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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

NATHAN POOL, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

UTC RESTAURANT VENTURE, LLC, a
California limited liability company; PASEO
RESTAURANT VENTURE, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 20STCV07785 (Lead Case)
Consolidated Case No.: 20GDCV00377

Honorable Amy D. Hogue
Department SSC7

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION
AND RENEWED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Declaration of Proposed Class Counsel
(Edwin Aiwazian); Declaration of
Proposed Class Representative (Nathan
Pool); Declaration of Proposed
Settlement Administrator (Norman
Alcantara); and [Proposed] Order filed
concurrently herewith]

Date: May 3, 2022
Time: 10:00 am
Department: SSC7

Complaint Filed: February 27, 2020
Trial Date: None Set

**TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF
RECORD:**

PLEASE TAKE NOTICE that on a date and time to be determined by the Court for the matter to be heard before the Honorable Amy D. Hogue in Department SSC7 of the Superior Court of California for the County of Los Angeles, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Nathan Pool (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the First Amended Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwazian, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Nathan Pool as Class Representative;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of *Lawyers for Justice, PC* as Class Counsel;
- Approving the revised proposed Notice of Class Action and PAGA Settlement (“Notice”), attached as “Exhibit B” to the Settlement Agreement;
- Directing the mailing of the Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment for

1 Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

2 This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules
3 of Court, which require approval by the Court of a class action settlement, allow the Court to
4 preliminarily certify a class for settlement purposes, and permit the Court to extend the page
5 limit for memoranda.

6 This motion is based upon the following memorandum of points and authorities, the
7 Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwazian) and
8 Proposed Class Representative (Nathan Pool) in support thereof, the pleadings and other records
9 on file with the Court in this matter, and such evidence and oral argument as may be presented
10 at the hearing on this motion.

11 Dated: January 13, 2022

LAWYERS for JUSTICE, PC

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13 By: 
14 Edwin Aiwazian
15 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Nathan Pool (“Plaintiff” or “Class Representative”) seeks preliminary approval of the First Amended Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant UTC Restaurant Venture, LLC and Paseo Restaurant Venture, LLC (“Defendants”), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the “Parties”) have agreed to settle the lawsuits for a Total Settlement Amount of two hundred seventy-five thousand dollars (\$275,000.00).¹ The Total Settlement Amount includes the following: (1) Net Settlement Amount to be paid to the Settlement Class Members²; (2) the Enhancement Payment of seven thousand five hundred dollars (\$7,500.00) to Plaintiff³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Total Settlement Amount, or \$96,250.00, and reimbursement of litigation costs and expenses not to exceed thirty-five thousand dollars (\$35,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator which are not to exceed ten thousand dollars (\$10,000.00);⁵ and (5) the amount of fifty thousand dollars (\$50,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA Penalties”), of which 75% (i.e., \$37,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA Payment”) and 25% (i.e., \$12,500.00) will be distributed to PAGA Members (“Employee PAGA Amount”).⁶

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendants do not oppose:

///

¹ Settlement Agreement, attached as “**EXHIBIT 2**” to Declaration of Edwin Aiwasian (“Aiwasian Decl.”), ¶ 7.kk.

² *Ibid.*

³ *Id.*, ¶ 12.

⁴ *Id.*, ¶ 11.

⁵ *Id.*, ¶ 13.

⁶ *Id.*, ¶ 14.

All current and former hourly-paid, non-exempt employees who worked for Defendants in the State of California at any time during the period from February 27, 2016 through October 20, 2020, who did not sign arbitration agreements (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately five hundred twenty-two (522) individuals and there are approximately two hundred forty-five (245) PAGA Members.⁸

Class Members who do not submit a timely request to be excluded from the Class Settlement (“Settlement Class Member”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each Settlement Class Member worked for Defendants as an hourly-paid, non-exempt employee during the period from February 27, 2016 through October 20, 2020 (“Class Workweeks”).⁹

With respect to PAGA, the Settlement resolves the PAGA Released Claims of all PAGA Members¹⁰; and with respect to the Class Settlement,¹¹ the Settlement resolves the Class Released Claims of Plaintiff and Settlement Class Members, against the Class Released Parties.¹²

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement and provisional certification of the Class for settlement purposes, Plaintiff also moves for an order permitting the filing of this memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d).

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants own and operate a chain of restaurants called Great Maple throughout California. Plaintiff Nathan Pool is a former employee of Defendants.

On January 29, 2020, Nathan Pool provided written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendants alleging Defendants violated specific provisions of the California Labor Code (“LWDA Letter”).

⁷ Settlement Agreement, ¶ 7.c & 8. “Class Period” is defined as the period of time from February 27, 2016 through October 20, 2020. *See id.*, ¶ 7.d.

⁸ Aiwasian Decl., ¶ 9.

⁹ Settlement Agreement, ¶¶ 7.i, 7.t, & 7.jj.

¹⁰ *See id.* at ¶ 7.aa for the full scope of the “PAGA Released Claims” or “PAGA Release,” and *id.* At ¶ 7.bb for the definition of “PAGA Released Parties.”

¹¹ The “Class Settlement” is defined as the settlement and resolution of Class Released Claims. *Id.*, ¶ 7.h.

¹² *See id.* at ¶ 7.e, for the full scope of the “Class Released Claims,” and *id.* at 7.f for the definition of the “Class Released Parties.”

On February 27, 2020, Nathan Pool filed a Class Action Complaint for Damages (“Class Complaint”) against Defendants in the Superior Court of California for the County of Los Angeles, Case No. 20STCV07785 (“Class Action”), alleging ten (10) causes of action for violation of California Labor Code and California Business & Professions Code §§ 17200, *et seq.* on behalf of all current and former hourly-paid or non-exempt employees who worked for Defendants within the State of California at any time since February 27, 2016 for failure to pay overtime wages, failure to provide meal periods and premium payments in lieu thereof, failure to provide rest periods and premium payments in lieu thereof, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to maintain complete and accurate payroll records, and failure to reimburse necessary business expenses.

On April 3, 2020, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“PAGA Complaint”) against Defendants in the Superior Court of California of Los Angeles, Case No. 20GDCV00377 (“PAGA Action”), alleging a single cause of action against Defendants for violation of the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”).

