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10 NAOMI MOJADDIDI, KIA SPURNEY, and all others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SACRAMENTO**

13 **(UNLIMITED JURISDICTION)**

14 NAOMI MOJADDIDI, KIA SPURNEY, and
15 ANTOLIN NAJERA, on behalf of themselves
16 and all others similarly situated, the general
17 public, and as “aggrieved employees” on behalf
18 of other “aggrieved employees” under the Labor
19 Code Private Attorneys General Act of 2004,

20 *Plaintiff(s),*

21 vs.

22 ELITE DINERS, LLC, a California limited
23 liability company; ELITE DEVCO, LLC, a
24 California limited liability company; ELITE
25 SPORTS BAR GROUP, LLC, a California
26 corporation; SOCAL DINERS, LLC, a
27 California limited liability company; ELITE
28 BUSINESS ENTERPRISES, INC., a California
corporation; and DOES 1–50, inclusive,

Defendant(s).

Case No. 34-2020-00273090-CU-OE-GDS
Reservation # A-273090-001

**PLAINTIFFS’ MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**



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Cases

<i>Arenas v. El Torito Rests., Inc.</i> , (2010) 183 Cal. App. 4th 723	18
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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 **I. INTRODUCTION**

4 Plaintiffs Naomi Mojaddidi, Kia Spurney, and Antolin Najera (“Plaintiffs”) submit this
5 memorandum of points and authorities in support of their unopposed motion for preliminary
6 approval of the Class Action and PAGA Settlement Agreement and Class Notice (the
7 “Settlement”)², which provides for a Gross Settlement Amount (“GSA”) of \$675,000.00 in
8 compromise of all disputed claims on behalf of all current and former hourly, non-exempt
9 restaurant employees during the period of January 1, 2016 through December 31, 2024. Through
10 this Motion, Plaintiffs respectfully request for this Court to (1) provisionally certify the below-
11 defined Class for settlement purposes only under Code of Civil Procedure § 382; (2) preliminarily
12 approve the Settlement; (3) preliminarily appoint each Plaintiff as a Class Representative; (4)
13 appoint David Spivak of The Spivak Law Firm, Walter L. Haines of United Employees Law
14 Group, and David Bibiyan and Vedang Patel of Bibiyan Law Group, P.C. as Class Counsel; (5)
15 approve the proposed notice procedures and related forms; and (6) schedule a final approval
16 hearing.

17 This Court should grant Plaintiffs’ motion because: (1) for settlement purposes, the
18 Settlement Class meets the requirements for class certification under Code of Civil Procedure §
19 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,
20 reasonableness, and adequacy; (3) for settlement purposes, Plaintiffs are adequate to serve as
21 Class Representatives; (4) Plaintiffs’ attorneys are adequate to serve as Class Counsel; (5) the
22 proposed notice procedures, and related forms, fully comport with due process and adequately
23 apprise Class Members of their rights; and (6) a final approval hearing must be scheduled to allow
24 Settlement Class Members an opportunity to be heard regarding the Settlement and to give it
25 finality. Accordingly, for the reasons detailed below, this Court should grant Plaintiffs’ Motion
26 in its entirety and preliminarily approve the Settlement.

27 **II. BACKGROUND**

28 Defendants are owners and operators of restaurants in North America. Declaration of

² The Settlement is attached as Exhibit (“Ex.”) 1 to the Declaration of David Spivak (“DS”), which is submitted herewith under a separate cover.



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1 David Spivak (“DS”), ¶ 3. Defendants employed Plaintiff Mojaddidi in California as a Server
2 from about March 27, 2017 until March 20, 2020. *Id.* Defendants employed Plaintiff Spurney in
3 California as a Server from about June 2016 until October 1, 2018 and from about April 2019
4 until August 1, 2019. *Id.* Defendants employed Plaintiff Najera in California as a non-exempt
5 employee, with duties that included, but were not limited to, file management, posting payments,
6 answering phones, and taking payments, from about June 2018 until June 2020. Declaration of
7 David Bibiyan (“DB”), ¶ 16.

8 **A. The Claims and Procedural History**

9 On January 06, 2020, Plaintiff Mojaddidi notified Defendant Elite Diners, LLC and the
10 California Labor and Workforce Development Agency (“LWDA”), pursuant to the California
11 Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”),
12 of alleged Labor Code violations committed by Defendant. DS, ¶ 13, Ex. 2. On January 31, 2020,
13 Plaintiff Mojaddidi notified Defendant Elite Diners, LLC, Defendant Elite Devco, LLC, and the
14 LWDA of her claims against Defendant Elite Devco, LLC. DS, ¶ 13, Ex. 3.

15 On January 08, 2020, Plaintiff Mojaddidi filed a Class Action Complaint in the
16 Sacramento County Superior Court, Case No. 34-2020-00273090-CU-OE-GDS, against
17 Defendant Elite Diners, LLC on behalf of herself and others similarly situated, alleging causes of
18 action on a class-wide basis for: (1) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198);
19 (2) Failure to Provide Meal Periods (Lab. Code §§226.7, 512 and 1198); (3) Failure to Pay All
20 Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197,
21 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage Statement Penalties
22 (Lab. Code § 226); and (6) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). DS, ¶ 14,
23 Ex. 6. On March 5, 2020, unbeknownst to Plaintiff Mojaddidi, Defendant Elite Diners, LLC filed
24 an answer to Plaintiff Mojaddidi’s Complaint. DS, ¶ 14, Ex. 7. On March 13, 2020, Plaintiff
25 Mojaddidi inadvertently filed a First Amended Complaint (“1AC”) adding Elite Devco, LLC as
26 a Defendant and adding a claim under PAGA and a claim for Waiting Time Penalties (Lab. Code
27 §§ 201, 202, and 203). DS, ¶ 14, Ex. 8. On May 8, 2020, the Court approved the stipulation of
28 Plaintiff Mojaddidi and Defendant Elite Diners, LLC for Plaintiff Mojaddidi to file her 1AC and



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1 deemed it filed on April 24, 2020. DS, ¶ 14, Ex. 8. However, Plaintiff Mojaddidi's 1AC did not
2 state Plaintiff Mojaddidi's PAGA claim under Labor Code §§ 201, 202 and 203. On June 25,
3 2020, Plaintiff Mojaddidi, Defendant Elite Diners, LLC, and Defendant Elite Devco, LLC filed a
4 stipulation and proposed order for leave to file Plaintiff Mojaddidi's Second Amended Complaint
5 ("2AC") to add Plaintiff Mojaddidi's PAGA claim under Labor Code §§ 201, 202, and 203. DS,
6 ¶ 14, Ex. 10. On June 25, 2020, the Court accepted Plaintiff Mojaddidi's 2AC as filed. DS, ¶ 14,
7 Ex. 10. On August 10, 2020, Defendant Elite Diners, LLC and Defendant Elite Devco, LLC filed
8 an answer to Plaintiff Mojaddidi's 2AC. DS, ¶ 14, Ex. 11. Defendants deny all of Plaintiff
9 Mojaddidi's allegations and strongly contend that their wage and hour policies, practices and
10 procedures are fully compliant with all applicable laws. DS, ¶ 14.

11 On March 27, 2020, Plaintiff Kia Spurney notified Defendant Elite Sports Bar Group LLC
12 and the LWDA, pursuant to PAGA, of alleged Labor Code violations committed by Defendant.
13 DS, ¶ 13, Ex. 4.

14 On June 3, 2020, Plaintiff Spurney filed a Class Action Complaint in the Kern County
15 Superior Court, Case No. BCV-20-101293, against Defendant Elite Sports Bar Group LLC on
16 behalf of herself and others similarly situated, alleging causes of action on a class-wide basis for:
17 (1) Failure to Provide Meal and Rest Breaks (Lab. Code §§226.7, 512 and 1198); (2) Failure to
18 Indemnify (Lab. Code §§ 1198 and 2802); (3) Failure to Pay All Wages Earned for All Hours
19 Worked (Lab. Code §§ 510, 1194, 1197 and 1198); (4) Wage Statement Penalties (Lab. Code §
20 226); (5) Waiting Time Penalties (Lab. Code §§ 201, 202 and 203); (6) Unfair Competition (Bus.
21 & Prof. Code §§ 17200, *et seq.*); and (7) Civil Penalties (Lab. Code §§ 2698, *et seq.*). DS, ¶ 15,
22 Ex. 12. On April 15, 2021, Defendant Elite Sports Bar Group LLC filed an answer to Plaintiff
23 Spurney's complaint. Defendant denies all of Plaintiff Spurney's allegations and strongly
24 contends that its wage and hour policies, practices, and procedures are fully compliant with all
25 applicable laws.

