all the provisions of the Settlement Agreement, including a full release of claims that will prevent you from separately suing the Released Parties for the Class Members’ Released Claims settled in this case.

33. ANY CLASS MEMBER WHO DOES NOT SUBMIT A TIMELY, VALID, AND FULLY-COMPLETED CLAIM FORM WILL NOT RECEIVE A SHARE OF THE SETTLEMENT FUND. IF YOU DO NOTHING – THAT IS, IF YOU DO NOT MAIL A TIMELY VALID, AND FULLY-COMPLETED CLAIM FORM, YOU WILL NOT BE ENTITLED TO A SHARE OF THE SETTLEMENT FUND. HOWEVER, YOU WILL BE BOUND BY THE TERMS OF THE SETTLEMENT, INCLUDING THE RELEASE REFERENCED AT PARAGRAPHS 27 AND 28 ABOVE, EVEN THOUGH YOU DID NOT RECEIVE ANY MONEY, UNLESS YOU EXCLUDE YOURSELF IN WRITING FROM THE SETTLEMENT AS PROVIDED IN PARAGRAPHS 34 AND 35 BELOW.

#### PROCEDURE FOR EXCLUSION FROM THE SETTLEMENT

34. **Request for Exclusion.** Any Class Member who does NOT wish to participate in the Settlement may exclude himself or herself (i.e., “opt-out”) by sending a request for exclusion to the Claims Administrator stating that the Class Member wants to be excluded from this Settlement. The request for exclusion must be signed, dated and mailed to: Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863.

35. **Deadline for Request for Exclusion.** The request for exclusion must be **postmarked no later than February 21, 2024**. If you submit request for exclusion **postmarked after February 21, 2024**, it will be rejected, and you will be bound by the Release and all other Settlement Terms. If you submit a request for exclusion and a Claim Form, your request for exclusion will be rejected and your Claim Form will be accepted.

36. **Consequences of Submitting Request for Exclusion.** Any person who sends a timely request for exclusion shall, upon receipt by the Claims Administrator, no longer be a member of the Settlement Class, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. Any such person, at their own expense, may pursue individually any claims he/she may have against Defendants. If you wish to exclude yourself and wish to pursue individual action, you should be aware there are time limits on your right to file any such individual action.

#### PROCEDURE FOR OBJECTIONS TO THE PROPOSED SETTLEMENT

37. **Objections to the Settlement.** Any Class Member who wishes to object to the Settlement must file with the Court and serve on counsel for both Parties and the Claims Administrator a written statement objecting to the Settlement. Such written statements must be filed with the Court and served on counsel for the Parties **no later than February 21, 2024**. No Class Member who submits a request for exclusion can object to the Settlement. No other Class Member shall be entitled to be heard at the final fairness hearing (whether individually or through separate counsel) to object to the Settlement, and no written objections or briefs submitted by any Class Member shall be received or considered by the Court at the final fairness hearing, unless copies of any written objections or briefs, shall have been timely filed with the Court and served on the Claims Administrator and counsel for all Parties. Any written objections and briefs must be served via mail on the Claims Administrator and counsel for the Parties at the following addresses:

To Plaintiff and the Settlement Class (Class Counsel):

Christian Gabroy  
Kaine Messer  
GABROY | MESSER  
170 South Green Valley Parkway  
Suite 280  
Henderson, NV 89012

To Defendants:

Jared Hague  
SUTTON | HAGUE  
6671 South Las Vegas Blvd.  
Suite 210 Las Vegas, NV 89119

Steve Guinn  
LAXALT LAW GROUP LTD  
9790 Gateway Drive  
Suite 200  
Reno, NV 89521

To Claims Administrator:

Phoenix Settlement Administrators  
P.O. Box 7208  
Orange, CA 92863

38. **Objections Must be Submitted Timely and In Writing.** Any Class Member who does not timely file with the Court and serve on counsel his or her written objections in the manner provided above shall be deemed to have waived such objections and shall be foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement.