On July 27, 2020, Defendants filed an Answer to Plaintiff’s Class Complaint in the Class Action.

On August 10, 2020, Plaintiff filed an Amendment to Complaint to add Great Maple LLC as a defendant in the Class Action,¹³ to which Defendants filed an Answer on August 17, 2020.

Also on August 17, 2020, Defendants filed an Answer to Plaintiff’s PAGA Complaint in the PAGA Action.

On August 25, 2020, pursuant to stipulation by the Parties, the Court issued an Order consolidating the Class Action and PAGA Action (the “Actions”) and designating the Class Action as the lead case.

¹³ The Settlement contemplates that Plaintiff will dismiss Great Maple LLC as a defendant in the Class Action. Settlement Agreement, ¶ 5.

On June 23, 2021, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”). On July 7, 2021, the Court issued a Minute Order that took the Motion for Preliminary Approval hearing off calendar without prejudice to the filing of a renewed motion for preliminary approval that addresses the Court’s concerns. Based on the Court’s guidance, the Parties have prepared and now present for the Court’s consideration, this Renewed Motion for Preliminary Approval of Class Action Settlement.

Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Actions, and further deny that the Actions is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

On July 31, 2020, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Sets One & Two); Special Interrogatories, (Sets One, Two, & Three); and Form Interrogatories, (Set One), on Defendants. On October 8 and 9, 2020, Plaintiff took the deposition of Defendants’ person most knowledgeable regarding job duties and organizational structure of Defendants.

The Parties have actively litigated the Actions since before the Class Action was commenced on February 27, 2020. On October 20, 2020, the Parties participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator’s evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions in their entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Total Settlement Amount to resolve the PAGA Released Claims of all PAGA Members and the Class Released Claims of Plaintiff and the Class Members who do not submit a timely request to be excluded from the Class Settlement (i.e., Settlement Class Member) in the Actions.¹⁴ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from

¹⁴ Settlement Agreement, ¶ 7.KK.

the Total Settlement Amount: (1) attorneys' fees in an amount up to ninety-six thousand two hundred fifty dollars (\$96,250.00) (i.e., up to 35% of the Total Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed thirty-five thousand dollars (\$35,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are not to exceed ten thousand dollars (\$10,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment in the amount of up to seven thousand five hundred dollars (\$7,500.00) to Plaintiff Nathan Pool ("Enhancement Payment"); and (4) the amount of fifty thousand dollars (\$50,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA Penalties"), of which 75% (i.e., \$37,500.00) will be distributed to the LWDA ("LWDA Payment") and 25% (i.e., \$12,500.00) will be distributed to PAGA Members ("Employee PAGA Amount").¹⁵ The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member's *pro rata* share of the available Net Settlement Amount ("Individual Settlement Share") based on each Class Member's Class Workweeks and each PAGA Member's share of the Employee PAGA Amount ("Individual PAGA Payments") based on each PAGA Member's PAGA Workweeks, in accordance with the Settlement Agreement and as follows:

- a. After Preliminary Approval of the Settlement, the Settlement Administrator will divide the Net Settlement Amount by the Class Workweeks of all Class Members to yield the "Estimated Workweek Value," and multiply each Class Member's individual Class Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement.¹⁶
- b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Class Workweeks of all Settlement Class Member to yield the "Final Workweek Value," and multiply each Settlement Class Member's individual Class Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁷

¹⁵ Settlement Agreement, ¶¶ 7.kk & 11-14.

¹⁶ *Id.* ¶ 15.a.

¹⁷ *Id.* ¶ 15.b.

- c. To determine the Individual PAGA Payment for each PAGA Member, the Settlement Administrator will divide the Employee PAGA Amount, i.e., \$12,500, by the total of all PAGA Members' PAGA Workweeks resulting in the PAGA Workweek Value and then multiplying the PAGA Workweek Value by each PAGA Member's individual PAGA Workweeks.¹⁸

Each Settlement Class Member's Individual Settlement Share will be allocated as follows: one-third (1/3) as wages (the "wages portion"), which will be reported on an IRS Form W-2; and two-thirds (2/3) penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099.¹⁹ Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the the employee's share of taxes and withholdings with respect to the wages portion of each Individual Settlement Share (the net payment is referred to as an "Individual Settlement Payment").²⁰ Defendants will pay employer's share of taxes and contributions on the wages portion of Individual Settlement Shares separately and in addition to the Total Settlement Amount.²¹

To the extent that a Settlement Class Member is also a PAGA Member, the Settlement Administrator will issue both Individual Settlement Payments and Individual PAGA Payments by way of a single check.²² Settlement checks will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance, and be cancelled thereafter.²³ The funds from associated with such cancelled checks will be transmitted to the State Controller's Office Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Member whose check is cancelled and in the respective amount of the cancelled check.²⁴

Class Members who wishes to be excluded from the Class Settlement must submit a timely letter indicating a request to be excluded from the Class Settlement ("Request for Exclusion") to the Settlement Administrator, by mail, no later than the date that is sixty (60) calendar days from the initial mailing of the Notice by the Settlement Administrator ("Response Deadline") or, in the event that a Notice is re-mailed to a Class Member, the

¹⁸ *Id.* ¶ 15.c.

¹⁹ Settlement Agreement, ¶ 26.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Id.*, ¶ 20.