26 On September 8, 2021, Plaintiff Antolin Najera filed a Class Action Complaint in the Los
27 Angeles County Superior Court, Case No. 21STCV33104, against Defendant SoCal Diners, LLC
28 on behalf of himself and others similarly situated, alleging causes of action on a class-wide basis



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1 for: (1) Failure to Pay Overtime Wages (Lab. Code §§510, 1194 and 1199); (2) Failure to Pay
2 Minimum Wages (Lab. Code §§ 1197 and 1199); (3) Failure to Provide Meal Periods (Lab. Code
3 §§ 226.7 and 512); (4) Failure to Provide Rest Periods (Lab. Code § 226.7); (5) Waiting Time
4 Penalties (Lab. Code §§ 201, 202 and 203); (6) Wage Statement Violations (Lab. Code § 226);
5 (7) Failure to Indemnify (Lab. Code § 2802); and (8) Unfair Competition (Bus. & Prof. Code §§
6 17200, *et seq.*). Ds, ¶ 16, Ex. 14.

7 On September 17, 2021, Plaintiff Najera notified Defendant SoCal Diners, LLC and the
8 LWDA, pursuant to PAGA, of alleged Labor Code violations committed by Defendant. DS, ¶ 13,
9 Ex. 5. On January 14, 2022, Plaintiff Najera filed a 1AC to add a claim under PAGA. DS, ¶ 16,
10 Ex. 15. On February 15, 2022 Defendants filed an Answer to Plaintiff Najera's First Amended
11 Complaint. DS, ¶ 16, Ex. 16.

12 On March 23, 2024, Plaintiff Mojaddidi filed a Third Amended Complaint adding
13 Plaintiffs Kia Spurney and Antolin Najera as named Plaintiffs and adding SoCal Diners, LLC,
14 and Elite Business Enterprises, Inc. as Defendants. The Third Amended Complaint is the
15 operative complaint in the Action (the "Operative Complaint"). DS, ¶ 17, Ex. 17. Defendants
16 deny the allegations in the Operative Complaint, deny any failure to comply with the laws
17 identified in the Operative Complaint and deny any and all liability for the causes of action
18 alleged. DS, ¶ 17.

19 On April 4, 2022, Maria Guadalupe Duque ("Plaintiff Duque") filed a Class Action
20 Complaint in Contra Costa Superior Court, Case No. C22-00609, against Defendants Elite
21 Business Enterprises, Inc. and Elite Devco, LLC on behalf of herself and others similarly situated,
22 alleging causes of action on a class-wide basis for: (1) Failure to Provide Meal and Rest Breaks
23 (Lab. Code §§226.7, 512 and 1198); (2) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (3)
24 Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197 and
25 1197.1); (4) Wage Statement Penalties (Lab. Code § 226); (5) Waiting Time Penalties (Lab. Code
26 §§ 201, 202 and 203); and (6) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*) DS ¶18,
27 Ex. 33. On May 2, 2022, Plaintiff Duque filed a First Amended Complaint to add a claim for Civil
28 Penalties under PAGA (Lab. Code §§ 2698, *et seq.*) DS ¶18, Ex. 34. On June 8, 2022, Defendants



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1 Elite Business Enterprises, Inc. and Elite Devco, LLC filed an answer to Plaintiff Duque's
2 Complaint. DS ¶18, Ex. 35. Defendants deny all of Plaintiff Duque's allegations and strongly
3 contend that its wage and hour policies, practices, and procedures are fully compliant with all
4 applicable laws.

5 On July 9, 2024, Defendants Elite Devco, LLC, Elite Sports Bar Group, LLC, SoCal
6 Diners, LLC, And Elite Business Enterprises, Inc., submitted to the Chairperson of the Judicial
7 Council a petition to coordinate the *Mojaddidi* and *Duque* actions. DS ¶19, Ex. 36. On July 18,
8 2024, Defendants Elite Devco, LLC, Elite Sports Bar Group, LLC, SoCal Diners, LLC, and Elite
9 Business Enterprises, Inc., submitted to the Chairperson of the Judicial Council an amended
10 petition to coordinate the *Mojaddidi*, *Duque*, and *Spurney* actions. DS ¶19, Ex. 37.

11 On October 28, 2024, the Sacramento County Superior Court, acting as the coordination
12 motion judge, granted Defendants Amended Petition and recommended Sacramento County
13 Superior Court for the site of the coordinated proceedings. DS ¶20, Ex. 38. On May 16, 2025,
14 Defendants filed the Notice of the coordination order in the *Duque* matter. DS ¶20, Ex. 39. On
15 August 25, 2025, the *Duque* court stayed the *Duque* matter pending resolution of the instant
16 matter. DS ¶20, Ex. 40.

17 **B. Sampling**

18 On December 23, 2021, Plaintiff Mojaddidi requested that Defendant Elite Diners, LLC
19 and Defendant Elite Devco, LLC informally disclose documents and data to enable Plaintiff
20 Mojaddidi to prepare for settlement discussions, including the number of putative class members
21 and aggrieved employees and the number of paychecks and workweeks for the various limitations
22 periods applicable to Plaintiff Mojaddidi's claims. DS, ¶ 21, Ex. 18. Plaintiff Mojaddidi also
23 requested a reasonable, randomly selected sample of Defendant Elite Diners, LLC's and
24 Defendant Elite Devco, LLC's time, payroll, and expense records, and related personnel records.
25 *Id.* Finally, Plaintiff Mojaddidi requested Defendant Elite Diners, LLC's and Defendant Elite
26 Devco, LLC's written policies applicable to the claims at hand and asked Defendant Elite Diners,
27 LLC and Defendant Elite Devco, LLC to identify any and all comparable claims against them.

28 Plaintiff Mojaddidi, Defendant Elite Diners, LLC, and Defendant Elite Devco, LLC



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1 thereafter engaged in an informal, voluntary exchange of information in the context of privileged
2 settlement discussions to facilitate an early mediation. Defendant Elite Diners, LLC and
3 Defendant Elite Devco, LLC produced Plaintiff Mojaddidi's entire personnel file (including
4 policies and agreements she signed and acknowledged) and copies of their relevant company
5 written policies. DS, ¶ 21.

6 The Defendants disclosed that there have been comparable claims against them.
7 Defendants disclosed and/or Plaintiffs discovered the following comparable claims: Kia Spurney
8 vs. Elite Sports Bar Group LLC, et al., Contra Costa Superior Court, Case Number MSC20-
9 02671, Filed June 4, 2020; Antolin Najera vs. SoCal Diners, LLC., et al., Los Angeles Superior
10 Court, Case Number 21STCV33104, Filed September 8, 2021; and Maria Guadalupe Duque vs.
11 Elite Business Enterprises, Inc., Elite Devco, LLC., et al., Contra Costa Superior Court, Case
12 Number C22-00609, Filed April 4, 2022. DS, ¶ 23.

13 For the period of January 01, 2019 to December 31, 2019, Defendants produced the
14 records for 203 employees. Defendants randomly chose the sample. The sample consisted of
15 personnel files, payroll records, punch records, and related records. DS, ¶ 24.

16 Plaintiff Mojaddidi retained Sridhar Srinivasan, a data analyst, to analyze the sample. The
17 sample population that Plaintiff Mojaddidi's data analyst evaluated is statistically reliable. *Id.*

18 **C. Mediation**

19 On February 24, 2022, following much of the foregoing informal discovery and exchange
20 of information, the Parties participated in a mediation session presided over by Mediator Hon.
21 Ronald M. Sabraw (Ret.), an experienced class action mediator. During the mediation, the Parties
22 had a full day of productive negotiations. Though the Parties did not reach a settlement at the
23 mediation, they continued to negotiate and eventually reached the material terms of this
24 Settlement in November of 2025. During and after the mediation sessions, each side, represented
25 by their respective counsel, recognized the risk of an adverse result in the Action and agreed to
26 settle the Action and all other matters covered by this Settlement pursuant to the terms and
27 conditions of this Settlement.

28 **D. Defendants' Financial Condition**

As part of the settlement negotiations, Defendants – with the exception of Elite Business



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1 Enterprises, Inc., a holding company - disclosed their balance sheets, tax returns, and related
2 information for 2022, 2023, and 2024. *Id.* Plaintiff Mojaddidi's Counsel has reviewed the
3 financial records with the aid of financial analyst. *Id.* The information provided was sufficient to
4 demonstrate the financial condition of the Defendants and that they will unlikely be able to afford
5 payment of a larger amount than the Settlement amount. Based on such records, Plaintiffs, on
6 their own behalf and on behalf of the Class Members, have agreed to settle the lawsuit on the
7 terms set forth in the Settlement. *Id.*

8 **III. OVERVIEW OF THE SETTLEMENT**

9 **A. Settlement Class and Aggrieved Employees Definition**

10 The Settlement defines the Settlement Class as all current and former hourly, non-exempt
11 restaurant employees of Defendants in California during the Class Period. Settlement ¶ 1.5. The
12 Class Period is January 01, 2016 through December 31, 2024. *Id.* The "Aggrieved Employees"
13 are all hourly, non-exempt restaurant employees of Defendants in California during the PAGA
14 Period. Settlement ¶ 1.4. The "PAGA Period" begins January 01, 2019 and ends December 31,
2024. *Id.*

