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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding Special Title (Rule 3.550)

Marugame Udon Wage and Hour Cases

Included actions:

Lance Linden v. Marugame Udon USA, LLC

Nereyda Rodriguez v. Marugame Udon USA, LLC

Alice Turner v. Marugame Udon USA, LLC

JCCP No.: 5146

Los Angeles County Superior Court  
Case No. 20STCV00728

Orange County Superior Court  
Case No. 30-2020-01127949

Orange County Superior Court  
Case No. 30-2020-01148544

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Date: October 11, 2022  
Time: 10:00 a.m.  
Courtroom: SSC - Dept. 9  
Judge: Hon. Yvette M. Palazuelos

Action Filed: January 8, 2020  
Trial Date: Not Set

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on October 11, 2021, at 10:00 a.m., or as soon thereafter as the  
3 matter may be heard, in Department SSC-9 of the above-captioned Court, located at 312 North Spring  
4 Street, Los Angeles, California 90012, Plaintiffs LANCE LINDEN, NEREYDA RODRIGUEZ and  
5 ALICE TURNER (“Plaintiffs”) will and hereby do move this Court for an order:

- 6 1. Granting class certification of the Settlement Class, solely for settlement purposes  
7 pursuant to Code of Civil Procedure § 382;
- 8 2. Preliminarily approving the Joint Stipulation Of Class Action And Representative  
9 Action Settlement (“Settlement” or “Agreement”);
- 10 3. Appointing counsel for Plaintiffs, LAWYERS FOR JUSTICE, PC and MOON &  
11 YANG, APC, as Class Counsel;
- 12 4. Appointing Plaintiffs as the Class Representatives;
- 13 5. Approving the use of the proposed notice procedure and related notice form;
- 14 6. Approving Phoenix Settlement Administrators, as the third-party administrator;
- 15 7. Directing that notice be mailed to the Settlement Class; and,
- 16 8. Scheduling a hearing date for the motion for final approval of class action  
17 settlement and awards of attorneys’ fees and costs.

18 Good cause exists to grant this Motion because:

- 19 1. The Class meets all of the requirements for class certification for settlement  
20 purposes under Code of Civil Procedure § 382;
- 21 2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the  
22 disputed wage and hour claims asserted by Plaintiffs;
- 23 3. Plaintiffs and Class Counsel are adequate to represent the Class;
- 24 4. The proposed notice procedures and related forms comply with California Rules of  
25 Court 3.766(d) and (e), adequately apprise Class Members of their rights, and fully comport  
26 with due process; and
- 27 5. Based on the foregoing, notice should be directed to the Class Members and a final  
28 fairness hearing should be scheduled (Plaintiffs propose 145 days after preliminary approval is

1 granted, or a date thereafter convenient to the Court).

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

5 **NOTE:** Pursuant to Rule 3.764(c)(2) of the California Rules of Court, this Motion, which  
6 includes a request for class certification as just one of the issues that must be discussed in connection  
7 with the relief requested, may be up to 20 pages in length, not 15 pages for most motions.

8 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points  
9 and Authorities, the Declarations of H. Scott Leviant and Edwin Aiwarzian, and the Declarations of  
10 Plaintiffs in support thereof, all papers and pleadings on file with the Court in this action, all matters  
11 judicially noticeable, and on such oral and documentary evidence as may be presented in connection with  
12 the hearing on the Motion.

13 Respectfully submitted,

14 Dated: July 21, 2022

**MOON & YANG, APC**

15  
16 By: \_\_\_\_\_

Kane Moon  
H. Scott Leviant  
Mariam Ghazaryan

17  
18 Attorneys for Plaintiff LANCE LINDEN and the  
19 Settlement Class

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiffs respectfully request that  
3 this Court preliminarily approve the proposed class action settlement set forth in the Joint Stipulation Of  
4 Class Action And Representative Action Settlement (“Settlement” or “Agreement”) with Defendant  
5 MARUGAME UDON USA, LLC (“MARUGAME” or “Defendant”).

6 After the exchange of voluminous documents and data, and an arm’s-length mediation session  
7 with experienced third-party mediator Steven Rottman, Plaintiffs and Defendant (collectively referred to  
8 herein as the “Parties”) reached a proposed class action settlement with a gross settlement amount  
9 (“GSA”) of **\$700,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class  
10 consisting of approximately 1,284 members. Plaintiffs believe that this settlement is a fair, adequate, and  
11 reasonable compromise of the disputed claims for alleged unpaid wage and hour violations and penalties  
12 asserted in this case.

13 Plaintiffs now submit this Motion for Preliminary Approval of Class Action Settlement, along  
14 with the Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], at Exhibit 1  
15 thereto). For the Court’s convenience, below is a summary of the key provisions of the Settlement.  
16

17 **II. THE MAJOR TERMS OF SETTLEMENT AND APPROVAL CHECKLIST ITEMS**

18 The key provisions of the proposed Settlement are summarized at Paragraph 11 of the  
19 Declaration of H. Scott Leviant.  
20

21 **III. FACTUAL AND PROCEDURAL BACKGROUND**

22 **A. Plaintiffs’ Claims**

23 On January 8, 2020, Plaintiff Lance Linden filed a class action alleging various wage and hour  
24 claims. On March 11, 2020, Plaintiff Lance Linden filed First Amended Complaint pursuant to Labor  
25 Code Section 2699.3(2)(c) adding the Eighth Cause of Action as a representative action under the  
26 California Private Attorney General Act (“PAGA”) to recover civil penalties that are owed to Plaintiff,  
27 the State of California, and past and present employees. Plaintiff Nereyda Rodriguez filed her class  
28 action complaint for damages on January 30, 2020 in the Orange County Superior Court. She filed her

1 First Amended Complaint on February 28, 2020. Plaintiff Alice Turner filed her Complaint under PAGA  
2 on July 14, 2020 in the Orange County Superior Court. (Leviant Decl., ¶ 4.)