²³ *Ibid.*

²⁴ *Ibid.*

Response Deadline for that Class Member will be the extended by fifteen (15) calendar days.²⁵ The Request for Exclusion should: (a) contain the case name and number of the Class Action, (b) be signed by the Class Member, (c) contain the full name, address, telephone number, and the last four digits of the Social Security Number of the Class Member requesting exclusion, (d) clearly state that the Class Member does not wish to be included in the Class Settlement, and (e) be returned by mail, facsimile, or email to the Settlement Administrator at the specified address, postmarked or fax-stamped on or before the Response Deadline.²⁶ Notwithstanding the above, the Settlement Administrator will accept any timely Request for Exclusion received on or before the Response Deadline if the Settlement Administrator can identify the Class Member and that the Class Member clearly does not wish to be included in the Class Settlement.²⁷ Class Members who submit a timely Request for Exclusion will not be a Settlement Class Member and will not have any right to object, appeal, or comment on the Class Settlement; however, if the Class Member is also a PAGA Member, he or she will still receive an Individual PAGA Payment, and will be bound by the PAGA Released Claims.²⁸

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Settlement Class Members) have standing to object to the Class Settlement.²⁹ Settlement Class Members who wish to object to the Class Settlement must submit a timely written objection to the Class Settlement (“Notice of Objection”) to the Settlement Administrator, by mail, facsimile, or email, on or before the Response Deadline.³⁰ The Notice of Objection should include: (a) the case name and number of the Class Action; (b) the objector’s full name, signature, address, and telephone number, and the last four digits of his or her Social Security number, (c) a written statement of all grounds for the objection accompanied by any legal support for such objection, and (d) copies of any papers, briefs, or other documents upon which the objection is based.³¹ Notwithstanding the above, the Settlement Administrator will

²⁵ *Id.*, ¶¶ 7.ff, 7.gg & 21.

²⁶ Settlement Agreement, ¶ 7.ff.

²⁷ *Ibid.*

²⁸ *Id.* ¶ 21.

²⁹ *Ibid.*

³⁰ *Id.*, ¶¶ 7.x & 23.

³¹ *Id.*, ¶ 9.z.

1 accept any timely Notice of Objection received on or before the Response Deadline if the
2 Settlement Administrator can identify the Class Member and that the Class Member clearly
3 wishes to object to the Class Settlement.³²

4 Class Members who wish to dispute the number of Class Workweeks credited to them
5 in their Notice must submit a written letter to the Settlement Administrator that: (a) contains
6 the case name and number of the Class Action, (b) is signed by the Class Member, (c) contains
7 the full name, address, telephone number, and the last four digits of the Social Security
8 Number of the disputing Class Member, (d) clearly states that the Class Member disputes the
9 number of Class Workweeks credited to him or her and what he or she contends is the correct
10 number to be credited to him or her, (e) includes information and/or attaches documentation
11 demonstrating that the number of Class Workweeks that he or she contends should be credited
12 to him or her are correct, and (f) is returned by mail, facsimile, or email to the Settlement
13 Administrator at the specified address, postmarked or fax-stamped on or before the Response
14 Deadline.³³

15 **IV. ESTIMATED PAYMENTS TO CLASS MEMBERS AND PAGA MEMBERS**

16 Based on the Settlement Administrator's declaration filed concurrently herewith, the
17 highest Individual Settlement Share to a Class Member is estimated to be \$1,174.02, the
18 minimum Individual Settlement Share is estimated to be \$11.11, and the average Individual
19 Settlement Share is estimated to be \$340.40.³⁴ The Settlement Administrator calculated these
20 amounts *pro-rata* based on the number of Class Workweeks each Class Member worked.³⁵
21 Furthermore, the highest Individual PAGA Payment to a PAGA Member is estimated to be
22 \$188.53, the minimum Individual PAGA Payment is estimated to be \$3.14, and the average
23 Individual PAGA Payment is estimated to be \$37.31.³⁶

24 ///

25 ///

26 _____
27 ³² *Id.* ¶ 7.x.

28 ³³ Settlement Agreement, ¶ 19.

³⁴ Declaration of Norman Alcantara Regarding the Class List and Estimates ("Simpluris Decl."), ¶ 4.

³⁵ *Ibid.*

³⁶ Simpluris Decl., ¶ 5.

V. **REASONABLE ESTIMATE OF THE NATURE AND VALUE OF THE CLAIMS**

Plaintiff's quantification of the value of the claims and *Kullar* analysis are set forth in the concurrently-filed Declaration of Edwin Aiwazian. (Aiwazian Decl., ¶¶ 23-72.) As discussed therein, Plaintiff's estimates of what could potentially be recovered warranted further discounting based on the risks involved, including, and not limited to, overcoming Defendants' arguments in their defense, overcoming Defendants' arguments that they properly provided meal and rest breaks, paid for all hours of work, properly calculated the applicable overtime rate, and properly reimbursed business expenses, satisfying class certification and manageability requirements, proving all of the elements of each cause of action, the derivative nature of many of the claims, the costs and expenses of further litigation, and the real possibility of no recovery after years of litigation. (*Id.*, ¶¶ 31, 32, 36, 37, 41, 42, 46, 48, 50, 51, 56, 70 & 71.)

Within the context of mediation, Defendants argued that the estimates of the value of the claims were overly ambitious and significantly inflated, asserting that there were multiple challenges to certification and the merits of the claims, including and not limited to, the key claims for overtime and minimum wages and non-compliant meal and rest periods. (*Id.*, ¶¶ 30, 35, & 40.) For example, Defendants contended that employees were required to record all hours worked, that its records accurately reflected all time worked, and that they were not aware that work had been performed off-the-clock. (*Id.*, ¶ 30.) Defendants also contended that they had a compliant overtime policy, that they correctly calculated and paid overtime to putative class members and produced wage statements reflecting overtime compensation paid to many of the putative class members (including, and not limited to, Plaintiff). (*Ibid.*) Defendants further contended that the putative class members' job titles and job duties varied, which raised highly individualized questions of fact. (*Ibid.*) Defendants further contended that putative class members, by and large, had no written records to prove clear instances of time worked off-the-clock that was not compensated, and variation as to the circumstances that could have caused the putative class members to work off-the-clock (with or without Defendants' knowledge) presented potential challenges for certification with respect to commonality. (*Ibid.*)

///

Defendants also contended that the non-compliant meal and rest period claims were meritless and unlikely to be certified because it contended that they had compliant meal and rest break policies and that putative class members were afforded the opportunity to take and did take duty-free meal and/or rest periods. (*Id.*, ¶¶ 35 & 40.) Defendants further contended that any allegation that putative class members were forced to miss meal and rest periods, or take late, short, or interrupted ones, would require highly individualized questions of fact. (*Ibid.*)

Plaintiff and Class Counsel have conducted adequate investigation and discovery to be sufficiently informed of the nature and extent of putative class members' claims, and to enable both sides to fully evaluate the Settlement for its fairness, adequacy, and reasonableness. (*Id.*, ¶ 12.) The parties have agreed that this case is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation. (*Id.*, ¶ 73.) The Settlement takes into account the strengths and weaknesses of each side's position, the uncertainty of how the case might have concluded at certification, trial, and/or appeal, and the risks to recovery. (*Ibid.*)