15 **B. Monetary Terms**

16 Gross Settlement Amount. Except as otherwise provided by Paragraph 9 [of the
17 Settlement], Defendants promise to pay means \$675,000.00 which is the maximum total amount
18 Defendants agree to pay under the Settlement except as provided in the Escalator Clause. The
19 Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA
20 Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class
21 Representative Service Payment, the Administrator's Expenses, and Employer Taxes. Defendants
22 have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph
23 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount
24 without asking or requiring Participating Class Members or Aggrieved Employees to submit any
25 claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.
26 Payments from the Gross Settlement Amount. The Administrator will make and deduct the
27 following payments from the Gross Settlement Amount, in the amounts specified by the Court in
28 the Final Approval:



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1 Payments from the Gross Settlement Amount. The Administrator will make and deduct
2 the following payments from the Gross Settlement Amount, in the amounts specified by the Court
3 in the Final Approval:

4 A. To Plaintiffs: Class Representative Service Payments to the Class Representatives of
5 not more than \$5,000.00 each (in addition to any Individual Class Payments and any Individual
6 PAGA Payments the Class Representatives are entitled to receive as Participating Class
7 Members). Defendants will not oppose Plaintiffs' request for a Class Representative Service
8 Payments that do not exceed this amount. As part of the motion for Class Counsel Fees Payment
9 and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class
10 Representative Service Payments no later than 16 court days prior to the Final Approval Hearing.
11 If the Court approves a Class Representative Service Payment less than the amount requested, the
12 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
13 pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full
14 responsibility and liability for employee taxes owed on the Class Representative Service
15 Payments.

16 B. To Class Counsel: A Class Counsel Fees Payment of not more than 33 1/3% of the
17 \$675,000.00 GSA, which is currently estimated to be \$225,000.00, and a Class Counsel Litigation
18 Expenses Payment of not more than \$35,000.00. Defendants will not oppose requests for these
19 payments provided that do not exceed these amounts. Plaintiffs and/or Class Counsel will file a
20 motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16
21 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees
22 Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested,
23 the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties
24 shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to
25 any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment.
26 The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses
27 Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and
28 liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation



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1 Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute
2 or controversy regarding any division or sharing of any of these Payments.

3 C. To the Administrator: An Administrator Expenses Payment not to exceed \$65,000.00
4 except for a showing of good cause and as approved by the Court. To the extent the
5 Administration Expenses are less or the Court approves payment less than \$65,000.00, the
6 Administrator will retain the remainder in the Net Settlement Amount.

7 D. To Each Participating Class Member: An Individual Class Payment calculated by (a)
8 dividing the Net Settlement Amount by the total number of Work Weeks worked by all
9 Participating Class Members during the Class Period and (b) multiplying the result by each
10 Participating Class Member's Work Weeks. 3.2.D.1. Tax Allocation of Individual Class
11 Payments. 33.33% of each Participating Class Member's Individual Class Payment will be
12 allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to
13 tax withholding and will be reported on an IRS W-2 Form. The Administrator will calculate the
14 amount of employee and Employer Taxes based on the Wage Portion and pay applicable
15 employee and Employer Taxes and deductions. The 66.67% of each Participating Class Member's
16 Individual Class Payment will be allocated to settlement of claims for interest and penalties (the
17 "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be
18 reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability
19 for any employee taxes owed on their Individual Class Payment. 3.2.D.2. Effect of Non-
20 Participating Class Members on Calculation of Individual Class Payments. Non-Participating
21 Class Members will not receive any Individual Class Payments. The Administrator will retain
22 amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution
23 to Participating Class Members on a pro rata basis.

24 E. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
25 \$24,000.00 to be paid from the Gross Settlement Amount, with 75% (\$18,000.00) allocated to the
26 LWDA PAGA Payment and 25% (\$6,000.00) allocated to the Individual PAGA Payments. The
27 Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the
28 Aggrieved Employees' 25% share of PAGA Penalties \$6,000.00 by the total number of PAGA

1 Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
2 multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved
3 Employees assume full responsibility and liability for any taxes owed on their Individual PAGA
4 Payment. 3.2.E.2. If the Court approves PAGA Penalties of less than the amount requested, the
5 Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will
6 report the Individual PAGA Payments on IRS 1099 Forms. Settlement Agreement ¶ 3.

7 **C. Timing of Payments**

8 Class Work Weeks and Aggrieved Employee Pay Periods. Based on a review of their
9 records to date, Defendants estimate the 5,500 Class Members collectively worked a total of
10 199,510 Work Weeks, and 3,400 Aggrieved Employees who worked a total of 71,110 PAGA Pay
11 Periods. Settlement Agreement ¶ 4.1.

12 Class Data. Not later than 15 days after the Court grants Preliminary Approval of the
13 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the
14 form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
15 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
16 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
17 employees who need access to the Class Data to effect and perform under this Agreement.
18 Defendants have a continuing duty to immediately notify Class Counsel if they discover that the
19 Class Data omitted class member identifying information and to provide corrected or updated
20 Class Data as soon as reasonably feasible. Without any extension of the deadline by which
21 Defendants must send the Class Data to the Administrator, the Parties and their counsel will
22 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
23 to missing or omitted Class Data.

24 Funding of Gross Settlement Amount. Defendants shall fund the Gross Settlement
25 Amount by transmitting the funds to the Administrator in six equal installment payments of
26 \$112,500.00 follows:

- 27 A. First installment payment within 30 days of the Effective Date;
28 B. Second installment payment within 180 days of the Effective Date;



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- 1 C. Third installment payment within 360 days of the Effective Date;
2 D. Fourth installment payment within 540 days of the Effective Date;
3 E. Fifth installment payment within 720 days of the Effective Date; and
4 F. Sixth installment payment within 900 days of the Effective Date.

5 Payments from the Gross Settlement Amount. Within 30 days after each of Defendants'
6 installment payments to fund the Gross Settlement Amount, the Administrator will mail pro rata
7 checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA
8 Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Employer
9 Taxes, the Class Counsel Litigation Expenses Payment, and the Class Representative Service
10 Payments. Pro rata disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation
11 Expenses Payment and the Class Representative Service Payments shall not precede pro rata
12 disbursement of Individual Class Payments and Individual PAGA Payments.

13 The Administrator will issue checks for the Individual Class Payments and/or Individual
14 PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid.
15 The face of each check shall prominently state the date (not less than 180 days after the date of
16 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by
17 the void date. The Administrator will send checks for Individual Settlement Payments to all
18 Participating Class Members (including those for whom Notice Packet was returned undelivered).
19 The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees
20 including Non-Participating Class Members who qualify as Aggrieved Employees (including
21 those for whom Notice Packet was returned undelivered). The Administrator may send
22 Participating Class Members a single check combining the Individual Class Payment and the
23 Individual PAGA Payment. Before mailing any checks, the Administrator must update the
24 recipients' mailing addresses using the National Change of Address Database.

25 The Administrator must conduct a Class Member Address Search for all other Class
26 Members whose checks are returned undelivered without USPS forwarding address. Within 7 days
27 of receiving a returned check the Administrator must re-mail checks to the USPS forwarding
28 address provided or to an address ascertained through the Class Member Address Search. The
Administrator need not take further steps to deliver checks to Class Members whose re-mailed
checks are returned as undelivered. The Administrator shall promptly send a replacement check
to any Class Member whose original check was lost or misplaced, requested by the Class Member



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1 prior to the void date.

2 For any Class Member whose Individual Class Payment check or Individual PAGA
3 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
4 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
5 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
6 California Code of Civil Procedure Section 384, subd. (b).

7 The payment of Individual Class Payments and Individual PAGA Payments shall not
8 obligate Defendants to confer any additional benefits or make any additional payments to Class
9 Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

10 The Administrator will calculate the amount of employee and Employer Taxes based on
11 the Wage Portion and pay applicable employee and Employer Taxes and deductions. Settlement
12 Para 4. Settlement Agreement ¶ 4.

13 **D. Calculation of Settlement Shares**

14 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by
15 the total number of Work Weeks worked by all Participating Class Members during the Class
16 Period and (b) multiplying the result by each Participating Class Member's Work Weeks.
17 Settlement Agreement ¶ 3.2(D).

18 **E. Apportionment of Settlement Shares**

19 33.33% of each Participating Class Member's Individual Class Payment will be allocated
20 to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
21 withholding and will be reported on an IRS W-2 Form. The Administrator will calculate the
22 amount of employee and Employer Taxes based on the Wage Portion and pay applicable
23 employee and Employer Taxes and deductions. The 66.67% of each Participating Class Member's
24 Individual Class Payment will be allocated to settlement of claims for interest and penalties (the
25 "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be
26 reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability
27 for any employee taxes owed on their Individual Class Payment. Settlement Agreement ¶ 3.2.D.1.

28 **F. The Releases**

RELEASES OF CLAIMS. Effective on the date when Defendants fully fund the entire
Gross Settlement Amount, Plaintiffs, Class Members, and Class Counsel will release claims



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1 against all Released Parties as follows:

2 Plaintiffs' Release. Naomi Mojaddidi, Kia Spurney, and Antolin Najera will each execute
3 a general release with a waiver of rights under California Civil Code Section 1542.