3 On October 15, 2020, Defendant filed a petition for coordination and application of stay of the  
4 following three actions: *Lance Linden v. Marugame Udon USA, LLC*, pending in Los Angeles County  
5 Superior Court, Case No. 20STCV00728; *Nereyda Rodriguez v. Marugame Udon USA, LLC*, pending in  
6 Orange County Superior Court, Case No. 30-2020-01127949; and *Alice Turner v. Marugame Udon*  
7 *USA, LLC*, pending in Orange County Superior Court, Case No. 30-2020-01148544. On March 18,  
8 2021, the Court granted Defendant's petition to coordinate the above mentioned three cases (the  
9 "Action"). (Leviant Decl., ¶ 5.) On September 10, 2021, Plaintiffs filed their Second Amended  
10 Consolidated Class and Representative Action Complaint. (*Ibid.*)

11 Thereafter, the Parties agreed to mediate the matter. (Leviant Decl., ¶ 5.).

12 **B. Pre-Mediation Data Production and Analysis**

13 The Parties have conducted a thorough investigation of the facts and law. Such discovery and  
14 investigation have included, inter alia, the exchange of informal data and discoverable information in  
15 preparation for the mediation session. (Leviant Decl., ¶ 6.) The Parties have analyzed payroll and other  
16 data pertaining to Plaintiffs and the Class during the relevant Settlement Period, including but not limited  
17 to the numbers of former and current members of each purported subclass within the Class, average  
18 workweeks, and average rate of hourly pay. (*Id.*) In addition, Defendant also provided documents  
19 reflecting its wage and hour policies and practices during the Settlement Period and information  
20 regarding the total number of current and former employees in the Class. (*Id.*)

21 After reviewing documents regarding Defendant's wage and hour policies and practices and  
22 other information obtained during the informal exchange of discovery, Class Counsel were able to  
23 evaluate the probability of class certification, success on the merits, and the reasonably obtainable  
24 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a  
25 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the  
26 claims and defenses asserted in the litigation. (Leviant Decl., at ¶ 7.)

27 **C. Settlement**

28 On April 28, 2022, the Parties mediated before Steven Rottman, Esq., who is a highly

1 experienced and well-regarded mediator for wage and hour class action litigation. (Leviant Decl., ¶ 8.)  
2 At the mediation, the Parties discussed at length the burdens and risks of continuing with the litigation as  
3 well as the merits of the claims and defenses. (*Id.*) The Parties agreed to the basic terms of a proposed  
4 settlement and ultimately signed a long form settlement agreement (the Agreement). (*Id.*)

5 Plaintiffs and Class Counsel are aware of the burdens of proof necessary to establish liability for  
6 the claims asserted in the Action, both generally and in response to Defendant’s defenses thereto.  
7 (Leviant Decl., ¶ 9.) Plaintiffs and Class Counsel have also taken into account Defendant’s agreement to  
8 enter into a Settlement that confers substantial relief upon the Class.

9 Based on the foregoing, Plaintiffs and Class Counsel have determined that the Settlement set  
10 forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the  
11 Class. (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the Parties stipulate to class  
12 certification. (*Id.*) If this Settlement is not approved by the Court for any reason, Defendant reserves its  
13 rights to contest class certification. (*Id.*) This Settlement, if approved by the Court, will result in the  
14 termination with prejudice of the litigation through the entry of the Judgment and the release of all  
15 Released Claims for all Class Members, including all within the class definition who have not elected to  
16 exclude themselves from the Class. (*Id.*)

#### 17 18 **IV. CLASS DEFINITION**

19 The Class is defined as follows:

20 All current and former non-exempt employees of Defendant within the State of  
21 California at any time during the Class Period (the “Class Period” is January 8, 2016  
22 through July 31, 2022, or the date upon which the Court grants preliminary approval of  
this Settlement, whichever is sooner). (Settlement, ¶¶ 3-4.)

23 (Leviant Decl., ¶ 35 and Exhibit 1.)  
24

#### 25 **V. DISCUSSION**

##### 26 **A. The Court Should Conditionally Certify the Class Because It Meets All the** 27 **Requirements for Certification for Settlement Purposes Under CCP § 382**

28 Under Code of Civil Procedure § 382, class certification is warranted so long as there is a

1 numerous and ascertainable class with a well-defined community of interest among its members and that  
2 a “class action proceeding is superior to other means for a fair and efficient adjudication of the  
3 litigation.” *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). Any  
4 doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to  
5 later modification. *Richmond v. Dart Indus. Inc.*, 29 Cal. 3d 462, 473-75 (1981). For purposes of this  
6 Settlement only, Defendant stipulated to conditional certification of the proposed class. (Settlement ¶ 52.)

