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9 persons similarly situated and similarly aggrieved employees

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

12 EDWIN ENRIQUEZ, individually and on
13 behalf of other persons similarly situated
14 and similarly aggrieved employees,

15 Plaintiffs,

16 v.

17 THE JOHNNY ROCKETS GROUP,
18 INC., an active Delaware Corporation; and
DOES 1 through 10,

19 Defendants.
20
21
22

Case No.: 19STCV43986

CLASS AND REPRESENTATIVE ACTION

*[Assigned for all purposes to Hon. Maren E.
Nelson in Dept. SS-17]*

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Final Approval Hearing Date: Nov. 13, 2023
Final Approval Hearing Time: 9:00 a.m.

Trial Date: Not yet set
Action Filed: December 9, 2019

23
24 **TO THE HONORABLE COURT, PARTIES, AND THEIR ATTORNEYS OF**
25 **RECORD:**

26 **PLEASE TAKE NOTICE** that, on July 7, 2023, before the Honorable Maren E.
27 Nelson in Department SS-17 of the above-entitled court, hearing was held on Plaintiff's Motion
28 for Preliminary Approval of Class Action Settlement in the above-entitled case. Attorney Zorik
Mooradian and Attorney Haik Hacopian of Mooradian Law, APC appeared remotely on behalf

1 of Plaintiff Edwin Enriquez and the putative class, and attorney Lonnie D. Giamela of Fisher
2 Phillips, LLP appeared remotely on behalf of Defendant The Johnny Rockets Group, Inc.

3 At the hearing, the Court entered the Order Granting Motion for Preliminary Approval
4 of Class Action Settlement, a true and correct copy of which is appended hereto.

5
6 Dated: July 10, 2023

MOORADIAN LAW, APC

7
8 By: /s/Haik Hacopian

Zorik Mooradian,

Haik Hacopian,

9 Attorneys for Plaintiff, individually and on
10 behalf of other persons similarly situated
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FILED
Superior Court of California
County of Los Angeles

JUL 07 2023

David W. Slayton, Executive Officer/Clerk of Court
By: P. Herrera, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

EDWIN ENRIQUEZ, individually and on
behalf of others similarly situated and
similarly aggrieved employees,

Plaintiff,

v.

THE JOHNNY ROCKETS GROUP, an
active Delaware Corporation; and DOES 1
through 10,

Defendants.

Case No.: 19STCV43986

[TENTATIVE] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: July 7, 2023

Time: 9:00 a.m.

Dept.: SSC-17

I. BACKGROUND

Plaintiff Edwin Enriquez sues his former employer, Defendant The Johnny
Rockets Group, for alleged wage and hour violations. Defendant is engaged in the
business of franchising of Johnny Rockets restaurants as well as direct ownership and

1 operation of Johnny Rockets branded restaurants. Plaintiff seeks to represent a class of
2 Defendant's current and former non-exempt employees.

3 On December 9, 2019, Plaintiff filed the class action complaint against
4 Defendant. On August 17, 2020, Plaintiff filed the operative First Amended Complaint
5 asserting the following causes of action: (1) Failure to Pay Wages (Labor Code §§ 510,
6 1194, 1194.2); (2) Failure to Provide Meal Periods (Labor Code §§ 226.7, 512); (3)
7 Failure to Provide Paid Rest Periods (Labor Code § 226.7); (4) Failure to Timely Pay
8 Wages at Termination (Labor Code §§ 201, 202, 203); (5) Failure to Provide Accurate
9 Wage Statements (Labor Code §§ 226(a), 226(b)); (6) Violation of Unfair Business
10 Practices Act (Bus. & Prof. Code §§ 17200, et seq.); and (7) Penalties Pursuant to
11 Private Attorneys General Act (Labor Code § 2699, et seq.) ("PAGA").

12 On May 12, 2021, Plaintiff and Defendant participated in a full-day mediation
13 before Jeffrey Krivis, which did not result in settlement. The parties resumed litigation
14 while concurrently attempting to negotiate a settlement, and ultimately reached the
15 proposed settlement now before the Court. The terms of settlement were finalized in
16 the long-form Stipulated Settlement Agreement attached to the Declaration of Haik
17 Hacopian filed October 5, 2022 ("Hacopian Decl.") as Exhibit A.