Having the benefit of discovery, pre-lawsuit filing investigation, interviews of Plaintiff and other putative class members, and data and information produced by Defendants in advance of and during mediation and settlement negotiations, Plaintiff recognized that if the litigation had continued, legal and factual hurdles might have been encountered that would pose significant risks to recovery on behalf of the putative class members. (*Id.*, ¶ 12.) Although a number of cases have found wage-and-hour actions to be amenable to class treatment³⁷, some

³⁷ See, e.g., *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 330-31 (Court successfully managed and adjudicated wage-and-hour claims made on behalf of a group of employees, utilizing, among other things, statistics and surveying.); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033 ("Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment [...] The theory of liability – that [the employer] has a uniform policy, and that that policy, measured against wage order requirements, allegedly violates the law – is by its nature a common question eminently suited for class treatment."); *Safeway v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 ("In our view, real parties demonstrated that the existence of the practice and the fact of damage were matters suitable for class treatment. Real parties' evidence supports the reasonable inference that in the context of a class action, they could establish that petitioners engaged in the alleged practice, that is, they never paid meal break premium wages, even though a significant number of employees accrued them. Furthermore, in view of real parties' theory of restitution, those facts would also suffice to demonstrate the fact of damage. Under that theory, the fact of damage does not require a showing that all -- or virtually all -- class members accrued unpaid meal break premium wages, but only that on a system-wide basis, petitioners denied the class

1 courts have found that, for various reasons, the issues raised here—off-the-clock work, unpaid
2 wages, non-compliant meal periods, non-compliant rest periods, and unreimbursed business
3 expenses—raise individualized issues and/or are unmanageable, and thus not suitable for
4 adjudication on a class basis.³⁸

5 Defendants contended that, in the context of a PAGA claim that is premised on the
6 violation of multiple provisions of the California Labor Code, a court would not assess
7 cumulative penalties, but that instead, if any penalty were assessed, only an initial violation
8 penalty, rather than a heightened, subsequent violation penalty would likely be applied. (*Id.*, ¶
9 64.) Defendants also contended that, if penalties are assessed, a penalty would only be assessed
10 once per pay period, rather than cumulatively per violation during a pay period. (*Id.*, ¶ 62.)
11 Defendants also contended that an important feature of the PAGA statute is that the Court has
12 discretion to reduce the penalties to be assessed against the employer.³⁹ (*Id.*, ¶ 63.)

13
14 members the benefits of the compensation guarantee and enhanced enforcement implemented by section 226.7.”);
15 *Martinez vs. Joe’s Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362, 383-84, *modified on other grounds*
16 *by Martinez v. Joe’s Crab Shack Holdings, et al.* (Dec. 3, 2014 B242807) 2014 Cal.App. LEXIS 1102, **1-2
17 (stating that difficult issues of proof do not vitiate the preference for efficient and effective means of resolving
18 wage and hour claims, including misclassification and overtime, recognizing that “statistical sampling may provide
19 assistance in identifying the realistic demands of the job and illuminating whether the typical employee was able
20 to meet those expectations” and that “[b]y refocusing its analysis on the policies and practices of the employer and
21 the effect those policies and practices have on the putative class . . . the trial court may in fact find class analysis a
22 more efficient and effective means of resolving plaintiffs’ overtime claim”); *Tyson Foods, Inc. v. Bouaphakeo*
23 (2016) 136 S.Ct. 1036 (holding that statistical evidence is admissible to support class action certification because
24 it is also admissible to prove liability and damages across a class, where the defendant employer had not kept
25 records of time spent by employees with respect to donning and doffing protective clothing).

26 ³⁸ See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35 (stating that even “[i]n wage
27 and hour cases where a party seeks class certification based on allegations that the employer consistently imposed
28 a uniform policy or de facto practice on class members, the party must still demonstrate that the illegal effects of
this conduct can be proven efficiently and manageably within a class setting” and in litigating representative actions
the procedures utilized by the court “may not be used to abridge a party’s substantive rights,” including
“abridge[ing] [the defendant’s] presentation of [a defense] simply because that defense was cumbersome to
litigate,” because of “principles of due process”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341
(affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks
demonstrated that individualized inquiries were required to show harm); *Brinker Restaurant Corp. v. Superior*
Court (2012) 53 Cal.4th 1004, 1018 (stating that employers must authorize, permit, or “relieve the employee of all
duty for [a] designated meal [or rest] period,” and “relinquish [full] control over [the employee’s] activities” and
“afford” employees an “opportunity to take an *uninterrupted* thirty-minute break,” but are not obligated to
affirmatively ensure that no work related tasks are performed during such periods).

³⁹ Cal. Lab. Code § 2699(e)(2)(“[A] court may award a lesser amount than the maximum civil penalty amount
specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in
an award that is unjust, arbitrary and oppressive, or confiscatory.”); *Thurman v. Bayshore Transit Management, Inc.*
(2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA penalties awarded to an
employee based upon discretionary factors other than the employer’s ability to pay.)

There were also multiple additional risks to recovery, including, and not limited to, the risk of possible bifurcation of discovery and/or trial of the PAGA claim—at the time, multiple courts had taken such an approach.⁴⁰ Given the derivative nature of the PAGA claim, Defendants contended that the underlying California Labor Code provisions would not only have to be proven, but that it would also have to be demonstrated that the aggrieved employees actually suffered from said violations, and that in doing so, a court would also have to be satisfied that Defendants’ right to due process would not be abridged. (*Id.*, ¶ 68.) While class certification requirements, strictly speaking, do not need to be satisfied with respect to the PAGA claim, there was a risk that the Court would determine that the PAGA claim was not sufficiently “manageable” and that representative adjudication would interfere with Defendants’ right to due process.⁴¹

Taking into account the risks of litigating the PAGA claim, Plaintiff’s estimate of the value of the PAGA claim was conservative, and this estimate warranted further discounting based on multiple additional risks relating to representative adjudication of the PAGA claim.