7 “The certification question is ‘essentially a procedural one that does not ask whether an action is  
8 legally or factually meritorious.’” *Id.* at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-40  
9 (2000). Indeed, the certification question simply asks whether the theory of recovery advanced by the  
10 plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal.  
11 App. 4th 1286, 1298 (2010).

12 “[I]t is also well established that trial courts should use different standards to determine the  
13 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard  
14 of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal.  
15 App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). As  
16 the court noted in *Dunk*, although certification requirements are intended “to protect the interests of the  
17 non-representative class members,” that concern is “protected by the trial court’s fairness review of the  
18 settlement.” *Dunk*, 48 Cal. App. 4th at 1807 n.19. Certification of a settlement class is a regular feature  
19 of class action litigation and an approved procedure which ought to be followed in this case. *See*  
20 *Newberg on Class Actions* (3d ed. 1991) § 11.27, pp. 11-40 to 11-56; *Manual for Complex Litigation*, 2d  
21 (1993) § 30.45.

22 In view of these standards, and as shown below, the Class should be certified for purposes of  
23 settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

24 **1. The Members of the Class Are Both Objectively Ascertainable and**  
25 **Sufficiently Numerous.**

26 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of  
27 the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal. App. 3d  
28 862, 873 (1983). In this case, Plaintiffs contend all three considerations strongly favor class certification.

1 A class is ascertainable when “it is defined ‘in terms of objective characteristics and common  
2 transactional facts’ that make ‘the ultimate identification of class members possible when that  
3 identification becomes necessary.’” *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019). No set  
4 number of class members is required to maintain a class action. *Hebbard v. Colgrove*, 28 Cal. App. 3d  
5 1017, 1030 (1972). In fact, the California Supreme Court has upheld a class of as few as ten members.  
6 *Bowles v. Superior Court*, 44 Cal. 2d 574 (1955).

7 The class definition is sufficiently specific to enable the Parties, Class Members, and the Court to  
8 readily determine the parameters of the class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d  
9 605, 617 (1987) (proposed class defined as all persons nationwide subscribing to telephone service since  
10 January 1, 1981, who were charged for one or more unanswered long distance calls, deemed “plainly”  
11 ascertainable).

12 In this case, there are approximately 1,284 Class Members, all of whom may be identified by  
13 reference to Defendant’s records. In addition, to facilitate the administration of the Settlement, Defendant  
14 has agreed to share the information from its records and has already demonstrated that it can do so when  
15 providing class-wide informal discovery to Plaintiffs to facilitate settlement discussions. Accordingly, the  
16 Class is not only ascertainable, but also sufficiently numerous. (Leviant Decl., ¶ 35.)

17 **2. There Are Common Questions That Predominate Over Any Questions That**  
18 **May Be Unique to Individual Class Members.**

19 The community of interest requirement embodies three factors: (1) predominant questions of law  
20 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class  
21 representatives who can adequately represent the class. *Dunk*, 48 Cal. App. 4th at 1806; *Richmond*, 29  
22 Cal. 3d at 473-75. In this case, Plaintiffs’ claims satisfy all three factors.

23 A question of law or fact is common to the members of a class if it may be resolved through  
24 common proof. *See, Jaimez*, 181 Cal.App.4th at 1305. As for predominance, it “is a comparative  
25 concept, and ‘the necessity for class members to individually establish eligibility and damages does not  
26 mean individual fact questions predominate.’” *Sav-on*, 34 Cal. 4th at 334, quoting *Reyes v. Los Angeles*  
27 *County Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1278 (1979). Thus, “[i]ndividual issues do not render  
28 class certification inappropriate so long as such issues may effectively be managed.” *Id.* This is

1 especially so where the key difference between class members solely concerns their damages. *See id.*

2 In this case, common questions include, but are not limited to: (i.) Whether or not Defendant paid  
3 proper wages to the Class; (ii.) Whether or not Defendant provided meal periods to the Class; (iii.)  
4 Whether or not Defendant provided rest periods to the Class; (iv.) Whether or not Defendant paid  
5 compensation timely upon separation of employment to former Class Members; (v.) Whether or not  
6 waiting-time penalties are available to the Class for violation of California Labor Code § 203; (vi.)  
7 Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in  
8 violation of California Business and Professions Code §§ 17200-17208; and (vii.) Whether or not  
9 Plaintiffs and the Class are entitled to penalties pursuant to PAGA. (Leviant Decl., ¶¶ 37-38.)

10 In the Action, Plaintiffs' claims present sufficient common issues of law and fact that  
11 predominate over individual issues and warrant class certification. From their review of the  
12 documentation provided, Class Counsel determined that for purposes of these claims, Defendant's  
13 policies and practices are either identical, or sufficiently similar, to raise the same questions of liability,  
14 and applied to all Class Members. Because Class Members would have to prove the same issues of law  
15 and fact to prevail, and because their potential legal remedies are identical, it would be preferable to  
16 resolve all Class Members' claims by means of the Settlement than to require each Class Member to  
17 litigate his or her individual claims. Therefore, common questions predominate over questions that may  
18 be unique to individual Class Members, and class-wide settlement is superior to other resolution options.