4 Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of
5 Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits,
6 if any, of section 1542 of the California Civil Code, which reads:

7
8 A general release does not extend to claims that the creditor or releasing party does
9 not know or suspect to exist in his or her favor at the time of executing the release,
10 and that if known by him or her would have materially affected his or her
11 settlement with the debtor or Released Party.

12 Release by Participating Class Members Who Are Not Aggrieved Employees: All claims
13 and/or causes of action arising from or related to this case under any federal, state, or local law or
14 administrative order that were pled or could have been pled in this case based on the facts alleged
15 in the operative class action complaint or notices to the LWDA including but not limited to the
16 failure to pay minimum wages, the failure to pay overtime wages, the failure to provide meal
17 periods, the failure to pay meal period premium pay, the failure to provide rest periods, the failure
18 to pay rest period premium pay, the failure to pay waiting-time penalties, the failure to maintain
19 records, the failure to provide accurate itemized wage statements, the failure to reimburse, and
20 other claims whatsoever that were alleged in this case or which arise out of such facts actually
21 pled in the complaint, including without limitation all related claims for restitution and other
22 equitable relief under Business and Professions Code section 17200 et seq., conversion, liquidated
23 damages, punitive damages, penalties, statutory penalties, civil penalties under the Labor Code
24 Private Attorneys General Act of 2004 for violations of Labor Code 201, 202, 203, 204, 226,
25 226.2, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802. Release of PAGA Claim. Plaintiffs
26 release all claims for civil penalties that could have been sought by the Labor Commissioner for
27 the violations identified in Plaintiffs' pre-filing letter to the LWDA; Plaintiffs do not release the
28 claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a



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1 Participating Class Member. Settlement Agreement ¶ 6.

2 **G. Notice and Claims Process and Procedures**

3 No later than three (3) business days after receipt of the Class Data, the Administrator
4 shall notify Class Counsel that the list has been received and state the number of Class Members,
5 PAGA Members, Work Weeks, and Pay Periods in the Class Data.

6 Using best efforts to perform as soon as possible, and in no event later than 14 days after
7 receiving the Class Data, the Administrator will send to all Class Members identified in the Class
8 Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet with Spanish
9 translation, if applicable substantially in the forms attached to this Agreement as Exhibits A, B,
10 C, and D. The first page of the Class Notice shall prominently estimate the dollar amounts of any
11 Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and
12 the number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate these
13 amounts. Before mailing Notice Packets, the Administrator shall update Class Member addresses
14 using the National Change of Address database.

15 Not later than 3 business days after the Administrator’s receipt of any Notice Packet
16 returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet using any
17 forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
18 the Administrator shall conduct a Class Member Address Search, and re-mail the Notice Packet
19 to the most current address obtained. The Administrator has no obligation to make further
20 attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by
21 the USPS a second time.

22 The deadlines for Class Members’ written objections, Challenges to Work Weeks and/or
23 Pay Periods (disputes), and Requests for Exclusion will be extended an additional 14 days beyond
24 the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-
25 mailed. The Administrator will inform the Class Member of the extended deadline with the re-
26 mailed Notice Packet.

27 If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers
28 any persons who believe they should have been included in the Class Data and should have



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1 received Notice Packet, the Parties will expeditiously meet and confer in person or by telephone,
2 and in good faith. in an effort to agree on whether to include them as Class Members. If the Parties
3 agree, such persons will be Class Members entitled to the same rights as other Class Members,
4 and the Administrator will send, via email or overnight delivery, a Class Notice requiring them
5 to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or
6 the deadline dates in the Class Notice, which ever are later. Settlement Agreement ¶ 8.4.

7 **1. Disputes**

8 Each Class Member shall have 60 days after the Administrator mails the Notice Packet
9 (plus an additional 14 days for Class Members whose Notice Packet is re-mailed) to challenge
10 the number of Class Work Weeks and PAGA Pay Periods (if any) allocated to the Class Member
11 in the Class Notice. This is also known as a dispute. A Work Week Dispute form, attached as
12 Exhibit C, may be used for this purpose but is not required. The Class Member may challenge the
13 allocation by communicating with the Administrator via fax, email or mail. The Administrator
14 must encourage the challenging Class Member to submit supporting documentation. In the
15 absence of any contrary documentation, the Administrator is entitled to presume that the Work
16 Weeks contained in the Class Notice are correct so long as they are consistent with the Class Data.
17 The Administrator's determination of each Class Member's allocation of Work Weeks and/or Pay
18 Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator
19 shall promptly provide copies of all challenges to calculation of Work Weeks and/or Pay Periods
20 to Defense Counsel and Class Counsel and the Administrator's determination the challenges..

21 Settlement Paragraph 8.6

22 **2. Opting Out**

23 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
24 send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later
25 than 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
26 Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class
27 Member or his/her representative that reasonably communicates the Class Member's election to
28 be excluded from the Settlement and includes the Class Member's name, address and email
address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed,



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1 or postmarked by the Response Deadline. An Election Not to Participate in Settlement form,
2 attached as Exhibit B, may be used for this purpose but is not required.

3 The Administrator may not reject a Request for Exclusion as invalid because it fails to
4 contain all the information specified in the Class Notice. The Administrator shall accept any
5 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the
6 person as a Class Member and the Class Member's desire to be excluded. The Administrator's
7 determination shall be final and not appealable or otherwise susceptible to challenge. If the
8 Administrator has reason to question the authenticity of a Request for Exclusion, the
9 Administrator may demand additional proof of the Class Member's identity. The Administrator's
10 determination of authenticity shall be final and not appealable or otherwise susceptible to
11 challenge.

12 Every Class Member who does not submit a timely and valid Request for Exclusion is
13 deemed to be a Participating Class Member under this Agreement, entitled to all benefits and
14 bound by all terms and conditions of the Settlement, including the Participating Class Members'
15 Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating
16 Class Member actually receives the Class Notice or objects to the Settlement.

17 Every Class Member who submits a valid and timely Request for Exclusion is a Non-
18 Participating Class Member and shall not receive an Individual Class Payment or have the right
19 to object to the class action components of the Settlement. Aggrieved Employees are eligible for
20 an Individual PAGA Payment. Settlement Agreement para 8.5.

21 **3. Objecting**

22 Only Participating Class Members may object to the class action components of the
23 Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
24 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
25 Payment and/or Class Representative Service Payments.

26 Participating Class Members may send written objections to the Administrator, by fax,
27 email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an
28 attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A



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1 Participating Class Member who elects to send a written objection to the Administrator must do
2 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
3 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
4 as Exhibit D may be used for this purpose but is not required.

5 Non-Participating Class Members have no right to object to any of the class action
6 components of the Settlement. Agreement para 8.7.

7 **H. Uncashed Checks**

8 For any Class Member whose Individual Class Payment check or Individual PAGA
9 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
10 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
11 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
12 California Code of Civil Procedure Section 384, subd. (b). Settlement Agreement para 4.4.C.

13 **IV. CERTIFICATION OF THE CLASS IS APPROPRIATE**

14 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
15 and its members are too numerous for joinder to be practical; (2) the representative and absent
16 class members share a community of interest and questions of law and fact common to the class
17 predominate over questions unique to individual class members; (3) the representative's claims
18 are typical of the class' claims; and (4) the representative will fairly and adequately represent the
19 class' interests. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Moreover,
20 in the settlement context, the Court can use a lesser standard to determine the appropriateness of
21 a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.* (1996) 48
22 Cal.App.4th 1794, 1807. As explained below, all of these requirements are met in this case.

23 **A. The Settlement Class Is Objectively Ascertainable**

24 A class is ascertainable when it may be readily identified without unreasonable expense
25 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932
26 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiffs maintain that the above-
27 defined Class is ascertainable because its members may be identified by reference to Defendants'
28 records and Defendants have agreed to share the relevant information from their records to
facilitate the settlement process. DS, ¶ 30. Therefore, the Settlement Class is ascertainable.

B. The Membership of the Settlement Class Is Sufficiently Numerous



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1 The Settlement Class has sufficiently numerous members to render joinder impractical.
2 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
3 (1972) 28 Cal.App.3d 1017, 1030. Defendants estimates that there are approximately 5,500 Class
4 Members. DS, ¶ 31. Plaintiffs maintain that it would be impractical and economically inefficient
5 to require each Class Member to separately maintain an individual action or be joined as a named
6 plaintiff in this action. The California Supreme Court has upheld a class of as few as 10
7 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations,
8 the Settlement Class' membership is sufficiently numerous. DS, ¶ 31. *See Daar v. Yellow Cab*
9 *Co.* (1967) 67 Cal.2d 695.

10 **C. Class Members Share a Well-Defined Community of Interest**

11 The community of interest requirement “embodies three factors: (1) predominant common
12 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
13 (3) class representatives who can adequately represent the class.” *Sav-On Drug Stores, Inc. v.*
14 *Superior Court* (2004) 34 Cal. 4th 319, 326. It “does not mandate that class members have
15 uniform or identical claims.” *Capitol People First v. Dept. of Developmental Servs.* (2007) 155
16 Cal. App. 4th 676, 692. Rather, courts focus on the Defendants’ internal policies and “pattern and
17 practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs
18 renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal. 4th at 333).