39. Any Class Member who is satisfied with the proposed Settlement can but need not appear at the final fairness hearing.

### **CHANGE OF ADDRESS**

40. If you move after receiving this Notice, if it was misaddressed, or if for any reason you want your payment or future correspondence concerning this Lawsuit and the Settlement to be sent to a different address, you should supply your current preferred address to the Claims Administrator at the address listed in paragraph 37 above.

### **EXAMINATION OF THE PAPERS AND ADDITIONAL INQUIRIES**

41. The foregoing is only a summary of the Lawsuit and the proposed Settlement and does not purport to be comprehensive. For a more detailed statement of the matters involved in the Lawsuit and the proposed Settlement, you may refer to the pleadings, the Settlement Agreement, and other papers filed in the Lawsuit, which may be inspected at the Clerk's Office of the Eighth Judicial District Court, Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89101, during regular business hours of each court day.

42. All inquiries by Class Members regarding this Notice and/or the Settlement that involve requests for information on whether a claim has been received or accepted, requests for additional copies of the Claim Form, information on when Participating Class Members' Settlement Awards will be paid, or the amount of your individual Settlement Award should be directed to the Claims Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. Inquiries involving legal questions about this Notice and/or legal questions about the Settlement or your legal rights should be directed to Class Counsel referenced at paragraph 37 above.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR DEFENDANT WITH INQUIRIES.**

EIGHTH JUDICIAL DISTRICT OF NEVADA IN AND FOR THE COUNTY OF CLARK

MARIAH MARTIN v. DED OPS NV LLC, et al.

CASE NO. A-22-863216-C

**CLAIM FORM**

*If your name and address is different from what is printed to the left, please provide updated information:*

List ID: «PSA\_ID»

«First\_Name» «Last\_Name»

«Address\_1»

«City», «State» «ZIP\_Code»

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To receive your share of the Settlement, you must sign and return this Claim Form **postmarked** no later than February 21, 2024. The Claim Form must be mailed or faxed to the Claims Administrator at the below address.

**Wallflower adv. Martin Claims Administrator  
c/o Phoenix Settlement Administrators  
P.O. Box 7208  
Orange, CA 92863  
Telephone: (800) 523-5773  
Facsimile: (949) 209-2503**

**COMPLETE AND SIGN THIS FORM IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE YOUR SHARE OF THE SETTLEMENT FUNDS**

Your estimated share of the Settlement is based on the number of hours worked between December 29, 2019, and December 14, 2023, for DED Ops NV LLC d/b/a and a/k/a Wallflower also d/b/a and a/k/a Wallflower Cannabis House and H & H Management LLC (“Defendants”) in Nevada as a non-exempt employee. Defendants’ records show that, within that period, you worked a total of: «Hours» hours.

Based on this information, the current estimated value of your settlement benefit is «Est\_Set\_Amt».

**If you disagree with Defendants’ records as to the number of applicable hours you worked, you must provide any documentation (such as pay stubs or written information) to support your claim and submit it with this form. If there is still a dispute after you submit your documentation, and the dispute cannot be resolved informally, the dispute will be settled by the Claims Administrator as described in the Notice that accompanies this claim form.**

**I believe that the Defendants’ estimate of the number of hours is incorrect and that I worked \_\_\_\_\_ hours during the class period. (If you agree with the Defendants’ estimate, leave blank.)**

My signature below is my consent to be bound by the Settlement and Release as described in the Notice enclosed with this Claim Form. **By signing below, I am making my claim for a share of the Settlement, and I agree to the information above.** I declare under penalty of perjury under the laws of the State of Nevada that the foregoing information supplied is true:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Printed Name

(\_\_\_\_\_)\_\_\_\_\_  
Daytime Phone Number

\_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_  
Social Security Number (for taxing reporting)

## **EXHIBIT B**





**PHOENIX**

CLASS ACTION ADMINISTRATION SOLUTIONS

**CASE ASSUMPTIONS**

Class Members	212
Claimes Made	138
Opt Out Rate	1%
Opt Outs Received	2
Subtotal Admin Only	<b>\$8,000.00</b>