18 On February 22, 2023, the Court issued a "checklist" to the parties pertaining to
19 deficiencies in the proposed settlement and called the matter of Plaintiff's Motion for
20 Preliminary Approval of Settlement for hearing. Subsequently, the parties filed further
21 briefing, including the Amended Stipulated Settlement Agreement attached to the
22 Supplemental Declaration of Haik Hacopian filed April 28, 2023 ("Supp. Hacopian
23 Decl.") as Exhibit A. All references below are to that agreement.

24 For the reasons set forth below, the Court preliminarily grants approval for the
25 settlement.

1
2 **II. THE TERMS OF THE SETTLEMENT**

3 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

4 “Settlement Class” and “Settlement Class Members” means shall refer to the
5 following: All non-exempt employees who previously were employed by Defendant in
6 California during the Class Period. (§1.22)

7 “Class Period” means the period starting November 18, 2016 to March 1, 2022.
8 (§1.5)

9 “Aggrieved Employees” means all non-exempt employees who are or previously
10 were employed by Defendant The Johnny Rockets Group, Inc. in California during the
11 PAGA Period. (§1.3)

12 “PAGA Period” means the period starting December 9, 2018 to March 1, 2022.
13 (§1.13)

14 “Participating Settlement Class Member” means a Settlement Class Member
15 who has not timely opted-out of the Settlement. (§1.14)

16
17 **B. THE MONETARY TERMS OF SETTLEMENT**

18 The essential monetary terms are as follows:

- 19 • The Settlement Amount is **\$600,000** (§1.21). This includes payment of a PAGA
20 penalty of **\$20,000** to be paid 75% to the LWDA (\$15,000) and 25% to the
21 Aggrieved Employees (\$5,000) (§3.9).
- 22 ○ It is estimated that the Settlement Class consists of approximately 530
23 individuals during the Class Period who worked approximately 37,662
24 workweeks during the Class Period. If the workweek number is greater
25 than 110% of the workweek estimate, Defendant may either: (1) increase

1 the Settlement Amount on a pro rata basis for each workweek in excess of
2 the 110% workweek estimate; or (2) adjust the end date of the Class
3 Period so that the number of workweeks during the Class Period does not
4 exceed 110% of the estimate. (§1.21)

- 5 • The Net Settlement Amount (“Net”) (\$322,000) is the GSA less:
 - 6 ○ Up to **\$210,000** (35%) for attorney fees (§3.6);
 - 7 ○ Up to **\$25,000** for attorney costs (*Ibid.*);
 - 8 ○ Up to **\$10,000** for a service award to the proposed class representative
9 (§3.8); and
 - 10 ○ Estimated **\$13,000** for settlement administration costs (§3.7).
- 11 • Employer-side payroll taxes will be paid by Defendant in addition to the
12 Settlement Amount (§1.21).
- 13 • Assuming the Court approves all maximum requested deductions, approximately
14 \$322,000 will be available for automatic distribution to participating class
15 members. Assuming full participation, the average settlement share will be
16 approximately \$607.54. ($\$322,000 \text{ Net} \div 530 \text{ class members} = \607.54). In
17 addition, each Aggrieved Employee will receive a portion of the PAGA penalty,
18 estimated to be \$27.02 per Aggrieved Employee. ($\$5,000 \text{ or } 25\% \text{ of } \$20,000$
19 $\text{PAGA penalty} \div 185 \text{ Aggrieved Employees} = \27.02).
- 20 • There is no Claim Requirement (§4.2.d).
- 21 • The settlement is not reversionary (§1.12).
- 22 • Individual Settlement Share Calculation: To determine the Individual Settlement
23 Amount to be included in the Class Notice sent to Settlement Class Members,
24 the Settlement Administrator will: (§4.3)