⁴⁰ See *Amalgamated Transit Union, Local 1756 v. Superior Court* (2009) 46 Cal.4th 993, 1001 (Noting that PAGA “require[s] a plaintiff to have suffered an injury resulting from an unlawful action”); *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, *4 (Court found that judicial economy supported bifurcation because of the difficulties and inherent uncertainties of being able to establish liability with respect to a large number of potentially aggrieved employees and noted that “PAGA’s public purpose would be ill—served if the court finds [the plaintiff] has not been aggrieved by a Labor Code violation”); *Grappo v. Coventry Fin. Corp.* (1991) 235 Cal.App.3d 496, 504 (Trial courts have “broad discretion to determine the order of proof in the interest of judicial economy”); see also Cal. Code Civ. Proc. § 598 (The court may “when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order. . . that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case[.]”); Cal. Code Civ. Proc. § 1048(b) (Court can separate trial of any cause of action or of any separate issue in the interest of convenience or to avoid prejudice); Cal. Code Civ. Proc. § 2019.020(b) (Courts have the power to “establish the sequence and timing of discovery for the convenience of parties and witnesses and in the interests of justice”); see *Horton v. Jones* (1972) 26 Cal.App.3d 952, 955 (Bifurcation and sequencing of litigation is allowed to avoid waste of time and money on trial and litigation of issue s could be rendered made moot.)

⁴¹ See, e.g., *Litty v. Merrill Lynch & Co.*, No. CV-14-0425-PA, WL 5904904 at *3 (C.D. Cal. Nov. 10, 2014); *Ortiz v. CVS Caremark Corp.*, No. C-12-05859, 2014 WL 1117614 (N.D. Cal. March, 18, 2014); see also *Duran v. US Bank National Association* (2014) 59 Cal.4th 1, 25,29, 31, and 34-35 (Plaintiff needs to be able to demonstrate the illegal effects of the policy or de facto practice efficiently and manageably, and in litigating representative actions the procedures utilized by the court “may not be used to abridge a party’s substantive rights,” including “abridge[ing] [the defendant’s] presentation of [a defense] simply because that defense was cumbersome to litigate,” because of “principles of due process”); see also *Knight v. Cashcall, Inc.* (2014) 231 Cal. App. 4th 112, 131 (noting “due process principles” require that defendants have the opportunity “to fairly litigate individual liability questions”).

Based on the risks involved and the costs and expenses of protracted litigation, and with the help of the mediator, Plaintiff and Class Counsel concluded that it was in the best interests of the Class Members to reach a settlement. (*Id.*, ¶ 73.) Class Counsel submits that, based on all of the available information reviewed, the Settlement presented for preliminary approval is within a reasonable range of outcomes in light of all of the strengths and weaknesses of the claims at issue between the parties.

Neither class certification, liability, damages, nor entitlement to monetary recovery is clear-cut, which is why the parties elected to settle this matter. Class Counsel applied appropriate discounts in light of the defenses asserted, developments in the law, the facts and circumstances in this matter, and the risks associated with certification. The risks included, and were not limited to, the costs and uncertainty of further litigating this matter through trial and additional appeals, as well as consideration of the issues of, *inter alia*, whether each putative class member worked off-the-clock, whether each putative class member worked in excess of 8 hours in a day or 40 hours in a week, whether each putative class member was not properly compensated for all hours worked, whether each putative class member was not provided with compliant meal and rest periods, whether each putative class member incurred reimbursable expenses that were not reimbursed, whether Defendants knew or should have known about uncompensated work, and the derivative nature of the other claims asserted in the cases. This Settlement, like most others, resolves disputed claims and is the product of compromise.

VI. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award

1 was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s
2 decision to approve a class action settlement may be reversed only upon a strong showing of
3 “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
4 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

5 Courts review class action settlements in a two-step process: (1) an earlier conditional
6 review by the court; and (2) a later detailed review after the period during which notice is
7 distributed to class members for their comments or objections. Conte & Newberg, *Newberg on*
8 *Class Actions* § 11.24 (4th Ed. 2002). This procedure, which is commonly utilized by both
9 federal and state courts, assures class members of the protection of procedural due process
10 safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement
11 class.

12 Preliminary approval of a settlement does not require a court to make a final
13 determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made
14 only at the final approval stage, after notice of the settlement has been given to the class members
15 and they have had an opportunity to voice their views of the settlement or to exclude themselves
16 from the settlement. Cal. R. Ct. 3.769(g).

17 In considering a potential class settlement, a court need not reach any ultimate
18 conclusions on the issues of fact and law which underlie the merits of the dispute and need not
19 engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495
20 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San*
21 *Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required
22 for the trial court to grant provisional class certification and preliminary approval; the court may
23 grant such relief upon an informal application by the settling parties and may conduct any
24 necessary hearing in court or in chambers, at the court’s discretion. *Newberg*, § 11.25.

25 **VIII. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

26 The trial court has broad powers to determine whether a proposed settlement is fair under
27 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make
28 this fairness determination, courts must consider several relevant factors, including “the strength

of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Dunk, supra*, 48 Cal.App.4th at 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give "proper deference to the private consensual decision of the parties." *Hanlon, supra*, 150 F.3d at 1027 (citation omitted).

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Id.*; *Dunk, supra*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

A. The Settlement Resulted from Arm's-Length Negotiations Based Upon Extensive Investigation and Discovery.

The Parties actively litigated the Actions since before the Class Action was commenced on February 27, 2020. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the matter for class certification and trial.⁴²

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the cases, including and not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendants.⁴³ The volume of data and documents that Class Counsel reviewed and analyzed

⁴² Aiwazian Decl., ¶¶ 11-14.

⁴³ *Id.*, ¶ 12.