**Not-to-Exceed Total \$8,000.00**

**For 212 Members**

Pricing Good for Scope of Estimate Only

**January 8, 2024**

**Case: Martin v. DED Ops NV, LLC, et al. Claims Made Admin**

Phoenix Contact: Jarrod Salinas  
 Contact Number: 800-523-5773  
 Email: Jarrod@phoenixclassaction.com

Requesting Attorney: Kaine Messer  
 Firm: Gabroy Messer  
 Contact Number: 702-259-7777  
 Email: kmesser@gabroy.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly. Estimate is based on 212 Class Members. Class data Must be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 days.

<b>Case &amp; Database Setup / Toll Free Setup &amp; Call Center / NCOA (USPS)</b>			
<b>Administrative Tasks:</b>	<b>Rate</b>	<b>Hours/Units</b>	<b>Line Item Estimate</b>
Programming Manager	\$125.00	3	\$375.00
Programming Database & Setup	\$125.00	3	\$375.00
Toll Free Setup*	\$119.87	1	\$119.87
Call Center & Long Distance	\$2.00	4	\$8.48
NCOA (USPS)	\$40.00	2	\$80.00
		<b>Total</b>	<b>\$958.35</b>

\* Up to 120 days after disbursement

<b>Data Merger &amp; Scrub / Notice Packet, Opt-Out Form &amp; Postage / Spanish Translation / Reporting</b>			
<b>Project Action</b>	<b>Rate</b>	<b>Hours/Units</b>	<b>Line Item Estimate</b>
Notice Packet Formatting	\$125.00	3	\$375.00
Data Merge & Duplication Scrub	\$0.50	212	\$106.00
Notice Packet & Opt-Out Form	\$1.75	212	\$371.00
Estimated Postage (up to 2 oz.)*	\$0.87	212	\$184.44
		<b>Total</b>	<b>\$1,036.44</b>

\* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

<b>Skip Tracing &amp; Remailing Notice Packets / Tracking &amp; Programming Undeliverables</b>			
<b>Project Action:</b>	<b>Rate</b>	<b>Hours/Units</b>	<b>Line Item Estimate</b>
Case Associate	\$55.00	3	\$165.00
Skip Tracing Undeliverables	\$1.75	32	\$55.65
Remail Notice Packets	\$1.75	32	\$55.65
Estimated Postage	\$0.87	32	\$27.67
Programming Undeliverables	\$50.00	2	\$100.00
		<b>Total</b>	<b>\$403.97</b>

<b>Database Programming / Processing Opt-Outs, Deficiencies or Disputes</b>			
<b>Project Action:</b>	<b>Rate</b>	<b>Hours/Units</b>	<b>Line Item Estimate</b>
Programming Claims Database	\$135.00	2	\$270.00
Claims Made Processing	\$135.00	2	\$270.00
Case Associate	\$55.00	3	\$165.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	5	\$53.00
Case Manager	\$85.00	3	\$255.00
		<b>Total</b>	<b>\$1,013.00</b>

<b>Calculation &amp; Disbursement Programming/ Create &amp; Manage QSF/ Mail Checks</b>			
<b>Project Action:</b>	<b>Rate</b>	<b>Hours/Units</b>	<b>Line Item Estimate</b>
Programming Calculations	\$135.00	3	\$405.00
Disbursement Review	\$135.00	3	\$405.00
Programming Manager	\$95.00	3	\$285.00
QSF Bank Account & EIN	\$100.00	1	\$100.00
Check Run Setup & Printing	\$125.00	3	\$375.00
Mail Class Checks *	\$2.00	138	\$275.60
Estimated Postage	\$0.64	138	\$88.19
		<b>Total</b>	<b>\$1,933.79</b>

\* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

<b>Tax Reporting &amp; Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations</b>			
<b>Project Action:</b>	<b>Rate</b>	<b>Hours/Units</b>	<b>Line Item Estimate</b>
Case Supervisor	\$125.00	3	\$375.00
Remail Undeliverable Checks (Postage Included)	\$2.50	14	\$34.45
Case Associate	\$55.00	4	\$220.00
Reconcile Uncashed Checks	\$75.00	3	\$225.00
Conclusion Reports	\$100.00	2	\$200.00
Case Manager Conclusion	\$75.00	2	\$150.00
Final Reporting & Declarations	\$125.00	2	\$250.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,200.00	1	\$1,200.00
		<b>Total</b>	<b>\$2,654.45</b>

\* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

**Estimate Total: \$8,000.00**



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

## TERMS AND CONDITIONS

**Provisions:** The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

**Data Conversion and Mailing:** The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

**Claims:** PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

**Payment Terms:** All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

### Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

# EXHIBIT II

1 **DECL**  
2 Christian Gabroy  
3 Nev. Bar No. 8805  
4 Kaine Messer  
5 Nev. Bar No. 14240  
6 GABROY | MESSER  
7 170 South Green Valley Parkway  
8 Suite 280  
9 Henderson, Nevada 89012  
10 Tel: (702) 259-7777  
11 Fax: (702) 259-7704  
12 christian@gabroy.com  
13 kmesser@gabroy.com

14 Mark R. Thierman  
15 Nev. Bar No. 8285  
16 Joshua D. Buck  
17 Nev. Bar No. 12187  
18 Leah L. Jones  
19 Nev. Bar No. 13161  
20 THIERMAN BUCK LLP  
21 325 West Liberty Street  
22 Reno, Nevada 89501  
23 Tel: (775) 284-1500  
24 Fax: (775) 703-5027  
25 mark@thiermanbuck.com  
26 josh@thiermanbuck.com  
27 leah@thiermanbuck.com

28 *Attorneys for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

MARIAH MARTIN, on behalf of herself  
and all others similarly situated,

Plaintiff,

vs.

DED OPS NV LLC d/b/a and a/k/a  
WALLFLOWER also d/b/a and a/k/a  
WALLFLOWER CANNABIS HOUSE; H &  
H MANAGEMENT LLC; DOES 1 through  
50; inclusive,

Defendants.

Case No.: A-22-863216-C  
Dept. No.: 1

**DECLARATION OF CHRISTIAN  
GABROY IN SUPPORT OF JOINT  
MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

**DECLARATION OF CHRISTIAN GABROY IN SUPPORT OF JOINT MOTION FOR  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, Christian Gabroy, do hereby declare and state as follows:

1           1.       The following declaration is based upon my own personal observation  
2 and knowledge, and if called upon to testify to the things contained herein, I could  
3 competently so testify.

4           2.       I am an attorney and founder of Gabroy | Messer and am admitted to  
5 practice law in Illinois and Nevada as well as in the United States District Court District  
6 of Nevada, the Ninth Circuit Court of Appeals, and the United States Supreme Court.