### 19 **3. Plaintiffs' Claims Are Typical of Those of the Class.**

20 Typicality "requires a showing that the class representative has claims or defenses typical of the  
21 class." *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1534 (2008), citing  
22 *Fireside Bank v. Superior Court*, 40 Cal. 4th 1069, 1089 (2007), and *Sav-On*, 34 Cal. 4th at 326,  
23 approved by *Jaimez*, 181 Cal. App. 4th at 1298 and *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004  
24 (2012). To satisfy the typicality requirement, California law does not require that Plaintiffs have claims  
25 identical to the other class members. Rather, the test of typicality for a class representative is whether  
26 other members have the same or similar injury, whether the action is based on conduct which is not  
27 unique to the named plaintiffs, and whether other class members have been injured by the same course of  
28 conduct. *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007).

1 The purpose of this requirement is to ensure that the representative plaintiff has interests that are  
2 reasonably co-extensive with those of absent class members. *See id.* “The test of typicality ‘is whether  
3 other members have the same or similar injury, whether the action is based on conduct which is not  
4 unique to the named plaintiffs, and whether other class members have been injured by the same course of  
5 conduct.’” *Id.*, quoting *Schwartz v. Harp* 108 F.R.D. 279, 282 (C.D. Cal. 1985). Notably, “it has never  
6 been the law in California that the class representative must have *identical* interest with the class  
7 members.” *Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983). In light of these standards, Plaintiffs are  
8 typical of class members.

9 Here, like other Class Members, Defendant employed Plaintiffs in non-exempt positions during  
10 the Class Period, and Plaintiffs were subject to the same policies alleged to have impacted the entire  
11 class. (Leviant Decl., ¶ 36; *see also*, Plaintiffs’ Declarations.) Plaintiffs and other Class Members share  
12 the same claims stemming from Defendant’s alleged violations of the Labor Code and relevant wage  
13 order. In addition, Defendant’s main defense, namely that its policies and practices fully comply with  
14 California law, apply equally to the claims of all Class Members. Thus, Plaintiffs are typical of the Class.

#### 15 **4. Plaintiffs and Plaintiffs’ Counsel Will Adequately Represent the Class.**

16 The adequacy requirement is met where the plaintiff is represented by counsel qualified to  
17 conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to class members’  
18 interests. *McGhee v. Bank of America*, 60 Cal.App.3d 442, 451 (1976). In other words, where the  
19 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts  
20 of interest that might hinder the plaintiff’s ability to represent the class. *Id.*

21 In the Action, Plaintiffs have no conflicts of interest with other Class Members and have agreed  
22 to place Class interests above Plaintiffs’ own. (Leviant Decl., ¶ 39.) Moreover, Plaintiffs’ counsel are  
23 experienced in wage and hour class action litigation and have no conflicts of interest with absent Class  
24 Members. (Leviant Decl., ¶¶ 21-26, 39; Ghosh Decl., ¶¶ 2-6.) As such, this Court should appoint  
25 Plaintiffs as Class Representatives for the Class and appoint Plaintiffs’ Counsel as Class Counsel.

#### 26 **5. Proceeding as a Class Action is Superior to Individual Actions**

27 Under the circumstances, proceeding as a class action is a superior means of resolving this  
28 dispute, as the Class Members and the Court will derive substantial benefits. Class certification would

1 serve as the only means to deter and redress the alleged Labor Code violations. *See Linder v. Thrifty Oil*  
2 *Co.* 23 Cal. 4th at 434 (relevant considerations include the probability that each class member will come  
3 forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the  
4 class approach would actually serve to deter and redress the alleged wrongdoing). Furthermore,  
5 individual actions arising out of the same operative facts would unduly burden the courts and could result  
6 in inconsistent results, which may be avoided by class certification.

7 **6. The Proposed Class Notice Is Constitutionally Sound and Complies with**  
8 **Rule 3.766(d) and (e)**

9 Notice requirements are set forth in Rules of Court, Rule 3.766. In determining the manner of  
10 the notice, the court must consider the interests of the class, the type of relief requested, the stake of the  
11 individual class members, the cost of notifying class members, the resources of the parties, the possible  
12 prejudice to class members who do not receive notice, and the *res judicata* effect on class members.  
13 Rules of Court, Rule 3.766(e). The Notice is based upon the Court's recently published model Notice.

14 *a) The Notice Procedure Satisfies Due Process*

15 Plaintiffs request that the Court approve the proposed plan for giving notice to the Class and  
16 administering the Settlement. The notice process is set forth in the Settlement. The standard for  
17 determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a  
18 substantial percentage of the class members." *Cartt v. Sup. Ct.*, 50 Cal.App.3d 960, 974 (1975).  
19 California law vests the Court with broad discretion in fashioning an appropriate notice program. *Cartt*,  
20 50 Cal. App. 3d at 973-74. There is no statutory or due process requirement that all class members  
21 receive actual notice, but in this matter, the Class Members will receive direct mailed notice. Direct mail  
22 notice to Class Members' last known address is the best possible notice under the circumstances.  
23 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

24 As the Court of Appeal has explained, "[t]he notice given should have a reasonable chance of  
25 reaching a substantial percentage of the Class Members . . . ." *Cartt*, 50 Cal. App. 3d at 974. For class  
26 claims "for money damages or similar relief at law, notice sent by first class mail to the last known  
27 address of each member of the plaintiff class is sufficient." *Phillips Petroleum Co. v. Shutts*, 472 U.S.  
28 797, 811 (1985). Here, the proposed procedure includes safeguards, including, but not limited to,

1 searches for address changes and the re-mailing of returned notices after skiptraces. As such, the  
2 proposed procedure provides a reasonable chance that Class members will receive notice.