1 included and was not limited to: Plaintiff's employment records, time and pay data of Plaintiff
2 and other Class Members (including, but not limited to, number of Class Workweeks, pay
3 periods, average hourly wage, etc.) from a randomized sample from Defendant representing
4 twenty-five (25%) of the class (this was done by alphabetizing the list of Class Members by last
5 name and selecting every fourth individual), various agreements (including, but not limited to,
6 Employee Arbitration Agreement and Waiver of Jury Trial, Slip-Resistant Shoe Agreement, and
7 Cutting Glove Agreement), acknowledgements (including, but not limited to, Employee
8 Handbook Acknowledgement Forms, Final Paycheck Acknowledgement, Policy
9 Acknowledgement, and Receipt of Employee Handbook and Employment-At-Will Statement),
10 waivers (including, but not limited to, signed Meal Period Waivers), internal memoranda, job
11 descriptions, New Hire Packets, trainings (including, but not limited to, Defendant's Manager
12 Training – Meal and Rest Periods), reports, including, but not limited to Hours Compliance
13 Reports and Employee Schedule Report), Defendants' operations and employment practices and
14 procedures (including, but not limited to Defendants' Employee Handbook and Employee Home
15 Book), and policies (including, but not limited to, Defendants' Time Theft and Eating Policy,
16 Recording Your Time policy, Paycheck Deductions policy, Meal Periods policy, and Rest and
17 Recovery Periods policy), among other information and documents.⁴⁴ Class Counsel
18 interviewed Plaintiff to gather facts and to identify potential witnesses.⁴⁵ Class Counsel
19 propounded multiple sets of formal written discovery requests onto Defendants and prepared for
20 and took the deposition of Defendants' Person Most Knowledgeable designee which spanned
21 over two (2) days.⁴⁶ Counsel for the Parties also met and conferred on numerous occasions,
22 e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and
23 data prior to the mediation.⁴⁷ Class Counsel also drafted Plaintiff's mediation brief and prepared
24 for and attended court proceedings, settlement negotiations, and the mediation, among other
25 tasks.⁴⁸

26 ⁴⁴ *Ibid.*

27 ⁴⁵ *Ibid.*

28 ⁴⁶ Aiwazian Decl., ¶ 12.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

1 Class Counsel verified Defendants' representations as to the number of Class Members,
2 number of Class Workweeks, and the average hourly rate of the Class Members by determining
3 the total of non-exempt employees from February 27, 2016 to present who had not signed an
4 arbitration agreement, by taking the total workweeks from February 27, 2016 to present and
5 removing workweeks that were covered by arbitration agreements, and by taking the average
6 hourly rate of all non-exempt employees who worked from February 27, 2016 to present.⁴⁹

7 The Parties engaged in extensive settlement negotiations and participated in a formal,
8 full-day mediation conducted by Paul Grossman, Esq., a well-respected mediator experienced
9 in mediating complex labor and employment matters.⁵⁰ Prior to and during the mediation and
10 settlement discussions, the Parties exchanged class information and engaged in an intensive
11 discussion regarding their evaluations of the cases and various aspects of the matter, including
12 but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding
13 with class certification and/or representative adjudication, the law relating to off-the-clock
14 theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as
15 well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁵¹
16 During all settlement discussions, the Parties conducted their negotiations at arm's length in an
17 adversarial position.⁵² Arriving at a settlement that was acceptable to both Parties was not easy.
18 Defendants and their counsel felt strongly about their ability to prevail on the merits and at
19 certification, and Plaintiff and Class Counsel believed that they would be able to obtain class
20 certification and prevail at trial.⁵³ After conducting investigations, formal and informal
21 discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the
22 Parties have agreed that the matter is well-suited for settlement given the legal issues relating to
23 Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further
24 litigation.⁵⁴

25
26 ⁴⁹ Aiwazian Decl., ¶ 13.

27 ⁵⁰ *Id.*, ¶ 11.

28 ⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Id.*, ¶¶ 11, 16-18.

⁵⁴ Aiwazian Decl., ¶¶ 11, 17-19.

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification and trial.⁵⁵ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁵⁶ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendants and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendants' defenses thereto, as well as facts discovered.⁵⁷ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁵⁸

B. The Settlement Is Fair, Reasonable, and Adequate.

The Settlement, which provides for a Total Settlement Amount of two hundred seventy-five thousand dollars (\$275,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁵⁹ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁶⁰ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.⁶¹ Moreover, considering all of the facts and circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁶²

Assuming that the Attorneys' Fees and Costs, Enhancement Payment, PAGA Penalties, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be seventy-six thousand two hundred fifty dollars (\$76,250.00).⁶³ As

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Id.*, ¶¶ 11-14 & 17-19.

⁵⁸ *Id.*, ¶¶ 6-7.

⁵⁹ *Id.*, ¶¶ 11, 14, 15 & 21.

⁶⁰ *Id.*, ¶¶ 11-13.

⁶¹ *Id.*, ¶¶ 17-19.

⁶² *Id.*, ¶¶ 11, 13, & 21.

⁶³ Aiwazian Decl., ¶ 15.

discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Class Workweeks.⁶⁴ There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁶⁵ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁶⁶ The discovery and information that Class Counsel obtained from Defendants and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendants' defenses thereto.⁶⁷ As outlined in the Declaration of Edwin Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁶⁸

⁶⁴ Settlement Agreement, ¶ 15.

⁶⁵ Aiwazian Decl., ¶¶ 11, 14, & 73.

⁶⁶ *Id.*, ¶¶ 11-14 & 19.

⁶⁷ *Id.*, ¶ 18.

⁶⁸ Aiwazian Decl., ¶¶ 11-14 & 17-19.

1 **IX. CERTIFICATION OF THE CLASS IS APPROPRIATE**

2 For settlement purposes, the requisites for establishing class certification are met, and
3 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁶⁹
4 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
5 one of a common or general interest, of many persons, or when the Parties are numerous, and it
6 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*
7 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
8 “both [1] an ascertainable class and [2] a well-defined community of interest among class
9 members.” *Id.*

10 The Class is ascertainable and numerous as to make it impracticable to join all Class
11 Members, and there are common questions of law and fact that predominate over any questions
12 affecting any individual Class Member. Further, Plaintiff’s claims are typical of the claims of
13 the Class Members, and Class Counsel will fairly and adequately protect the interests of the
14 Class. Finally, prosecution of separate actions by individual Class Members would create the
15 risk of inconsistent or varying adjudications, and a class action is superior to other available
16 means for the fair and efficient adjudication of the cases. The Class is amenable to class
17 certification for settlement purposes as discussed below.