- Determine the total number of Workweeks Worked by the Settlement Class during the Class Period as provided in the Class List and Data Report. (§4.3.a)
- Divide the Net Settlement Amount by the total number of Workweeks Worked by the Settlement Class to determine the Per Workweek Settlement Amount. The Per Workweek Settlement Amount shall then be multiplied by the number of Workweeks Worked by each Settlement Class Member during the applicable Class Period to determine each Settlement Class Member's Individual Settlement Amount. All Settlement Class Members will be entitled to payment for at least one (1) workweek. (§4.3.b)
- Any portion of the Net Settlement Amount not payable to Settlement Class Members shall be distributed to Participating Settlement Class Members on a basis proportional to the number of Workweeks Worked by each Participating Settlement Class Member, including Workweeks Worked enhancements. (§4.9.a)
- Calculation of Individual PAGA Settlement Payment Amounts: The sum attributable to each Aggrieved Employee shall be allocated based on the proportionate number of weekly pay periods worked by the individual Aggrieved Employee during the PAGA Period relative to the total number of weekly pay periods worked by all Aggrieved Employees during the PAGA Period. (§4.3.c)
- Tax Withholdings: Each Participating Settlement Class Member's Individual Settlement Payment shall be apportioned as 20% wages, 80% interest and

1 penalties. (§§4.9.b, 4.9.c) 100% of each Aggrieved Employee's Individual
2 PAGA Settlement Payment shall be apportioned to penalties. (§4.9.d)

- 3 • Funding of Settlement: Within thirty (30) days after the Effective Date,
4 Defendant shall deliver the Settlement Amount, or Six Hundred Thousand
5 Dollars and No Cents (\$600,000.00), and the corresponding share of employer
6 taxes to the Settlement Administrator. (§4.12)
- 7 • Distribution: The Settlement Administrator shall make a distribution from the
8 Qualified Settlement Fund not later than fourteen (14) days after receiving the
9 Settlement Amount from Defendant. With the distribution, the Settlement
10 Administrator is to make distributions to the appropriate parties for payments
11 due under this Agreement as follows: (§4.13)
 - 12 ○ Settlement Class Counsel's attorneys' fees and costs as awarded by the
13 Court under Paragraph 3.6. (§4.13.a)
 - 14 ○ The service award to Plaintiff Enriquez as awarded by the Court under
15 Paragraph 3.8. (§4.13.b)
 - 16 ○ The PAGA payments to the LWDA and Aggrieved Employees as set
17 forth in Paragraph 3.9. (§4.13.c)
 - 18 ○ Payment to the Settlement Administrator for the costs of settlement
19 administration as set forth in Paragraph 3.7 and approved by the Court.
20 (§4.13.d)
 - 21 ○ Individual Settlement Payments to Participating Class Members as set
22 forth in Paragraph 4.3 and 4.9. (§4.13.e)
- 23 • Uncashed Settlement Payment Checks: All checks for Individual Settlement
24 Payments shall remain valid and negotiable for 180 days from the date of their
25 issuance. Any checks not cashed during the 180 day period after distribution

1 shall be void, and the Participating Settlement Class Member's release set forth
2 herein shall remain valid. After the 180 day period following the final
3 distribution, all funds will escheat to the State of California's Unclaimed
4 Property Fund in the name of the Class Member. (§4.15)

5
6 **C. TERMS OF RELEASES**

- 7 • Release As To All Participating Class Members: Upon the Effective Date and
8 funding in full of the Settlement Amount by Defendant, all Settlement Class
9 Members who do not timely opt out of the Settlement ("Participating Class
10 Members"), including their heirs, assigns, estates and representatives, shall be
11 deemed to fully forever, irrevocably and unconditionally release and discharge
12 the Released Parties from the Released Claims. The Settlement Agreement shall
13 be in full settlement, compromise, release and discharge of the Released Claims
14 and each of them, and the Released Claims by the Class Representative, and the
15 Released Parties shall have no further or other liability or obligation to any Class
16 Member and/or the Class Representative with respect to the Released Claims and
17 Class Representative's Released Claims, except as expressly provided herein.
18 (§5.1)

- 19 ○ "Released Claims" means: all class claims alleged in the operative
20 complaint which occurred during the Class Period, and expressly
21 excluding all other claims, including claims for vested benefits, wrongful
22 termination, unemployment insurance, disability, social security, workers'
23 compensation, and class claims outside of the Class Period. This release
24 includes claims for failure to pay all wages, failure to pay overtime
25 wages, failure to provide meal periods, failure to provide rest periods,

1 failure to provide itemized wage statements, failure to pay all wages and
2 termination and unfair business practices under the California Business
3 and Professions Code associated with same. (§1.17)