7           3.       I am the attorney of record for Plaintiff along with partner Kaine Messer,  
8 Esq. and co-counsel at Thierman Buck LLP. I have extensive litigation practice in the  
9 wage-and-hour practice since opening my firm here in Nevada in 2008. I have been  
10 certified as class counsel in, *inter alia*, our federal court in *Gaspar, et al. v.*  
11 *Supershuttle Las Vegas, LLC*, Case No. 2:15-cv-02149-APG-VCF, *Garibay v.*  
12 *Wyndham Vacation Ownership Inc.*, Case No. 2:21-cv-00439-JAD-NJK, and *Walden,*  
13 *et al., v. State of NV*, Case No. 3:14-cv-00320-MMD-CSD as well as in Nevada state  
14 court in *Zelege v. Ike Gaming, Inc. d/b/a and a/k/a El Cortez Hotel and Casino*, Case  
15 No. A-18-769220-C, *Baltimore v. LTF Club Management Company, LLC*, Case No. A-  
16 18-782512-C, *DiMuzio, et al. v. Blazin Wings, Inc. d/b/a and a/k/a Buffalo Wild Wings,*  
17 Case No. A-18-771424-C, *Greene-Lewis v. Hussong's Las Vegas, LLC*, Case No. A-  
18 18-771094-C, *Aaron v. Wendy's of Las Vegas, Inc. et al*, Case No. A-18-774902-C,  
19 *Boschini v. White House Black Market, Inc., et al.*, Case No. A-19-803613-C, *Barnett*  
20 *v. WBF McDonald's Management LLC*, Case No. A-18-777786-C, and *Russum v.*  
21 *Lucky Lucy D LLC, et al.*, Case No. A-19-795009-C, *Ramirez v. PR Restaurant*  
22 *Management, LLC, et al.*, Case No. A-19-801650-C, *Valencia v. P & M Holdings, LLC,*  
23 Case No. A-21-830175-C, *Barth v. Henderson NJ TE LLC*, Case No. A-20-810439-C,  
24 *Smith v. Ascenda USA Inc.*, Case No. A-20-811554-C, *Maestas v. Lisa/Carrison LTD.*,  
25 Case No. A-19-797084-C, *Noguez v. Towne Park, LLC*, Case No. A-20-813315-C.  
26 *Jara v. MVF LLC*, Case No. A-20-822482-C; *Loyal v. Lazy Dog Restaurants, LLC,*  
27 Case No. A-21-834299-C; *Kennedy v. Port of Subs, Inc.*, Case No. A-19-800823-C;  
28 *Mizhiritsky v. Casino Job Center, Inc., et al.*, Case No. A-19-800466-C; *Dadd v. Sports*

1 *Clip, Inc.*, Case No. A-21-836630-C; and *Jurasovic v. Archer West Security &*  
2 *Consulting Group, LLC*, Case No. A-22-862686-C.

3 4. Attached to the parties' November 8, 2023 Joint Motion For Preliminary  
4 Approval Of Class Action Settlement as Exhibit 1 is a true and correct copy of the  
5 parties' Joint Stipulation of Settlement and Release (the "Settlement").

6 **Case-Specific Information**

7 5. In my opinion, the settlement achieved in this case represents a good  
8 result on behalf of the Class. Notwithstanding each party's various legal arguments as  
9 to the appropriateness of class-wide relief in this action, and the liability and amount  
10 owed to class members, the basis for recovery is based upon the total amount of  
11 unpaid overtime premium hours worked during the class period. Furthermore, the  
12 proposed settlement would release only participating class members' wage and hour  
13 claims, not all potential employment claims, in exchange for the financial benefits they  
14 receive.

15 6. The parties have reviewed relevant compensation data and employment  
16 and have arrived at a reasonable resolution through a protracted arm's-length  
17 negotiation process. The negotiations continued into all details of the settlement  
18 agreement and ancillary documents.

19 7. The Settlement represents a significant recovery on behalf of the Class  
20 given the risks associated with this case. Plaintiff alleged various causes of action  
21 against Defendants for unpaid wages on behalf of herself and all similarly situated  
22 individuals under the Nevada Revised Statutes. Specifically, Plaintiff asserted the  
23 following claims: (1) Failure to Pay Overtime in Violation of NRS §§ 608.140 and  
24 608.018; (2) Failure to Timely Pay All Wages Due and Owing in Violation of NRS §§  
25 608.140 and 608.020-050, and (3) Injunctive Relief. Plaintiff's legal claims stem from  
26 her allegation that she was not paid daily overtime when she and others similarly  
27 situated worked over 24 hours in a workday, as defined by NRS § 608.0126.

28



1 8. After subtracting out costs, third party administrator fees, enhancements,  
2 and attorneys’ fees, the net class fund of approximately \$124,417.29 represents over  
3 five times the actual amount of overtime wages allegedly owed.