19 To justify certification, the class proponent ““must show ... that questions of law or fact
20 common to the class predominate over the questions affecting the individual members”” *See,*
21 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal. App. 4th 723, 732 (citing *Washington Mut. Bank,*
22 *FA v. Superior Court* (2001) 248 Cal. 4th 906, 913). In light of the more lenient standard for
23 certification of a settlement class, the Parties agree that for the purposes of the Settlement only,
24 the claims of the Class Members all stem from the same sources. DS, ¶ 32.

25 In this case, Plaintiffs assert all Class Members were subject to the same or similar
26 operations and employment policies, practices, and procedures. The claims arise from
27 Defendants’ alleged policy-driven failure to pay wages, failure to provide meal periods, failure to
28 authorize and permit rest periods, failure to indemnify for business expenses, failure to issue



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proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related labor law violations, all of which Plaintiffs claim constitute unfair business practices and give rise to PAGA penalties. Plaintiffs assert that common questions include, but are not limited to: (1) Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay; (2) Whether Defendants failed to provide the class with all meal and rest periods in compliance with California law; (3) Whether Defendants failed to pay the class one additional hour of pay on workdays they failed to provide the class with one or more meal or rest periods in compliance with California law; (4) Whether Defendants failed to indemnify the class for all necessary business expenditures incurred during the discharge of their duties; (5) Whether Defendants knowingly and intentionally failed to provide the class with accurate wage statements; (6) Whether Defendants willfully failed to provide the class with timely final wages; and (7) Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code section 17200, *et seq.*, with respect to the class. DS, ¶ 32. Therefore, common questions predominate.

D. Each Plaintiff Is Typical of the Settlement Class

The class representative must be similarly situated to the rest of the purported class. *See Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating “it has never been the law in California that the class representative must have identical interests with the class members. The only requirements are ... that the class representative be *similarly* situated”) (emphasis in original); *See also* Newberg, § 3:29 (typicality “focuses on whether there exists a relationship between the Plaintiffs’ claims and the claims alleged on behalf of the class”). Each Plaintiff contends that his/her claims are typical for the purposes of certifying the Settlement Class. Plaintiffs assert that they, like absent Class Members were subject to the same relevant policies and procedures governing their compensation, hours of work and meal and rest periods. Because each Plaintiff contends that he/she was subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiffs will determine Defendants’ *prima facie* liability to all Class Members. Moreover, Plaintiffs’ claims could potentially be subject to the same primary affirmative defenses as those of absent Class Members. Accordingly, Plaintiffs’



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1 claims are typical of the Class. DS, ¶ 30.

2 **E. Each Plaintiff Will Adequately Represent the Settlement Class**

3 The adequacy requirement is met where the plaintiff is represented by counsel qualified
4 to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class'
5 interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the
6 Plaintiffs have adequate counsel, the plaintiff may represent the entire class absent any disabling
7 conflicts of interest that might hinder the plaintiff's ability to represent the class. DS, ¶ 31.

8 First, Class Counsel have supplied the Court with declarations to show that they are
9 adequate to represent the Settlement Class and that they have significant experience in
10 employment litigation generally, and wage and hour and employment-related class action
11 litigation specifically. *See* DS, ¶¶ 36-43; Declaration of Walter L. Haines ("Haines Decl.") 2.
12 Thus, Plaintiffs' counsel are adequate to serve as Class Counsel.

13 Second, each Plaintiff contends that he/she is an adequate class representative. Each
14 Plaintiff and the Class Members have strong and co-extensive interests in this litigation because
15 each worked for Defendants during the relevant time period, allegedly suffered the same alleged
16 injuries from the same alleged course of conduct, and there is no evidence of any conflict of
17 interest between Plaintiffs and the Class Members. DS, ¶ 35. Moreover, each Plaintiff has
18 demonstrated his/her commitment to the Settlement Class by, among other things, retaining
19 experienced counsel, providing counsel with documents and extensively speaking with them to
20 assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as
21 well as exposing him/herself to the risk of attorneys' fees and costs awards against him/her if this
22 lawsuit had been unsuccessful. DS, ¶ 35. Thus, each Plaintiff is adequate to serve as settlement
23 class representative. Accordingly, this Court should find that Plaintiffs and their counsel are
24 adequate to represent the Settlement Class as required under Code of Civil Procedure § 382.

25 **F. Class Action Treatment Is the Superior Means For Resolving The Claims**
26 **Of The Class Members**

27 Plaintiffs further contend that a class action is also superior to other means of adjudicating
28 the issues in this action. The predominance of common legal and factual questions shows that this
Court could fairly adjudicate the claims of Class Members through a single class action. In view



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1 of the *theoretical* alternatives that proposed class members could potentially utilize—
2 representative PAGA action (where there is less relief available), individual civil lawsuits or wage
3 claims through the Division of Labor Standards Enforcement (where there would be relatively
4 little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly
5 superior to all of them. Thus, this consideration supports conditional class action treatment for
6 purposes of this Settlement only. DS, ¶ 44.

7 **V. INTRODUCTION THE COURT SHOULD GRANT PRELIMINARY APPROVAL**
8 **BECAUSE THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

9 **A. Legal Standard**

10 A class action settlement requires court approval. California Rules of Court (“CRC”), Rule
11 3.769 provides three steps for approval: (1) Preliminary approval after submission of a written
12 motion for preliminary approval, the proposed class settlement, and the proposed class notice; (2)
13 Issuance of notice of settlement to class members; and (3) A final settlement approval hearing
14 where class members may be heard regarding the settlement, and at which evidence and argument
15 concerning the fairness, adequacy, and reasonableness of the settlement is presented. The decision
16 to approve or reject a class settlement is committed to the Court’s broad discretion. *Kullar v. Foot*
17 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve class settlement
18 may be reversed only upon a showing of “clear abuse of discretion.” *Id.*

19 **B. The Settlement Is Presumptively Fair**

20 In assessing preliminary approval, a court evaluates if the settlement process has certain
21 indicia of fairness. A “presumption of fairness exists where (1) the settlement is reached through
22 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
23 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
24 of objectors is small.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996)
25 48 Cal.App.4th at 1794.

26 The class settlement here satisfies all of these factors. DS, ¶ 45. The Settlement resulted
27 from thorough, arms’ length, negotiations between experienced counsel with the assistance of a
28 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
weaknesses of their respective cases and Defendants’ estimated exposure. *Id.*

On January 08, 2020, Plaintiff Naomi Mojaddidi commenced this Action by filing a





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1 Complaint against Defendants Elite Diners, LLC alleging causes of action for failure to pay
2 wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to
3 indemnify for business expenses, failure to issue proper wage statements, failure to timely pay
4 wages, failure to maintain required payroll records, and related claims. On April 24, 2020,
5 Plaintiff Naomi Mojaddidi filed a First Amended Complaint against Defendants Elite Diners,
6 LLC and Elite Devco, LLC alleging causes of action against for failure to pay wages, failure to
7 provide meal periods, failure to authorize and permit rest periods, failure to indemnify for
8 business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to
9 maintain required payroll records, and related allegations. On June 25, 2020, Plaintiff Naomi
10 Mojaddidi filed a Second Amended Complaint against Defendants Elite Diners, LLC and Elite
11 Devco, LLC alleging causes of action against for failure to pay wages, failure to provide meal
12 periods, failure to authorize and permit rest periods, failure to indemnify for business expenses,
13 failure to issue proper wage statements, failure to timely pay wages, failure to maintain required
14 payroll records, and related allegations. On May 27, 2020, Plaintiff Kia Spurney filed a complaint
15 against Defendant Elite Sports Bar Group, LLC for failure to pay wages, failure to provide meal
16 periods, failure to authorize and permit rest periods, failure to indemnify for business expenses,
17 failure to issue proper wage statements, failure to timely pay wages, failure to maintain required
18 payroll records, and related allegations. On September 8, 2021, Plaintiff Najera Antolin filed a
19 complaint against Defendant SoCal Diners, LLC for failure to pay wages, failure to provide meal
20 periods, failure to authorize and permit rest periods, failure to indemnify for business expenses,
21 failure to issue proper wage statements, failure to timely pay wages, failure to maintain required
22 payroll records, and related allegations. On March 22, 2024, Plaintiff Naomi Mojaddidi filed a
23 Third Amended Complaint adding Plaintiffs Kia Spurney and Antolin Najera as named-Plaintiffs
24 and adding SoCal Diners, LLC, and Elite Business Enterprises, Inc. as Defendants. The Third
25 Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”)
26 Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the
27 laws identified in in the Operative Complaint and deny any and all liability for the causes of action
28 alleged. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written notice to

1 Defendants and the LWDA by sending the PAGA Notice.

2 On February 24, 2022, Plaintiff Mojaddidi and Defendants participated in an all-day
3 mediation presided over by The Honorable Ronald M. Sabraw (ret.). Though the Parties did not
4 reach a settlement at the mediation.