3 *b) The Notice is Accurate and Informative*

4 The proposed Notice of Class Action Settlement, *which is identical to the Court's recently*  
5 *published model notice aside from the inclusion of information about the FLSA claim*, should be  
6 approved for dissemination to the Class Members because its content complies with Rule of Court  
7 3.766(d) in that it contains a brief explanation of the case, including the basic contentions or denials of  
8 the Parties, detailed information about Class Members' rights to be excluded from the Settlement and  
9 object to the Settlement; a statement that the Settlement will bind all members who do not timely opt-out.  
10 Thus, the Notice also satisfies Rule of Court 3.769(f) regarding the contents of settlement notices.

11 The Notice also fulfills the requirement of neutrality in class notices. 3 NEWBERG § 8.39. It  
12 summarizes the proceedings and the terms and conditions of the proposed Settlement, in an informative  
13 and coherent manner, in compliance with the Manual for Complex Litigation ("MANUAL"), (2d Ed.  
14 1993), which states that "the notice should be accurate, objective, and understandable to Class Members .  
15 . ." MANUAL, § 30.211. It makes clear that the Settlement does not constitute an admission of liability  
16 by Defendants and recognizes that this Court has not ruled on the merits. It also states that the final  
17 settlement approval decision has yet to be made. Accordingly, the Notice complies with the standards of  
18 fairness, completeness, and neutrality required of a combined settlement-certification class notice.

19 Finally, as noted above, the Notice is based upon the recently published model notice, with the  
20 only addition to the form being the references to the settlement of FLSA claims.

21 Upon the Court's approval, the Notice of Class Action Settlement will be mailed by the  
22 Administrator to each Class Member.

23 **B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair,**  
24 **Adequate, and Reasonable Compromise of Disputed Wage Claims in View of**  
25 **Defendant's Potential Liability Exposure and the Risks of Continued Litigation**

26 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,  
27 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists  
28 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*

1 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary  
2 settlement approval, notice being given to class members, and a final fairness and approval hearing being  
3 held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed  
4 below, this Court should preliminarily approve the Settlement, allow the Parties to give notice to the  
5 Class as proposed, and schedule a final fairness and final approval hearing.

6 **1. Class Action Settlements Are Subject to Review and Approval.**

7 Any settlement of class litigation must be reviewed and approved by the presiding court. Rules  
8 of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial  
9 court and (2) a subsequent (final) review after notice has been distributed to the class members. The  
10 Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present  
11 motion seeks *preliminary approval* and the setting of a Final Approval Hearing.

12 To evaluate a settlement, the trial court must receive “basic information about the nature and  
13 magnitude of the claims in question and the basis for concluding that the consideration being paid for the  
14 release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.  
15 App. 4th 116, 133 (2008). However, the record need *not* contain an explicit statement of the maximum  
16 theoretical amount that the class could recover. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*,  
17 186 Cal. App. 4th 399, 409 (2010) (“*Kullar* does not, as Greenwell claims, require any such explicit  
18 statement of value. . .”).

19 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**  
20 **Between Experienced Counsel with the Assistance of a Highly-Qualified**  
21 **Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

22 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on  
23 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is  
24 experienced in similar litigation, and the percentage of objectors is small.<sup>1</sup> *Dunk*, 48 Cal.App.4th at 1802;  
25 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*  
26

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27 <sup>1</sup> Because the fourth prerequisite for the presumption to arise cannot be addressed until the final  
28 approval hearing, only the first three prerequisites are relevant at this preliminary stage of the settlement  
approval process.

1 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a  
2 trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g.*,  
3 *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding  
4 concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801,  
5 quoting *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

6 Relevant factors in making this determination, include, but are not limited to:

7 [T]he complexity and likely duration of further litigation, the risk of maintaining class  
8 action status through trial, the amount offered in settlement, the extent of discovery  
9 completed and the state of the proceedings, the experience and views of counsel, the  
presence of a governmental participant, and the reaction of the class members to the  
proposed settlement.

10 *Id.* These factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the factors  
11 considered to each case and give due regard to “what is otherwise a private consensual agreement  
12 between the parties.” *Id.*

13 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced  
14 counsel with the assistance of highly-regarded mediator. (Leviant Decl., ¶¶ 8-10.) With respect to the  
15 claims at issue in this case, Plaintiffs obtained data from Defendant and then carefully reviewed that  
16 information. Counsel for Plaintiffs also examined relevant policies and interviewed witnesses in detail  
17 about their work experiences and Defendant’s practices.

18 Based on the totality of that review, Plaintiffs estimated the potential exposure and then estimated  
19 risk factors to adjust the reasonable expected outcome. The investigation and discovery that Plaintiffs’  
20 counsel conducted were sufficient to provide them with enough information to intelligently evaluate the  
21 estimated exposure in this action for purposes of negotiating the Settlement in view of the risks discussed  
22 below and are also sufficient to allow this Court to do the same. *See, e.g., Wershba v. Apple Computer,*  
23 *Inc.*, 91 Cal. App. 4th 224, 245 (2001).