- 4 • Release As To All Aggrieved Employees: Upon the Effective Date and funding
5 in full of the Settlement Amount by Defendant, Plaintiff and the State of
6 California shall be deemed to fully forever, irrevocably and unconditionally
7 release and discharge the Released Parties from the Released PAGA Claims.
8 (§5.1)

- 9 ○ “Released PAGA Claims” means all PAGA claims alleged in the
10 operative complaint and Plaintiff’s PAGA notice to the LWDA which
11 occurred during the PAGA Period, and expressly excluding all other
12 claims, including claims for vested benefits, wrongful termination,
13 unemployment insurance, disability, social security, workers’
14 compensation, and PAGA claims outside of the PAGA Period. This
15 release includes PAGA claims for failure to pay all wages, failure to pay
16 overtime wages, failure to provide meal periods, failure to provide rest
17 periods, failure to provide itemized wage statements, failure to pay all
18 wages and termination and unfair business practices under the California
19 Business and Professions Code associated with same. (§1.18)

- 20 • “Released Parties” means Defendant, and each of Defendant’s respective past,
21 present, and/or future, direct and/or indirect, officers, directors, members,
22 managers, exempt employees, agents, representatives, attorneys, insurers,
23 partners, investors, shareholders, administrators, parent companies, subsidiaries,
24 related entities, affiliates, divisions, predecessors, successors, assigns, and joint
25 venturers. (§1.19)

- The named Plaintiff will also provide a general release and a waiver of the protections of Cal. Civ. Code §1542. (¶5.2)
- The releases are effective upon the Effective Date and funding in full of the Settlement Amount by Defendant.

D. SETTLEMENT ADMINISTRATION

- The proposed Settlement Administrator is CPT Group, Inc. (¶1.20), which has provided evidence that no counsel are affiliated with it and that it has adequate procedures in place to safeguard the data and funds to be entrusted to it. (See Declaration of Julie Green.)
- Settlement administration costs are estimated to be \$13,000 (¶3.7).
- Notice: The manner of giving notice is described below.
- Opt Out/Objection Dates: Settlement Class Members will have Sixty (60) days from the mailing of the Class Notice to submit a Request for Exclusion or object to the Settlement. (¶4.4.b) The same deadline applies to the submission of workweek disputes. (¶4.4.c)
 - Any Settlement Class Member who requests exclusion from the Settlement by timely submitting a valid Request for Exclusion will not be entitled to an Individual Settlement Payment (but will be entitled to an Individual PAGA Settlement Payment if he or she is an Aggrieved Employee), will no longer be a Settlement Class Member and will not be bound by the Agreement or have any right to object, appeal or comment thereon, except that he or she will still be bound by the release of the PAGA Released Claims if he or she is an Aggrieved Employee. (¶4.5.c)

- Notice of Final Judgment will be posted on the Settlement Administrator’s website (Notice p. 9).

III. SETTLEMENT STANDARDS AND PROCEDURE

California Rules of Court, rule 3.769(a) provides: “A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing.” “Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.” See Cal. Rules of Court, rule 3.769(c).

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal quotation marks omitted].

1 “The burden is on the proponent of the settlement to show that it is fair and
2 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
3 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
4 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
5 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
6 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

7 Notwithstanding an initial presumption of fairness, “the court should not give
8 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
9 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
10 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
11 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
12 members, the court must independently and objectively analyze the evidence and
13 circumstances before it in order to determine whether the settlement is in the best
14 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
15 In that determination, the court should consider factors such as “the strength of
16 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
17 the risk of maintaining class action status through trial, the amount offered in
18 settlement, the extent of discovery completed and stage of the proceedings, the
19 experience and views of counsel, the presence of a governmental participant, and the
20 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
21 factors is not exclusive and the court is free to engage in a balancing and weighing of
22 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
23 245.

24 At the same time, “[a] settlement need not obtain 100 percent of the damages
25 sought in order to be fair and reasonable. Compromise is inherent and necessary in the

1 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
2 substantially narrower than it would be if the suits were to be successfully litigated,’
3 this is no bar to a class settlement because ‘the public interest may indeed be served by
4 a voluntary settlement in which each side gives ground in the interest of avoiding
5 litigation.’” *Id.* at 250.