4 9. The enhancement payment of \$15,000.00 to the named Plaintiff is fair  
5 and reasonable Plaintiff provided significant assistance to counsel through is this  
6 process and took the risk of bringing this action on behalf of others who were similarly  
7 affected by wage policy. Specifically, Plaintiff could have been held liable for  
8 Defendants’ costs if she were ultimately unsuccessful in resolving the case and her  
9 potential employment opportunities could impacted because of her public participation  
10 in this lawsuit.

11 10. Given that the settlement provides to the class for over 196% recovery of  
12 the overtime wages potentially owed, and the benefit of a quick and certain payout  
13 (compared to the potential of further litigation including the outcome of class  
14 certification, dispositive motions, trial, and any attendant appellate proceedings, all of  
15 which are inherently uncertain and likely to consume many more months or years of  
16 litigation if the case should continue) to Plaintiff and all members of the class who  
17 decide to make a claim, it is the opinion of Plaintiff’s Counsel, that the proposed  
18 settlement is fair and reasonable and represents a better alternative than continued  
19 litigation under all the circumstances.

20 **THE NOTICE PROCESS**

21 11. The settlement also provided for all the necessary notice and disclosures  
22 to Class Members so that they could make an informed decision about whether to  
23 participate, opt-out, or object to the Settlement, and the named-Plaintiff enhancement  
24 and attorneys’ fee award was prominently displayed on the Notice. Out of 212 Class  
25 Members, none chose to exclude themselves and none have objected. Based on my  
26 years of experience handling class action cases, this represents overwhelming support  
27 for the Settlement from the Class.

28

**NAMED-PLAINTIFF'S ENHANCEMENT IS WELL DESERVED**

1  
2 12. Named-Plaintiff has taken a substantial risk in deciding to bring this  
3 action on her own behalf and a group of other similarly situated employees of  
4 Defendants. Specifically, Plaintiff provided relevant information, actively participated in  
5 the litigation process, frequently communicated with counsel, and reviewed numerous  
6 documents including settlement documents. Plaintiff could have been responsible for  
7 Defendants' costs if she were not successful. Given the substantial risks she took in  
8 bringing this action, in addition to her dedicated and significant involvement throughout  
9 the litigation, the enhancement amount should be finally judged as fair and  
10 reasonable.

**CLASS COUNSEL'S ATTORNEYS' FEES AND COSTS  
ARE FAIR AND REASONABLE**

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13 13. The parties have disclosed the initial agreed-upon attorney fee award,  
14 which is based on a percentage of recovery method and is reasonable and consistent  
15 with similar cases that I have been involved in.

16 14. The attorneys' fees and costs requested in the case represent a  
17 percentage of the common fund type of recovery. The percentage of recovery method  
18 protects the class from "churning" the case so as to justify a higher fee and recognizes  
19 the time value of money. It makes payment sooner better than payment later even if  
20 interest is awarded by the court. The percentage of recovery method also recognizes  
21 that the risk of litigation may be increased as time goes on, so it is often better to settle  
22 early than to wait until enough fees are built into a case to justify a lodestar recovery  
23 formula. Notwithstanding the beneficial nature of a percentage of recovery method,  
24 Class Counsel has devoted significant hours to the case to date—e.g., pre-filing  
25 investigations, complaint drafting, reviewing data/information pertaining to Plaintiff's  
26 claims, direct settlement discussions, drafting settlement documents, and  
27 communicating with Class Members who called regarding the Settlement. Accordingly,  
28 the attorneys' fees and costs amounts should be finally judged as fair and reasonable.

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15. Class Counsel has incurred and will incur a total of \$5,916.04 in costs during the course of this litigation. This amount is less than the \$10,000.00 listed in the Notice to the Class, to which no Class Members objected.

16. In sum, it is my opinion that the Settlement remains fair, reasonable, and adequate; therefore, I respectfully request that the Settlement be given final approval.

I declare under the penalties of NRS § 53.045 under the laws of the United States of America and the State of Nevada that the foregoing is true and correct.

Executed on March 27, 2024 in Henderson, Nevada.

/s/ Christian Gabroy  
Christian Gabroy, Esq.