24 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**  
25 **of Class Members’ Claims Based on Defendant’s Estimated Liability**  
26 **Exposure Given the Risks Continued Litigation Would Entail.**

27 A settlement is not judged against what might have been recovered had a plaintiff prevailed at  
28 trial and does not have to provide 100% of damages sought to be fair and reasonable. “In the context of a

1 settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the  
2 complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91  
3 Cal.App.4th at 250. Accordingly, because settlements involve compromise, even one that provides for  
4 substantially narrower relief than would likely be obtained if the suit were successfully litigated can be  
5 reasonable given that “the public interest may indeed be served by a voluntary settlement in which each  
6 side gives ground in the interest of avoiding litigation.” *Id.*, quoting *Air Line Stewards & Stewardesses*  
7 *Ass’n, Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).

8 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that  
9 support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that  
10 Plaintiffs would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v.*  
11 *US Bank Nat’l Ass’n*, 59 Cal. 4th 1, 39 & n. 33 (2014) (“*Duran*”), citing *Dilts v. Penske Logistics, LLC*  
12 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial); (ii)  
13 the risk that Defendant’s meal and rest period policies might not ultimately support class certification or  
14 a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28 (citing Court of Appeal decisions  
15 favorable on class certification issue without expressing opinion as to ultimate viability of proposition);  
16 (iii) the risk that uncertainties pertaining to the ultimate legality of Defendant’s policies and practices  
17 could preclude class-wide awards of statutory penalties under Labor Code §§ 203 and 226(e); (iv) the  
18 risk that individual differences between Class Members could be construed as pertaining to liability and  
19 not solely to damages, *see Duran*, 59 Cal. 4th at 19; (v) the risk that any civil penalties award under the  
20 PAGA could be reduced by the Court in its discretion, *see Labor Code § 2699(e)(1)*; (vi) the risk that  
21 class treatment could be deemed improper as to one or more claims, except for settlement purposes; (vii)  
22 the risk that lengthy appellate litigation could ensue; and (viii) the risk that violation rate estimates would  
23 prove much lower than expected. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

24 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and  
25 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of  
26 course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to  
27 liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be  
28 given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are

greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the approximately 1,284 members of the Class, the average **gross** recovery is approximately **\$545** per class member, and the estimated average **net** recovery for each Class Member is approximately **\$250**. (*Id.*) Given that Defendant could challenge certification and liability, this is a significant sum to have achieved in settlement. Moreover, a Class Member who worked a greater number of weeks for Defendant will receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time during the class period. (*Id.*)

After analyzing the claims in this matter, Plaintiffs have concluded that the value of this Settlement is fair, adequate, and reasonable. (Leviant Decl., ¶ 18.) The Class Settlement Amount of **\$700,000** is about 65% of the **\$1,076,540.34** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. (*Id.*) It would be unwise to pass up this settlement opportunity.

The maximum calculated plausible exposure is **\$7,545,321.10**, *including* PAGA penalties and **no discount applied to any class claim**. (*Id.*)

- The reasonably estimated exposure for unpaid off-the-clock work over the class period was estimated to be **\$399,808.40**, but with chances of certification and proof of liability (50% and 40% respectively) for a risk-adjusted exposure of **\$79,961.68**.
- The reasonably estimated exposure for rest break violations over the class period was calculated at **\$105,623.70**, but with low chances of certification and proof of liability (25% and 25% respectively) for a risk-adjusted exposure of **\$6,601.48** (based on a missed break every pay period for 100% of the class).
- The reasonably estimated exposure for meal break violations over the class period was calculated at **\$45,568.00**, with chances of certification and liability risks (40% and 40% respectively) resulting in a risk-adjusted exposure of **\$7,290.88** (based on potential violations observed in the actual time-keeping data).
- The reasonably estimated exposure for unreimbursed expenses over the class period was estimated to be **\$41,447.50**, but with chances of certification and proof of liability (40%

and 40% respectively) for a risk-adjusted exposure of **\$6,631.60**.

- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **\$304,185.00** and **\$257,349.70**, respectively, on maximum exposures of **\$1,520,925.00** and **\$1,286,748.50**, respectively.
- Performing risk-adjusted valuations for all claims yields a total value in the range of **\$662,020.34**, excluding PAGA. (*Id.*)
- PAGA penalties were calculated as having a maximum realistic exposure of **\$4,145,200.00**, but a risk adjusted value of **\$414,520.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

The concurrently-filed Declaration of H. Scott Leviant sets forth claim valuation in additional detail. (*See*, Leviant Decl., ¶ 18.)

This result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶ 19.) Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. (Leviant Decl., ¶ 19.) Third, the certification rates in California are lower than conventional wisdom holds. *See*, H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on certification* (February 19, 2010), [www.thecomplexlitigator.com](http://www.thecomplexlitigator.com), available at <http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html>; *see also*, *Findings of the Study of California Class Action Litigation, 2000-2006*, available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement *or* as part of a contested certification motion).

Here, the estimated certification probabilities are *above* the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. (Leviant Decl., ¶ 19.) In sum, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. (*Id.*) The recovery is roughly 10% of the maximum plausible recovery (estimated to be approximately **\$7,545,310.10**, including PAGA), which falls within

the expected outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately \$551,000.10, with no risk reduction), excluding penalties and interest; the settlement is about one-third of the premium wages (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure value.<sup>2</sup> This Settlement achieves the goals of the litigation.