6 7 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

8 9 **A. THERE IS A PRESUMPTION OF FAIRNESS**

10 The settlement is entitled to a presumption of fairness for the following reasons:

11 12 **1. The settlement was reached through arm’s-length bargaining**

13 On May 12, 2021, Plaintiff and Defendant participated in a full-day mediation
14 before Jeffrey Krivis, which did not result in settlement. The parties resumed litigation
15 while concurrently attempting to negotiate, and ultimately reached the proposed
16 settlement. (Hacopian Decl. ¶10.)

17 18 **2. The investigation and discovery were sufficient**

19 Class Counsel represents that they reviewed and examined class data and
20 retained the services of an expert who analyzed the damages and evaluated the potential
21 class wide exposure. Prior to mediation, Defendant produced a sample of time and
22 payroll records for two of their locations, a class list with hire and termination dates,
23 and relevant policies. Subsequent to mediation, the production was substantially
24 supplemented through formal discovery to include time records, time adjustment
25

1 records, payroll records across all class restaurant locations as embodied by over a
2 16,000 bates page production and payroll data file with 17,840 lines of data. (*Id.* at ¶9.)

3 Counsel further represents that their office initially received and analyzed sample
4 data for 144 class members for what was then known to be a class of 223 individuals.
5 Defendant had represented that 223 represented the number of current and former
6 employees employed at corporate Johnny Rockets restaurants in operation at the time of
7 mediation on May 12, 2021. (Supp. Hacopian Decl. ¶4.) As the mediation was
8 unsuccessful and litigation resumed, it was learned that Defendant's class count had not
9 included individuals employed at restaurants during the Class Period that had been
10 closed as of the mediation date. Defendant then represented that the true class size was
11 522 individuals who worked 37,662 workweeks. Class Counsel received additional
12 records and ultimately had complete time and payroll data for the putative class (for a
13 Class Period that ended on March 31, 2022) prior to the filing of the Motion for
14 Preliminary Approval on October 5, 2022. (*Ibid.*) Accordingly, counsel had analysis
15 for 144 out of 552 class members, or 27.6%, prior to mediation. The results of the pre-
16 mediation sample analysis was extrapolated to the full class (522 individuals and
17 37,662 workweeks) to inform the *Kullar* analysis presented to the Court in connection
18 with Plaintiff's motion for preliminary approval. (*Id.* at ¶5.)

19 This is sufficient to value the case for settlement purposes.

20 21 **3. Counsel is experienced in similar litigation**

22 Class Counsel represent that they are experienced in class action litigation,
23 including wage and hour class actions. (Hacopian Decl. ¶3.)

24 //

25 //

1 **4. Percentage of the class objecting**

2 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
3 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
4 the court receive objections to the proposed settlement, it will consider and either sustain
5 or overrule them at the fairness hearing.”].

6
7 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
8 **FAIR, ADEQUATE, AND REASONABLE**
9

10 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
11 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
12 does when it approves a settlement as in good faith under Code of Civil Procedure
13 section 877.6, the court must at least satisfy itself that the class settlement is within the
14 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
15 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
16 consider and weigh the nature of the claim, the possible defenses, the situation of the
17 parties, and *the exercise of business judgment* in determining whether the proposed
18 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
19 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

20
21 **1. Amount Offered in Settlement**

22 The most important factor is the strength of the case for plaintiffs on the merits,
23 balanced against the amount offered in settlement.” (*Id.* at 130.)

24 Class Counsel estimated Defendant’s maximum exposure at \$6,248,426 and
25 realistic exposure at \$953,734, based on the following analysis:

Violation	Maximum Exposure	Realistic Exposure
Unpaid Wages	\$1,176,938.00	\$117,694.00
Meal Break Violations	\$776,400.00	\$77,640.00
Rest Break Violations	\$1,037,888.00	\$200,000.00
Waiting Time Penalties	\$856,800.00	\$128,520.00
Wage Statement Penalties	\$1,004,000.00	\$150,600.00
PAGA Penalties	\$1,396,400.00	\$279,280.00
Total	\$6,248,426.00	\$953,734.00

(Hacopian Decl. ¶¶17-28; Supp. Hacopian Decl. ¶8.)