5 Plaintiffs prepared “damages” estimates in advance of the mediation. DS, ¶ 49, Ex. 19.
6 Plaintiffs determined Defendants’ maximum possible exposure for restitution and penalties to be
7 approximately \$45,051,886.23 (consisting of \$2,233,874.54 in unpaid wages, \$2,233,874.54 in
8 liquidated damages, \$580,185.40 in missed meal period premium wages, \$4,865,504.75 in missed
9 rest break premium wages, \$96,198.30 in unreimbursed expenses, \$1,234,950.00 for wage
10 statement penalties, \$7,879,398.70 for waiting time penalties, and \$25,927,900.00 for civil
11 penalties under PAGA. Plaintiffs calculated the damages based on the number of workweeks and
12 pay periods provided by Defendants, Plaintiffs’ reports, and the sample data. *Id.*

13 However, based on the difficulties of proof, the Defendants’ defenses, and the other
14 attendant risks Plaintiffs identify, Plaintiffs estimate the likely awards at trial should Plaintiffs
15 prevail to be the following amounts:

- 16 a. Unpaid wages and liquidated damages with interest in the amount of
17 \$1,116,937.28;
- 18 b. Meal period premium wages with interest in the amount of \$145,046.35;
- 19 c. Rest period premium wages with interest in the amount of \$1,216,376.19;
- 20 d. Unreimbursed expenses with interest in the amount of \$24,049.58;
- 21 e. Statutory pay stub penalties in the amount of \$617,475.00;
- 22 f. Waiting time penalties in the amount of \$3,939,699.35; and
- 23 g. Civil penalties in the amount of \$1,296,395.00.

24 The total of these amounts is \$8,355,978.75. DS, ¶ 50.

25 Plaintiffs also considered the possibility that Defendants could launch a *Pick Up Stix*
26 campaign and pursue individual release agreements from the Class Members. Defendants also
27 represented that they had interviewed all of Defendants’ current employees regarding Plaintiffs’
28 claims, all of whom would provide declarations, under penalty of perjury, that were favorable to



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1 Defendants with respect to the relevant factual issues at issue in Plaintiffs’ action. Plaintiffs’
2 Counsel applied discounts to the maximum possible exposure to account for all other risks
3 discussed below. While it is difficult to assign anything but crudely-determined percentages of
4 risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude
5 recovery for such employees is substantial and alone justifies a significant discount because
6 Defendants would likely by trial have gathered releases from the majority of the Class Members.
7 A settlement for approximately 8.08% of the potential recovery is a proportion substantially in
8 excess of recovery proportions sanctioned by existing case law.³ *Id.*

9 Plaintiffs are aware of only two significant awards under the PAGA in a contested
10 proceeding, both issued by federal district courts.⁴ DS, ¶ 66. PAGA penalty awards are often small
11

12
13 ³ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
14 (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to
15 be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance,*
16 *Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the
17 proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*,
18 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery
19 of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d
20 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum
21 potential recovery asserted by either party.”).

22 ⁴ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
23 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were
24 \$18,695,692.58. In this regard, the district court stated,

25 The plain language of PAGA provides that “a court may award a lesser amount than the
26 maximum civil penalty amount specified by this part if, *based on the facts and*
27 *circumstances of the particular case*, to do otherwise would result in an award that is
28 unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code s 2699(e)(2) (emphasis
added). The relationship between the amount of total damages and the amount of
maximum PAGA penalties is certainly a “circumstance” of the case under the term's
ordinary meaning. The weight given to that circumstance is greater in this case because
Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs'
individual claims except for one. As a general matter, it would be excessively punitive
for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed
the damages caused by that injury or set of injuries.

Id., fn. 9. The district court further stated, “Virgin “has not presented any evidence that the full
penalty would be excessive in relation to its ability to pay,” the weight of this factor is lessened.”
Id.



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1 even for egregious, intentional violations of the Labor Code.⁵ *Id.* For instance, on October 24,
2 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very
3 experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company,*
4 *Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.* (2018) 30
5 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA
6 penalty of only \$5 per pay period for the Defendants' meal period violations. A similar result
7 could occur here. *Id.*

8 Plaintiffs' initial estimates do not realistically account for the risks outlined below or the
9 risk that a class will not be certified. *Id.* Therefore, Plaintiffs believe a class settlement for
10 \$675,000.00 is fair and reasonable. *Id.*

11 **C. The Settlement Satisfies the Kullar Factors for Approval**

12 The *Kullar* case sets forth several factors a court should consider in determining whether
13 to approve a class settlement. These factors include: (1) the strength of plaintiff's case; (2) the
14 risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class
15 action status through trial; (4) the amount offered in settlement; (5) the extent of discovery
16 completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence
17 of a governmental participant; and (8) the reaction of the class members to the proposed
18 settlement. 168 Cal.App.4th at 128. As demonstrated herein, the Settlement satisfies each of these
19 factors.

20 **1. Evaluation of Plaintiffs' Case**

21 **a. Risks Associated With the Arbitration Agreements**

22 The arbitration agreements entered into between Defendants on the one hand, and the
23 Class Members, on the other, present a significant risk to the success of Plaintiffs' class action
24 litigation. DS ¶ 53. According to Defendants, the majority of the Class entered into arbitration

25 In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
26 awarded approximately \$102 million in damages, primarily based on the Defendants' failures to
27 comply with the requirements of California Labor Code section 226.

28 ⁵ In 2012, Plaintiff's Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court
case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The
plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the
Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under
the PAGA.



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1 agreements with Defendants. Defendants estimate that approximately 2,628 of the approximate
2 class members signed arbitration agreements. *Id.* As the arbitration agreements in question restrict
3 potential litigants from bringing class actions against Defendants, Plaintiffs would be effectively
4 barred from pursuing claims on behalf of the Class in Court. *Id.* Thus, there is a significant risk
5 the Court could determine that those Class Members who have not entered into arbitration
6 agreements with Defendants do not constitute a sufficiently numerous class to justify class action
7 treatment. As such, by continuing to trial on class-wide claims, Plaintiffs would run the high risk
8 of suffering defeat due to the existence of the arbitration agreement. Moreover, the arbitration
9 agreements would pose danger to any class certification motion brought by Plaintiffs. Because
10 different defenses would apply to some Class Members and not others – i.e., the existence of
11 signed arbitration agreements – there is a risk that the Court could determine that Plaintiffs’ claims
12 present too many individualized inquiries to justify class certification. *Id.*

13 **b. Risks Associated with Defendants’ Financial Condition**

14 Defendants’ financial condition was the key factor in reaching this Settlement. DS, ¶ 54.
15 Due to Defendants’ financial condition, even if Plaintiffs prevailed on all claims at trial, they may
16 never recover the damages due to the risk of insolvency. A very large class action judgment would
17 almost certainly put the company out of business and/or would interfere with the company's
18 ability to carry out its contractual obligations. *Id.* In short, the “poor financial health of [the
19 defendant will] seriously increase [] the chance that Plaintiffs would be left with nothing if they
20 continued to litigate their claims.” *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
21 1376 (the financial condition of defendant predominated in assessing the reasonableness of
22 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
23 concerning Defendants’ financial stability “strongly supports the reasonableness of the
24 settlement”); *Laguna v. Coverall N. Am., Inc.* (9th Cir. 2014) 2014 U.S. App. LEXIS 10259 at
25 *11 (finding potential insolvency to be additional risk that favors approval of a class action
26 settlement). Accordingly, Defendants’ financial distress supports this settlement. *Id.*

27 **c. Risks Associated with the Unpaid Wages Claim**

28 There is a risk that Plaintiffs’ recovery for unpaid wages would be extremely limited at
best, largely because Defendants’ written policies throughout the relevant time period prohibited



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1 off-the-clock work. DS, ¶ 55. Off-the-clock claims are difficult where a defendant requires in its
2 written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation*
3 *Hospital* (2014) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to
4 be compensable). *Id.* In their written employment policies, Defendants mandate that employees
5 must record all time worked accurately on their time records and strictly prohibit employees from
6 performing any work off-the-clock. DS, ¶ 55. Moreover, while Defendants dispute that off-the-
7 clock work occurred, they contends that any time spent off the clock was *de minimis*. The
8 California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested
9 that irregular and minute periods of time may still be subject to a *de minimis* defense even if
10 compensable. (Stating that “We do not decide whether there are circumstances where
11 compensable time is so minute or irregular that it is unreasonable to expect the time to be
12 recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here
13 because the time spent off the clock were minute and insignificant. Accordingly, a large award of
14 penalties seems unlikely with respect to this claim. *Id.*

15 The difficulty inherent in proving that off-the-clock work occurred poses a significant
16 hurdle to Plaintiffs. Plaintiffs will rely on declarations and witness statements to prove this claim.
17 Generally, a court will not certify a class unless it can determine an appropriate classwide
18 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiffs
19 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given
20 the lack of records indicating when such off-the-clock work may have taken place. Individualized
21 inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual
22 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant
23 risk that the Court would consider this evidentiary showing insufficient as a classwide
24 methodology. DS, ¶ 56.