**4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate, and Reasonable.**

The proposed method of allocating the Settlement Fund to Class Members also is fair and reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members based on time worked by the Class Member during the Class Period, in relation to the total amount of time worked by all participating Class Members collectively during the class period. This proposed method is fair and reasonable because each Class Member's actual potential damages vary based on the number of workweeks he or she actually worked (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when a higher number of incidents occur). A Class Member who worked a greater number of weeks for Defendant will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 11, 17.)

**5. The Proposed Enhancement Payments to Plaintiffs Are Fair, Adequate, and Reasonable and Warrant Preliminary Approval.**

The proposed enhancement payments of \$7,500 to each Plaintiff are intended to recognize the substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class

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<sup>2</sup> The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser amount than the maximum civil penalty amount specified by this part...")), and, second, courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics U.S.A., Inc.*, 2015 WL 729638, at \*7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a defendant's exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).

1 action litigation, often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins.*  
2 *Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for  
3 their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D.Cal.  
4 1995) (approving a \$50,000 enhancement award). Plaintiffs contributed time to the prosecution of this  
5 matter, including assistance prior to the mediation with information and substantial time conferring with  
6 counsel over the course of this litigation and before it was filed. (Leviant Decl., ¶ 33.) The enhancement  
7 also recognizes the considerable risks Plaintiffs undertook on behalf of the Class to be personally liable  
8 for all costs incurred regardless of the success of the litigation or class certification, as well as the  
9 personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiffs  
10 sued a former employer, making future employment prospects uncertain. The accompanying  
11 Declarations confirm Plaintiffs’ involvement and support their appointment as Class Representatives.

12 **6. The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate,**  
13 **and Reasonable and Merits Preliminary Approval.**

14 The California Supreme Court removed any lingering doubt about the use of the percentage of  
15 the fund method to award attorney’s fees in California Courts:

16 We join the overwhelming majority of federal and state courts in holding that when  
17 class action litigation establishes a monetary fund for the benefit of the class members,  
18 and the trial court in its equitable powers awards class counsel a fee out of that fund, the  
19 court may determine the amount of a reasonable fee by choosing an appropriate  
20 percentage of the fund created. The recognized advantages of the percentage method—  
21 including relative ease of calculation, alignment of incentives between counsel and the  
22 class, a better approximation of market conditions in a contingency case, and the  
23 encouragement it provides counsel to seek an early settlement and avoid unnecessarily  
24 prolonging the litigation (See pt. I, *ante*; *Lealao, supra*, 82 Cal.App.4th at pp. 48–49, 97  
25 Cal.Rptr.2d 797; *Rawlings v. Prudential–Bache Properties, Inc., supra*, 9 F.3d at p.  
26 516)—convince us the percentage method is a valuable tool that should not be denied  
27 our trial courts.

28 *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).<sup>3</sup> Thus, this Court may and, as strongly  
encouraged by the California Supreme Court, *should* award attorney’s fees to Plaintiff’s counsel based

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<sup>3</sup> The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing  
doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method  
inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport  
to bar its usage generally in common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

1 upon the percentage of the fund methodology.

2         Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund or the lodestar  
3 method is used, the outcome is roughly the same: “[F]ee awards in class actions average around one-  
4 third of the recovery’ regardless of ‘whether the percentage method or the lodestar method is used.’”  
5 *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521 (2021) (quoting *Chavez v. Netflix, Inc.*, 162  
6 Cal.App.4th 43, 66, fn. 11 (2008)). This is consistent with Plaintiffs’ counsels’ experience in these types  
7 of cases. Here, Plaintiffs’ attorneys intend to request attorneys’ fees of up to \$245,000 (35% of the GSA),  
8 and costs capped at \$40,000 (which includes payment for mediation, filing fees, legal research fees, and  
9 other standard costs). (Leviant Decl., ¶ 32.) Given the efforts and risks involved, as well as the results  
10 achieved, these amounts are within the range of reasonableness and warrant *preliminary approval*.

#### 11                 **7. The Proposed Payment to the Administrator Is Fair and Reasonable**

12         In deciding whether to approve a proposed settlement, a trial court must determine if the  
13 proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In  
14 exercising this power, the overriding concern is to ensure that a proposed settlement is “fair, adequate,  
15 and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Phoenix Settlement  
16 Administrators, which was selected due to its competitive bid, estimates that administration can be  
17 performed for **\$14,000**. In counsel’s experience, based on similar wage-and-hour actions, an estimated  
18 cost of **\$14,000** is a fair and reasonable amount for administration fees and should be preliminarily  
19 approved. (Leviant Decl., ¶ 34.)

#### 20                 **8. The PAGA Allocation is Reasonable**

21         The ultimate decision as to the amount of PAGA penalties is always up to the discretion of the  
22 Court. Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee seeking recovery of a  
23 civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum  
24 civil penalty amount specified by this part if, based on the facts and circumstances of the particular case,  
25 to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

26         The PAGA allocation is reasonable because the settlement of the underlying wage and hour  
27 claims is robust and serves the deterrent purpose of the PAGA statute. *O’Connor v. Uber Technologies,*  
28 *Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members

1 as employees and substantial monetary relief, a settlement not only vindicates the rights of class  
2 members as employees, but may have a deterrent effect upon the defendant employer and other  
3 employers, an objective of PAGA.”); *see also Visceral v. Mistras Group*, 2016 WL 5907869 \*9 (N.D.  
4 Cal. 2016) (“Applying O’Connor’s sliding scale approach, settlement of the PAGA claim may be  
5 substantially reduced below its standalone settlement value without sacrificing its statutory purposes  
6 because the non PAGA settlement is relatively substantial.”)