18 **A. The Class Is Ascertainable and Sufficiently Numerous.**

19 “Ascertainability is required in order to give notice to putative class members as to whom
20 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
21 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
22 by describing a set of common characteristics sufficient to allow a member of that group to
23 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
24 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
25 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

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⁶⁹ Settlement Agreement, ¶¶ 8-9.

This matter involves a class of approximately five hundred twenty-two (522) individuals and there are approximately two hundred forty-five (245) PAGA Members.⁷⁰ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendants to the Settlement Administrator through a review of Defendants' employment records regarding hourly-paid, non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

B. The Class Members Share a Well-Defined Community of Interest.

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) class representative with claims or defenses typical of the class; and (3) class representative who can adequately represent the class." *Sav-On, supra*, 34 Cal.4th at 326. "[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims.*" *Capitol People First v. Dep't of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts focus on the Defendant's internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiff renders class certification appropriate." *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

The "common issues" requirement "involves analysis of whether the proponent's 'theory of recovery' is likely to prove compatible with class treatment." *Capitol People, supra*, 155 Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore, the commonality inquiry centers on the "reasonableness" of the defendant's labor policies as applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Class Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in the cases, Plaintiff contends that Class Members were subject to the same or similar job duties and uniform operations and

⁷⁰ Aiwazian Decl., ¶ 9.

1 employment practices, policies, and procedures during the time period at issue.⁷¹ Plaintiff's
2 claims arise from Defendants' alleged uniform policy and systematic scheme, with respect to
3 Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum
4 wages for all hours worked, failing to provide compliant meal and rest periods and associated
5 premium pay, failing to timely pay wages during employment and upon termination of
6 employment, failing to provide complaint wage statements, failing to keep requisite payroll
7 records, and failing to reimburse necessary business-related expenses.⁷²

8 Plaintiff also contends that Defendants' payroll and recordkeeping practices with respect
9 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁷³
10 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
11 compensation due to them from Defendants during the time period at issue.⁷⁴

12 Plaintiff maintains that the outcome of this litigation would be determined by
13 Defendants' alleged uniform operations and employment policies and procedures that applied
14 across their hourly-paid or non-exempt employees who worked in California during the Class
15 Period. Accordingly, the Court should certify the Class for settlement purposes only.

16 **X. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR**
17 **ATTORNEYS' FEES AND COSTS**

18 Class Counsel has litigated the matter for over a year, and was actively preparing the
19 matter for class certification and trial.⁷⁵ The ongoing work has been extensive, demanding, and
20 ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted
21 extensive investigations into the facts of the cases and formal and informal discovery, including,
22 and not limited to, propounding multiple formal written discovery requests onto Defendants and
23 preparing for and taking a two-day deposition of Defendants' Person Most Knowledgeable
24 designee. Class Counsel reviewed a volume of documents and data⁷⁶ and also interviewed and
25

26 ⁷¹ Aiwazian Decl., ¶ 17.

27 ⁷² *Ibid.*

28 ⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Id.*, ¶¶ 11-14.

⁷⁶ Aiwazian Decl., ¶ 12.

1 obtained information from Plaintiff, researched applicable law, undertook damages/valuation
2 calculations, and met and conferred with Defendants' counsel regarding the pleadings,
3 discovery, and the production of documents and data prior to mediation.⁷⁷ Counsel for the
4 Parties also undertook extensive settlement discussions, which included participating in a
5 formal, full-day mediation.⁷⁸

6 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
7 experience to obtain a great result for the Class.⁷⁹

8 The Settlement establishes a Total Settlement Amount of two hundred seventy-five
9 thousand dollars (\$275,000.00), and provides for Class Counsel to apply to the Court for
10 Attorneys' Fees and Costs, consisting of attorneys' fees in an amount up to thirty-five percent
11 (35%) of the Total Settlement Amount (i.e., \$96,250.00) and an amount not to exceed thirty-
12 five thousand dollars (\$35,000.00) for costs and expenses.⁸⁰ The attorneys' fees provided for
13 by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and
14 litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to
15 the cases, (3) the skill and determination that Class Counsel has shown, (4) the results that Class
16 Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class
17 Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to
18 turn down in order to devote its time and efforts to this matter. The proposed Notice provides
19 Class Members with information about the amount allocated toward the Attorneys' Fees and
20 Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the
21 Settlement.⁸¹

22 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
23 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
24 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
25 "experienced trial judge is the best judge of the value of professional services rendered in his

26 ⁷⁷ *Ibid.*

27 ⁷⁸ *Id.*, ¶ 11.

28 ⁷⁹ *Id.*, ¶¶ 6-7.

⁸⁰ Settlement Agreement, ¶¶ 7.kk & 11.

⁸¹ *Id.*, Exh. B.

court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Id.* at 50. In cases where class members present claims against a settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

The propriety of calculating and awarding attorneys’ fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that “[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee,” “they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[,]” and “[t]he percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

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Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁸²

As outlined in the Declaration of Edwin Aiwazian, Class Counsel has already incurred approximately \$33,525.68 and Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's motion for final approval of the Settlement and application for the Attorneys' Fees and Costs and at the Final Approval Hearing.⁸³ Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

XI. THE PROPOSED NOTICE IS ADEQUATE

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it "present[s] a fair recital of the subject matter and proposed terms" of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

The proposed Notice⁸⁴ describes the Settlement, the deadlines and procedures to submit a Notice of Objection, a Request for Exclusion, and/or a dispute regarding Class Workweeks to the Settlement Administrator, and the date and time set for the Final Approval Hearing.⁸⁵

The proposed Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁸⁶ The proposed Notice recognizes that the Court has not yet granted final approval of the settlement.⁸⁷ The

⁸² Aiwazian Decl., ¶ 19.

⁸³ Aiwazian Decl., ¶ 25.

⁸⁴ Settlement Agreement, Exh. B.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

1 proposed Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement
2 Share is calculated and the number of Class Workweeks credited to them.⁸⁸

3 The proposed Notice satisfies all due process requirements and complies with the
4 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*,
5 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 (“The
6 essentials of due process of law in class suits would appear to be afforded by fair representation
7 in the assertion of claims of class members against the opposing parties in any lawsuit, and
8 notice of the pending suit.”). Accordingly, the Court should approve the proposed Notice.