25 **d. Risks Associated with the Meal Period Claims**

26 There are risks to Plaintiffs’ meal period claim. DS, ¶ 57. Defendants contend that, to
27 establish a violation for missed meal periods, a plaintiff must do more than show that a meal break
28 was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a



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1 “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal
2 breaks and ensure no work thereafter is performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must
3 show the employer impeded, discouraged, or prohibited the employee from taking a proper break,
4 or otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard
5 to the meal break claim is the reason that a particular employee may have failed to take a meal
6 break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

7 Defendants contend they did not impede or discourage Plaintiffs, or any other employees,
8 from taking their meal or rest periods. DS, ¶ 58. Defendants’ policies mandate that employees
9 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
10 of their meal breaks each day on their time records. *Id.* The time records that comprise the random
11 sample Defendants produced to Plaintiffs for purposes of mediation show that meal periods were
12 taken the vast majority of the time. *Id.* Of the time records that show a late, short or no lunch,
13 individualized evidence may be necessary to determine whether they occurred due to conduct of
14 the Defendants or each of the employees concerned. Accordingly, there is a significant risk that
15 the value of Plaintiffs’ meal period claim would be substantially reduced at trial. *Id.*

16 **e. Risks Associated with the Rest Break Claims**

17 There are risks to Plaintiffs’ rest period claim. DS, ¶ 59. Employers are not required to
18 record rest periods and such periods are paid. *Id.* Defendants contend they provided non-exempt
19 employees the opportunity to take rest periods in accordance with California law. Further,
20 Defendants’ written policies on meal and rest periods are consistent with the Wage Order. *Id.*
21 Thus, unlike meal periods, where there are often records showing whether an employee clocked
22 out or not, there is no such evidence to prove a missed rest period or that the employer refused to
23 authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.*
24 Plaintiffs will depend on sample witness testimony and surveys to prove the claims. *Id.* While a
25 victory with such evidence is certainly possible, relevant caselaw makes such claims risky from
26 a trial management and due process perspective. *Id.*, *See Duran v. U.S. Bank National Assn.*,
27 (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist to support class
28 certification, it may be possible to manage individual issues through the use of surveys and



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1 statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast*
2 *Corporation v. Behrend* (2013) 133 S.Ct. 1426.

3 **f. Risks Associated with the Failure to Indemnify Claim**

4 There is a risk that the Court may consider Plaintiffs’ claims as to Defendants’ alleged
5 failure to indemnify for business expenses to be individual in nature and thus decline to certify
6 the class. DS, ¶ 60. Plaintiffs allege that Defendants required Plaintiffs and the Class Members
7 to use their personal items including cellular phones, computers and other electronic devices,
8 vehicles, and tools, and failed to indemnify them for these business expenses. *Id.* Defendants
9 presented evidence that they had supplied its employees with tools, equipment, and other supplies
10 and had an expense reimbursement policy. As such, there is a risk that the Court may consider
11 Plaintiffs’ claims to be individual in nature and unfit for class wide resolution. *Id.*

12 **g. Risks Associated with the Statutory Wage Statement Penalty**
13 **Claims**

14 Plaintiffs also assert claims for wage statement violations, untimely wage violations, and
15 PAGA penalties. Under Labor Code section 226, wage statements must include various
16 information, including the applicable rates of pay, corresponding hours worked, and gross pay.
DS, ¶ 61.

17 Here, Plaintiffs’ wage statement claim has the same underlying risks as the above claims,
18 as it is derivative of them. *Id.* On their face, the wage statements issued by Defendants comply
19 with the requirements of Labor Code § 226. DS, ¶ 61.

20 **h. Risks Associated with the Waiting Time Penalty Claims.**

21 Without proof willful behavior, Plaintiffs will be unable to recover these penalties.

22 **i. Risks Associated With the PAGA Claim**

23 Regarding PAGA, a court has discretion to award a lesser amount than the maximum
24 penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
25 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed
26 valid defenses to the Labor Code claims underlying Plaintiffs’ PAGA allegations. Thus, the
27 PAGA claims likewise face significant uncertainty. DS, ¶ 63. There is a risk that the Court would
28 consider the maximum civil penalty available to be confiscatory. This is particularly the case
considering Defendants’ financial condition. *Id.* Moreover, the current COVID-19 pandemic



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1 could motivate the Court to further reduce the penalty award to avoid what it may consider a
2 confiscatory taking. *Id.*

3 This uncertainty increases Plaintiffs' risk of pursuing the PAGA claims and required a
4 significant discount for settlement purposes. DS, ¶ 65. For mediation purposes, Plaintiff's counsel
5 estimated a maximum possible exposure of approximately \$35,042,248.70 in civil penalties. This
6 estimate did not take into account any of the risks discussed above and assumed a violation for
7 every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay
8 period for the same alleged violations of different Labor Code provisions and derivative
9 violations. *Id.* Although two federal district court decisions held that "stacking" PAGA penalties
10 in this fashion may be appropriate to determine the amount in controversy for purposes of removal
11 jurisdiction, Plaintiffs' counsel is not aware of any California state courts awarding plaintiffs
12 multiple PAGA penalties for the same violation for the same pay period under different Labor
13 Code provisions. *Id.* This may be because the PAGA does not provide for what many employers
14 characterize as claim splitting and not merely stacking. *Id.*

15 **i. Risks Associated With A Pick-Up Stix Campaign**

16 An employer enjoys the right to settle a putative class member's disputed wage claims
17 individually, without the consent or involvement of class counsel. DS, ¶ 68 (See *Chindarah v.*
18 *Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* As discussed above, Defendants may launch
19 a "pick off" settlement campaign to pursue individual release agreements from the Class
20 Members, thereby potentially narrowing the size of the Settlement Class – 5,500 members - until
21 it is no longer numerous enough for class certification. *Id.* Plaintiffs, then, may not have sufficient
22 number of employees to represent. This led to a significant reduction of claim value in settlement
23 negotiations. *Id.*

24 While the evidence gathered through Plaintiffs' discovery supports the merits of the
25 claims asserted in this lawsuit, Plaintiffs and their counsel recognize that continued litigation
26 presents significant risks that support a downward departure from Defendants' estimated liability
27 exposure. DS, ¶ 69. In view of the risks, the Settlement reflects Plaintiffs' estimate of the total
28 amount of damages, monetary penalties or other relief that the Class could reasonably expect to



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1 be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.*
2 It also represents a fair, adequate, and reasonable compromise amount for these claims and
3 warrants preliminary approval. *Id.*, *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
4 1376 (the financial condition of defendant predominated in assessing the reasonableness of
5 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
6 concerning Defendants’ financial stability “strongly supports the reasonableness of the
7 settlement”); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014
8 WL 2465049, * 3.

9 **2. Allocation of the PAGA Payment**

10 The settlement of PAGA penalties in the sum of \$24,000.00, of which 75% (\$18,000.00)
11 will be paid to the LWDA and 25% (\$6,000.00) will be distributed to the Class, is reasonable and
12 appropriate under the circumstances. DS, ¶ 70. The Parties negotiated a good faith amount for
13 PAGA Penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA
14 was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements
15 “negotiate[] a good faith amount” for PAGA penalties and “there is no indication that this amount
16 was the result of self-interest at the expense of other Class Members,” such amounts are generally
17 considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844
18 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good
19 faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted
20 because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary,
21 and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming
22 trial court’s award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The
23 amount to be paid to the LWDA comports with PAGA settlement amounts approved by other
24 courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL
25 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund);
26 *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA
27 payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v.*
28 *Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA



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1 settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589
2 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also
3 approved settlements for \$20,000 or less. See, e.g., *Hicks v. Toys 'R' Us—Delaware, Inc.*, (C.D.
4 Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in a case
5 involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012)
6 2012 WL 5941801 at *14 (approving PAGA penalties of \$10,000 as part of \$2.5 million
7 settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3
8 (approving PAGA payment of \$10,000 as part of \$3.7 million common-fund settlement). *Id.*

9 **3. Presence of Governmental Participant**

10 As required under Labor Code section 2699(l)(2), Plaintiffs will provide notice of this
11 settlement to the LWDA with the filing and service of this motion. DS, ¶ 119, Ex. 32.