Class Counsel obtained a gross settlement valued at \$600,000. This is approximately 9.6% of Defendant's maximum exposure and 62.9% of Defendant's realistic exposure. It is represented that Defendant had compliant policies as to time tracking and the payment and calculation of wages. There was an electronic timekeeping system on which employees were instructed and a prohibition against "off-the-clock" work. Thus, liability will not be established based on any facially improper policies. Inquiry as to individual restaurants, shifts, and job circumstances will be required. The wage statements were facially compliant with the Labor Code. Although Plaintiff contends he was late paid upon termination this does not appear substantiated. Counsel also represent that the likelihood of maximum PAGA penalties is unrealistic as Defendant no longer has any employees and thus there are no future violations to deter. In short, the likelihood of recovering the maximum is not high.

2. The Risks of Future Litigation

The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any

1 recovery by the class members. Even if a class is certified, there is always a risk of
2 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
3 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
4 conducting class actions, which means, under suitable circumstances, entertaining
5 successive motions on certification if the court subsequently discovers that the propriety
6 of a class action is not appropriate.”].) Further, the settlement was negotiated and
7 endorsed by Class Counsel who, as indicated above, are experienced in class action
8 litigation. Based upon their investigation and analysis, the attorneys representing
9 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
10 adequate. (Hacopian Decl. ¶28.)

11 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
12 which was sent a copy of the Settlement Agreement on April 28, 2023 and has not yet
13 objected. (See Proof of Service filed April 28, 2023.) Any objection by it will be
14 considered at the final fairness hearing.

15 16 **3. The Releases Are Limited**

17 The Court has reviewed the Releases to be given by the absent class members and
18 the named plaintiff. The releases, described above, are tailored to the pleadings and
19 release only those claims in the pleadings. There is no general release by the absent
20 class. The named plaintiff’s general release is appropriate given that he was represented
21 by counsel in its negotiation.

22 23 **4. Conclusion**

24 Class Counsel estimated Defendant’s maximum exposure at \$6,248,426 and
25 realistic exposure at \$953,734. Class Counsel obtained a gross settlement valued at

1 \$600,000. This is approximately 9.6% of Defendant's maximum exposure and 62.9% of
2 Defendant's realistic exposure, which, given the uncertain outcomes, including the
3 potential that the class might not be certified, that liability is a contested issue, and that
4 the full amount of penalties would not necessarily be assessed even if the class is certified
5 and liability found, the settlement is within the "ballpark of reasonableness."

6 7 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

8 A detailed analysis of the elements required for class certification is not required,
9 but it is advisable to review each element when a class is being conditionally certified.
10 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
11 advocating class treatment must demonstrate the existence of an ascertainable and
12 sufficiently numerous class, a well-defined community of interest, and substantial
13 benefits from certification that render proceeding as a class superior to the alternatives."
14 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

15 **1. The Proposed Class is Numerous**

16 There are approximately 530 putative Class Members. (Supp. Hacopian Decl.
17 ¶7.) Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
18 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the "requirement that there be many
19 parties to a class action is liberally construed," and citing examples wherein classes of
20 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
21 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

22 **2. The Proposed Class Is Ascertainable**

23 "A class is ascertainable, as would support certification under statute
24 governing class actions generally, when it is defined in terms of objective
25 characteristics and common transactional facts that make the ultimate identification

1 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
2 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

3 The class is defined above. Class Members are ascertainable through
4 Defendant’s personnel and other employment records. (MPA at 19:13-14.)

5
6 **3. There Is A Community of Interest**

7 “The community of interest requirement involves three factors: ‘(1) predominant
8 common questions of law or fact; (2) class representatives with claims or defenses typical
9 of the class; and (3) class representatives who can adequately represent the class.’”
10 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

11 As to predominant questions of law or fact, Plaintiff contends that the
12 predominance factor is met because each claim challenges an alleged common policy or
13 practice that Plaintiff contends is illegal. Plaintiff’s claims under the Labor Code are
14 predicated on: a failure to pay for all hours worked; meal, rest period policies and
15 practices, which Plaintiff contends are the sorts of claims commonly held to be proper for
16 class certification. (MPA at 19:22-20:10.)

17 As to typicality, Plaintiff asserts that he was employed by Defendant during the
18 proposed Class Period and was subject to its wage and hour practices. Plaintiff also
19 claims he was injured by the same challenged practices he claims injured the Settlement
20 Class as a whole. (MPA at 20:12-20.)