9 **XII. APPOINTMENT OF SIMPLURIS AS THE SETTLEMENT ADMINISTRATOR**

10 The Parties have selected Simpluris to administer the Settlement.

11 The Settlement Administrator will translate and mail the Notice in English and Spanish
12 to each Class Member by First-Class U.S. Mail.⁸⁹ With respect to Notices that are returned as
13 undeliverable on or before the Response Deadline, the Settlement Administrator will search for
14 an alternate address by way of skip-trace and re-mail the Notice within five (5) calendar days.⁹⁰
15 The Settlement Administrator will receive and process Requests for Exclusion, Notices of
16 Objections, and any disputes regarding Class Workweeks.⁹¹

17 The Settlement Administrator will calculate the amounts of the Individual Settlement
18 Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal
19 taxes in connection with the wage portion of Individual Settlement Shares; mail the Settlement
20 checks to Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys’ Fees
21 and Costs, Enhancement Payment, and LWDA Payment; provide weekly reports; and perform
22 such other tasks necessary to effectuate the terms of the Settlement Agreement.⁹² The
23 Settlement Administration Costs are not to exceed ten thousand dollars (\$10,000.00) and will
24 be paid out of the Total Settlement Amount, subject to approval by the Court.⁹³

25
26 ⁸⁸ Settlement Agreement, Exh. B.

27 ⁸⁹ *Id.*, ¶ 18.a.

28 ⁹⁰ *Id.*, ¶ 18.b.

⁹¹ *Id.*, ¶¶ 19, 21, & 23.

⁹² *Id.*, ¶¶ 13, 20, & 24; Aiwazian Decl., ¶ 16.

⁹³ Settlement Agreement, ¶ 13.

Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris, Inc. as the Settlement Administrator and direct the mailing of the Notice to the Class Members in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

XIII. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records.⁹⁴

Within fifteen (15) calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendants will provide the Settlement Administrator with a complete list of all Class Members and PAGA Members that Defendants will diligently and in good faith compile from their records, which will include their full names, last known mailing addresses, last known telephone numbers (if available), and Social Security Numbers, as well as their dates of employment, total Class Workweeks, total PAGA Workweeks, and such other information as is necessary for the Settlement Administrator to administer the Settlement (collectively, "Data List").⁹⁵

Within fourteen (14) calendar days of receipt of the Data List, the Settlement Administrator will mail the Notice in English and Spanish to the Class Members via First-Class U.S. Mail.⁹⁶ Class Members will have until the applicable Response Deadline to mail a Request for Exclusion, Notice of Objection, and/or a dispute regarding Class Workweeks.⁹⁷

Defendants will make a one-time deposit of the Total Settlement Amount, together with an amount sufficient to pay Employer Taxes, into a settlement account to be established by the Settlement Administrator, within twenty-five (25) calendar days after the Effective Date.⁹⁸ Within five (5) calendar days of the funding of the Total Settlement Amount, the Settlement

⁹⁴ *Id.*, ¶ 7.k.

⁹⁵ *Id.*, ¶¶ 7.k & 17.

⁹⁶ *Id.*, ¶ 18.a.

⁹⁷ *Id.*, ¶ 7.gg.

⁹⁸ Settlement Agreement, ¶ 10.

1 Administrator will issue Individual Settlement Payments to Settlement Class Members and
2 Individual PAGA Payments to PAGA Members.⁹⁹ Within seven (7) calendar days of the
3 funding of Total Settlement Amount, the Settlement Administrator will distribute: (1) LWDA
4 Payment to the Labor and Workforce Development Agency; (2) Enhancement Payment to
5 Plaintiff; (3) Attorneys' Fees and Costs to Class Counsel; and (4) Settlement Administration
6 Costs to itself.¹⁰⁰ In no way shall the Attorneys' Fees and Costs and Enhancement Payment be
7 paid before the Settlement Class Members and PAGA Members are issued payment under the
8 Settlement.¹⁰¹

9 To the extent that a Settlement Class Member is also a PAGA Member, the Settlement
10 Administrator will issue both Individual Settlement Payments and Individual PAGA Payments
11 by way of a single check.¹⁰² Settlement checks will be valid and negotiable for one hundred
12 eighty (180) calendar days from the date of issuance, and be cancelled thereafter.¹⁰³ The funds
13 from associated with such cancelled checks will be transmitted to the State Controller's Office
14 Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA
15 Member whose check is cancelled and in the respective amount of the cancelled check.¹⁰⁴

16 **XIV. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR**
17 **ENHANCEMENT PAYMENT**

18 Plaintiff Nathan Pool respectfully requests that the Court appoint him as the Class
19 Representative and preliminarily approve the Enhancement Payment in an amount up to seven
20 thousand five hundred dollars (\$7,500.00) to Plaintiff.¹⁰⁵ It is within the Court's discretion to
21 award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield*
22 *Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single
23 class representative). The factors that courts may consider in determining whether to make an
24 enhancement payment include: (1) the risk to the class representative in commencing suit, both

25 ⁹⁹ *Ibid.*

26 ¹⁰⁰ *Ibid.*

27 ¹⁰¹ *Ibid.*

28 ¹⁰² *Id.*, ¶ 20.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Id.*, ¶ 12.

financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.¹⁰⁶ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.¹⁰⁷ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for his services on behalf of the Class, in addition to his Individual Settlement Payment and Individual PAGA Payment.

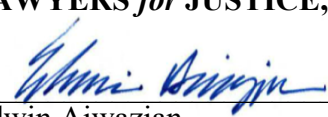
XV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Edwin Aiwasian, Arby Aiwasian, and Joanna Ghosh of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Nathan Pool as Class Representative; appoint Simpluris, Inc. as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment, PAGA Penalties, and Settlement Administration Costs; approve the proposed Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately late February 2022; and permit the filing of a memorandum that exceeds the page limit.

Dated: January 13, 2022

LAWYERS for JUSTICE, PC

By:


Edwin Aiwasian
Attorneys for Plaintiff

¹⁰⁶ Aiwasian Decl., ¶ 21; Declaration of Nathan Pool in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Pool Decl."), ¶ 4.

¹⁰⁷ Aiwasian Decl., ¶ 21; Pool Decl., ¶¶ 3-6.