12 **4. Reaction of Class Members to Proposed Settlement**

13 If the settlement is preliminarily approved, Class Members will be provided with the
14 Notice Packet (attached as Exhibits A through D to the Settlement) and an opportunity to object.
15 DS, ¶ 91. The parties' proposed notice fully complies with California Rules of Court 3.766(d)
16 and 3.769(f) and will allow Class Members to make informed responses to the proposed
17 settlement. *Id.*

18 **VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY**
19 **COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS**
20 **MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY**
21 **COMPARED TO OTHER CLASS MEMBERS**

22 The Individual Settlement Payments will be paid to each Class Member based on his or
23 her eligible Work Weeks compared to the total Work Weeks. DS, ¶ 88. Because this method
24 compensates Class Members based on the extent of their potential injuries, in that Class Members
25 who worked for Defendants longer would have been subject to more alleged violations, it is fair,
26 adequate, and reasonable. *Id.*

27 Defendants estimate 199,510 Work Weeks for the Class Period. So, each Work Week has
28 a value of approximately \$1.56 (\$311,000.00 Net Settlement Amount / Defendants estimate Work
Weeks = \$1.56). Plaintiff Mojaddidi had 155 Work Weeks during the Class Period. Based on this,
it is anticipated that Plaintiff Naomi Mojaddidi will receive an Individual Class Payment of



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1 approximately \$241.80 as a participating Class Member (155 Work Weeks x \$1.56 = \$241.80)
2 while the average estimated Individual Class Payment to participating Class Members will be
3 approximately \$56.55. Some Class Members – those who worked more Work Weeks during the
4 Class Period - will receive more, and some less. The highest possible Individual Class Payment
5 to a participating Class Member (i.e., to those who qualify for all Work Weeks in the Class Period)
6 will be approximately \$614.71. The lowest possible Individual Class Payment to a participating
7 Class Member (i.e., to those who qualify for only one Work Week in the Class Period) will be
8 approximately \$1.56. *See* DS Decl., ¶ 88.

9 It is anticipated that the average Aggrieved Employee Individual PAGA Payment will
10 be \$1.76. *Id.* Plaintiff Mojaddidi's Individual PAGA Payment, her individual share of 25% of the
11 PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the
12 Settlement, each Aggrieved Employee will receive a *pro rata* distribution of 25% of the PAGA
13 Penalties proportionate to the number of paychecks he or she had with Defendants during the
14 PAGA Period, compared to the total of all paychecks of all Aggrieved Employees during the
15 PAGA Period, as reflected by Defendants' records. Defendants estimate that there are 71,110
16 Aggrieved Employee paychecks for the PAGA Period. So, each Aggrieved Employee
17 paycheck from the PAGA Period has a value of approximately \$0.08 (25% of \$24,000.00 in
18 PAGA Penalties / 71,110 Aggrieved Employee paychecks = \$0.08). It is anticipated that Plaintiff
19 Naomi Mojaddidi will receive an Individual PAGA Payment of approximately \$2.67 as an
20 Aggrieved Employee (32 paychecks during the PAGA Period x \$0.08 paycheck value = \$2.67)
21 while the average estimated Individual PAGA Payment to an Aggrieved Employee will be
22 approximately \$1.76 (\$6,000.00, 25% of PAGA Penalties / 3,400 Aggrieved Employee paychecks
23 during the PAGA Period = \$1.76 Individual PAGA Payment). Some Aggrieved Employees –
24 those who had more paychecks during the PAGA Period - will receive more, and some less. The
25 highest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify
26 for all paychecks in the PAGA Period) will be approximately \$13.17. The lowest possible
27 Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for only one
28 paycheck in the PAGA Period) will be approximately \$0.08. *See* DS Decl., ¶ 90.



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1 **VII. ALLOCATION FOR CLASS COUNSEL’S FEE AWARD AND ATTORNEYS’**
2 **FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE**

3 The Settlement states Class Counsel may seek attorneys’ fees of \$225,000.00 (one-third
4 of the GSA) and up to \$35,000.00 for actual reasonable litigation costs and expenses incurred in
5 prosecuting the Action. Settlement § 3.1.C. These amounts are reasonable, given the facts and
6 circumstances of the case. DS, ¶¶ 71-73.

7 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
8 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
9 *Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the “experienced
10 trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum*
11 *v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should
12 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
13 incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Cal. 5th 480, 503 (citing *Lealao, supra*, 82
14 Cal.App.4th at p. 48-49). The Supreme Court has recently approved fees equal to one-third (1/3)
15 of the common fund. *Laffitte, supra*, 1 Cal. 5th 480. Many courts have similarly approved fee
16 awards equal to or greater than the percentage requested here. *See, e.g., In re Pacific Enterprises*
17 *(9th Cir. 1995) 47 F.3d 373, 379* (award of 33% of the common fund); *In re Activision* (N.D.
18 Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re Ampicillin Antitrust*
19 *Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

20 The amount of fees and costs requested are commensurate with (1) the risk Class Counsel
21 took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the
22 skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the
23 value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned
24 down to devote time to this matter. DS, ¶ 72. Class Counsel interviewed and obtained information
25 from putative class members, met and conferred with Defendants’ counsel on numerous
26 occasions, reviewed and analyzed hundreds of pages of data and documents provided by
27 Defendants and obtained through other sources, researched applicable law, and provided
28 estimates of “damages” for purposes of settlement discussions, among other tasks. *Id.*

Class Counsel have borne all the risks and costs of litigation and will receive no



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1 compensation until recovery is obtained. DS, ¶ 73. Class Counsel are well-experienced in wage-
2 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*
3 Considering the amount of the attorney fees requested, the work performed, and the risks incurred,
4 the requested fees and costs are reasonable and should be awarded. *Id.*

5 **VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO EACH PLAINTIFF**
6 **SHOULD BE PRELIMINARILY APPROVED BECAUSE IT IS FAIR,**
7 **ADEQUATE, AND REASONABLE**

8 Courts routinely approve incentive awards to compensate named plaintiffs for the services
9 they provide and the risks they incur during class action litigation, often in much higher amounts
10 than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
11 (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van*
12 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
13 enhancement award). The Settlement provides that each Plaintiff may seek a Class Representative
14 Service Payment of \$5,000.00. This amount is entirely reasonable given each Plaintiff’s efforts
15 in this action and the risks she/he undertook on behalf of Class Members. DS, ¶ 75; Declaration
16 of Naomi Mojaddidi (“Plaintiff decl.”) and Declaration of Kia Spurney (“Plaintiff decl.”),
17 generally. Plaintiffs have devoted many hours advancing the interests of the Settlement Class.
18 Plaintiffs have done this by, among other things, retaining experienced counsel, providing them
19 with information about their work history with Defendants and Defendants’ policies and practices
20 with respect to the wage and hour claims at issue, participating in mediation, and being actively
21 involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In
22 doing this, Plaintiffs have been exposed to significant risks, including the risk of an order to pay
23 Defendants’ attorneys’ fees and costs if this action had been unsuccessful (*See* Labor Code §§
24 218.5-218.6). The efforts and risks that each Plaintiff undertook on behalf of the Settlement Class
25 shows that the proposed Class Representative Service Payment is fair, adequate, and reasonable,
26 and thus warrants preliminary approval. DS, ¶ 77; Plaintiffs’ decls., generally.

27 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE**
28 **PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE,**
AND REASONABLE

With regard to the settlement administration costs (“Administrator Expenses”) provision,



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1 it is reasonable. Before agreeing to ILYM Group, Inc. and its bid of \$50,250.00, the Parties sought
2 and reviewed bids from other reputable third-party administrators which provided higher bids.
3 DS, ¶ 112, Exs. 29, 30, and 31. Thus, the settlement administration costs provision should be
4 given preliminary approval.

5 **X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN**
6 **SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO**
7 **GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO**
8 **EXERCISE THEIR RIGHTS**

9 This Court should approve the proposed plans for giving notice to the Settlement Class
10 and administering the Settlement. The standard for determining the adequacy of notice is whether
11 the notice has “a reasonable chance of reaching a substantial percentage of the class members.”
12 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple
13 measures to ensure that as many Class Members as practicable receive actual notice of the
14 Settlement and have enough time to exercise their rights. The Settlement requires distribution of
15 the Notice by First Class U.S. mail only. Settlement, ¶ 8.4.2. Although there are current employee
16 Class Members, it is uncertain whether Defendants’ records of their contact information include
17 email addresses and Class Members, who perform all of their work away from a desk, are not in
18 a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable.
19 DS, ¶ 99.

20 With respect to its content, “[The] notice given to the class must fairly apprise the class
21 members of the terms of the proposed compromise and of the options open to dissenting class
22 members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.
23 The purpose of the notice in class settlement context is to give class members sufficient
24 information to decide whether they should accept the benefits offered, opt out and pursue their
25 own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides
26 Class Members with all pertinent information that they need to fully evaluate their options and
27 exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among
28 other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how
Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the
Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how



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1 payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the
2 individual Settlement Class Member's estimated payment. Additionally, the Class Notice will
3 include the number of Work Weeks a Class Member had during the Class Period. Accordingly,
4 the Notice should be approved because it describes the Settlement with sufficient clarity and
5 specificity to explain to Class Members what this action is about, their rights under the Settlement,
6 and how to exercise those rights. DS, ¶ 99.

7 **XI. CONCLUSION**

8 For the reasons stated above, this Court should grant Plaintiffs' Motion in its entirety and
9 adopt the proposed order submitted concurrently herewith.

10 Respectfully submitted,

11
12 THE SPIVAK LAW FIRM

13
14 Dated: March 11, 2026

By:



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18
19 BIBIYAN LAW GROUP, P.C.

20
21 Dated: March 11, 2026

By: /s/ Vedang J. Patel (Authorized on 3/11/26)

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