21 As to adequacy, Plaintiff represents that he is aware of his responsibilities to the
22 class, does not have conflicts of interest with the class, and has participated in the
23 litigation. (Declaration of Edwin Enriquez ¶¶3-7.) As previously stated, Class Counsel
24 have experience in class action litigation.

1 **4. Substantial Benefits Exist**

2 Given the relatively small size of the individual claims, a class action is superior to
3 separate actions by the class members.

4 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS**
5 **OF DUE PROCESS**

6
7 The purpose of notice is to provide due process to absent class members. A practical
8 approach is required, in which the circumstances of the case determine what forms of
9 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
10 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
11 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
12 stake of the individual class members; (4) the cost of notifying class members; (5) the
13 resources of the parties; (6) the possible prejudice to class members who do not receive
14 notice; and (7) the res judicata effect on class members.

15 **1. Method of class notice**

16 Defendant will diligently and in good faith compile and provide to the Settlement
17 Administrator the Class List and Data Report within fourteen (14) calendar days of
18 Preliminary Approval of the Settlement. (¶4.2.b)

19 Within fourteen (14) calendar days after receipt of the Class List and Data
20 Report, the Settlement Administrator shall mail the Class Notice to the Settlement Class
21 Members via first-class regular U.S. mail. Prior to mailing, the Settlement
22 Administrator will perform a search based on the National Change of Address Database
23 information to update and correct for any known or identifiable address changes. If a
24 new address is obtained by way of a returned Notice, then the Settlement Administrator
25 shall promptly forward the original Class Notice and to the updated address via first-

1 class regular U.S. mail indicating on the original Class Notice packet the date of such
2 re-mailing. (¶4.4.a)

3 Any Notice returned to the Settlement Administrator as non-delivered on or
4 before the expiration of the Opt Out and Objections Deadline Date shall be sent to the
5 forwarding address affixed thereto within five (5) business days. If no forwarding
6 address is provided, then the Settlement Administrator shall promptly attempt to
7 determine a correct address using a single skip-trace, computer or other search using the
8 name, address and/or Social Security number of the individual involved, and shall then
9 perform a single re-mailing within five (5) business days. Those Settlement Class
10 Members that receive a re-mailed Class Notice shall have their deadline for submitting
11 an opt-out, objection, or disputes regarding Individual Settlement Amounts to the
12 Settlement extended by seven (7) calendar days from the post mark date of re-mailing.
13 In the event the procedures in this Paragraph are followed and the intended recipient of
14 a Class Notice still does not receive the Notice, the Settlement Class Member shall be
15 bound by all terms of the Settlement and any final order entered by the Court if the
16 Settlement is approved by the Court. (¶4.4.d)

17 **2. Content of class notice.**

18 A copy of the proposed class notice is attached to the Settlement Agreement as
19 Exhibit 1. The notice includes information such as: a summary of the litigation; the
20 nature of the settlement; the terms of the settlement agreement; the maximum
21 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
22 the enhancement award, and claims administration costs); the procedures and deadlines
23 for participating in, opting out of, or objecting to, the settlement; the consequences of
24 participating in, opting out of, or objecting to, the settlement; and the date, time, and
25

1 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be
2 given in both English and Spanish (§1.6).

3 **3. Settlement Administration Costs**

4 Settlement administration costs are estimated at **\$13,000**, including the cost of
5 notice (§3.7). Prior to the time of the final fairness hearing, the settlement administrator
6 must submit a declaration attesting to the total costs incurred and anticipated to be
7 incurred to finalize the settlement for approval by the Court.

9 **E. ATTORNEY FEES AND COSTS**

10 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
11 implied, that has been entered into with respect to the payment of attorney fees or the
12 submission of an application for the approval of attorney fees must be set forth in full in
13 any application for approval of the dismissal or settlement of an action that has been
14 certified as a class action.”

15 Ultimately, the award of attorney fees is made by the court at the fairness
16 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
17 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
18 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
19 1132-1136. In common fund cases, the court may use the percentage method. If
20 sufficient information is provided a cross-check against the lodestar may be conducted.
21 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
22 agreement by the parties to the contrary, “the court ha[s] an independent right and
23 responsibility to review the attorney fee provision of the settlement agreement and
24 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
25 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

1 The question of class counsel's entitlement to **\$210,000** (35%) in attorney fees
2 will be addressed at the final fairness hearing when class counsel brings a noticed
3 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
4 the court with current market tested hourly rate information and billing information so
5 that it can properly apply the lodestar method and must indicate what multiplier (if
6 applicable) is being sought.