7 In addition, there is no evidence that a court or a commissioner had informed Defendant that its  
8 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis*  
9 *v. Xerox Bus. Servs., LLC*, 2013 WL 6053831, \*7-8 (E.D. Cal. 2013) (“Under California law, courts have  
10 held that employers are not subject to heightened penalties for subsequent violations until and unless a  
11 court or commissioner notified the employer that it is in violation of the Labor Code.”) And in *Cotter*,  
12 the court found a significant reduction of the PAGA claim would be appropriate because “[t]his does not  
13 appear to be a case where a company has deliberately sought to evade the law.” *Cotter v. Lyft, Inc.*, 176  
14 5 F. Supp. 3d 930, 941 (N.D. Cal. 2016). Here, Defendant can state a strong case that, as the Court  
15 concluded in *Cotter*, its efforts to devise compliant operational policies do not indicate an organization  
16 that has deliberately sought to evade the law. This is a very significant risk factor.

17 Using class settlements as a source of analogous settlement review standards, to assess the  
18 fairness, adequacy, and reasonableness of a settlement, the court should also consider the expense,  
19 complexity and likely duration of further litigation. *Dunk*, 48 Cal. App. 4th at 1801. Here, the expense,  
20 complexity and likely duration of future litigation as it pertained to Plaintiffs’ PAGA claims was to some  
21 extent an unknown. However, what is certain is that to adequately establish the foundational violations  
22 that would support a substantial penalty award, tremendous time and expense would be invested. To  
23 adequately establish that aggrieved employees experience the alleged violations, and at what frequency,  
24 most of the aggrieved employees would need to be interviewed in a systematic fashion and their  
25 testimony cataloged in way sufficiently meaningful to permit the submission of summary evidence at  
26 trial, such as via survey. *First*, the burdensome nature of such a process would be expensive and time-  
27 consuming. *Second*, the individuals already interviewed confirmed substantial risk that the Court would  
28 either substantially reduce any penalty ultimately awarded *or* conclude that the conduct was insufficient

1 to support a penalty award. *Third*, it would be essentially impossible to formulate an objectively reliable  
2 means of summarizing testimonial experiences, other than by an extraordinarily detailed survey. And  
3 formulating such a survey would have been important, since frequency of violations would need to be  
4 established before any penalties could be recovered. At least as to claims such as meal period and rest  
5 break violations, the decisions of aggrieved employees are a major factor in assessing liability. In sum,  
6 the evidence collected to date leads Plaintiffs to conclude that, to the extent violations occurred, a fact  
7 which Defendant disputes, the violations were *not* systematic and *not* uniform across all of Defendant's  
8 employees who worked during the PAGA period. Alternatively, direct testimony would have been  
9 required from as many aggrieved employees as could be obtained, which would be, at best, very difficult.  
10 Proof of this sort gives rise to a manageability argument that could substantially reduce the size of the  
11 aggrieved employee group.

12 Finally, the PAGA allocation is fair. The LWDA is receiving \$56,250. The Class is receiving,  
13 net, an estimated \$312,250.00 for the releases for six other theories of recovery (inclusive of the \$18,750  
14 as the aggrieved employees' share of the PAGA Allocation). The proportion is tipped slightly in favor of  
15 the Class Members, but not markedly so. An allocation to the LWDA equal to 18% of the Net  
16 Settlement Amount is not unfair and satisfies the policies underlying California's wage and hour laws.

## 17 18 **VI. THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING**

19 The last step in the settlement approval process is the fairness hearing. Plaintiffs request that the  
20 fairness hearing be scheduled for about 135 days after issuance of an Order granting preliminary  
21 approval. Under the Settlement, the Defendant will have 21 days to provide the mailing data to the  
22 Settlement Administrator, which will then have 14 days to mail out class notice. Class Members have 60  
23 days after mailing of the notice to submit exclusions or objections (with a 14-day extension available for  
24 late-returned and re-mailed notices). Plaintiffs propose that the final approval hearing be scheduled for  
25 the first available hearing date that is about 145 days after preliminary approval is granted.

## 26 27 **VII. CONCLUSION**

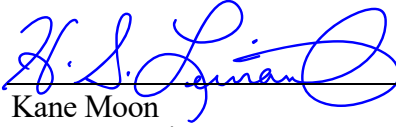
28 For all the foregoing reasons, because the Class meets the requirements for certification, because

1 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the  
2 proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant  
3 this Motion for Preliminary Approval, adopt the [Proposed] Order Granting Preliminary Approval of  
4 Class Action Settlement submitted herewith, and schedule a Final Fairness Hearing.

5 Respectfully submitted,

6 Dated: July 21, 2022

**MOON & YANG, APC**

7  
8 By:  \_\_\_\_\_  
Kane Moon  
H. Scott Leviant  
Mariam Ghazaryan

10 Attorneys for Plaintiff LANCE LINDEN and the  
11 Settlement Class  
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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7<sup>th</sup> Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

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☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service CASEANYWHERE. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **July 22, 2022** at Los Angeles, California.

H. Scott Leviant  
Type or Print Name

  
Signature