7 Class counsel should also be prepared to justify the costs sought (capped at
8 **\$25,000**) by detailing how they were incurred.

9 10 **F. SERVICE AWARD**

11 The Settlement Agreement provides for a service award of up to **\$10,000** for the
12 class representative. Trial courts should not sanction enhancement awards of thousands
13 of dollars with "nothing more than *pro forma* claims as to 'countless' hours expended,
14 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of
15 quantification of time and effort expended on the litigation, and in the form of reasoned
16 explanation of financial or other risks incurred by the named plaintiffs, is required in
17 order for the trial court to conclude that an enhancement was 'necessary to induce [the
18 named plaintiff] to participate in the suit" *Clark v. American Residential Services*
19 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

20 The Court will decide the issue of the enhancement award at the time of final
21 approval.

22 23 **V. CONCLUSION AND ORDER**

24 The Court hereby:
25

1 (1) Grants preliminary approval of the settlement as fair, adequate, and
2 reasonable;

3 (2) Grants conditional class certification;

4 (3) Appoints Edwin Enriquez as Class Representative;

5 (4) Appoints Mooradian Law, APC as Class Counsel;

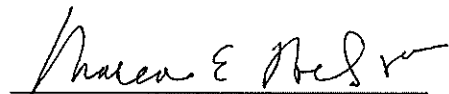
6 (5) Appoints CPT Group, Inc. as Settlement Administrator;

7 (6) Approves the proposed notice plan; and

8 (7) Approves the proposed schedule of settlement proceedings as follows:

- 9 • Preliminary approval hearing: July 7, 2023
- 10 • Deadline for Defendant to provide class list to settlement administrator: July 21,
11 2023 (within 14 calendar days from preliminary approval)
- 12 • Deadline for settlement administrator to mail notices: August 4, 2023 (within 28
13 calendar days from preliminary approval)
- 14 • Deadline for class members to opt out: October 3, 2023 (60 calendar days from
15 the initial mailing of the Notice Packets)
- 16 • Deadline for class members to object: October 3, 2023 (60 calendar days from
17 the initial mailing of the Notice Packets)
- 18 • Deadline for class counsel to file motion for final approval:
19 _____, 2023 (16 court days prior to final fairness hearing)
- 20 • Final fairness hearing: _____, 2023, at _____
- 21
- 22

23 Dated: 7/7/23



24 MAREN E. NELSON

25 Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp FILED Superior Court of California County of Los Angeles 07/07/2023 David W. Slayton, Executive Officer / Clerk of Court By: <u>P. Herrera</u> Deputy
COURTHOUSE ADDRESS: Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012		
PLAINTIFF: Edwin Enriquez		
DEFENDANT: The Johnny Rockets Group, Inc., et al.		
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6		CASE NUMBER: 19STCV43986

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Minute Order and Order Granting Motion for Preliminary Approval of Class Action Settlement entered herein, on 07/07/2023, upon each party or counsel of record in the above entitled action, by electronically serving the document(s) on Case Anywhere at www.caseanywhere.com on 07/07/2023 from my place of business, Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012 in accordance with standard court practices.

David W. Slayton, Executive Officer / Clerk of Court

Dated: 07/07/2023

By: P. Herrera

Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 17

19STCV43986

**EDWIN ENRIQUEZ vs THE JOHNNY ROCKETS GROUP,
INC.**

July 7, 2023

9:00 AM

Judge: Honorable Maren Nelson
Judicial Assistant: P. Herrera
Courtroom Assistant: M. Miro

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Haik Hacobian (Telephonic); Zorik Mooradian (Telephonic)

For Defendant(s): Lonnie D. Giamela (Telephonic)

NATURE OF PROCEEDINGS: Hearing on Motion for Preliminary Approval of Settlement

The Court's Tentative Order is issued and served on the parties via the Case Anywhere website on 07/06/2023.

The matter is called for hearing.

Both sides submit on the Court's tentative ruling.

The Court finds final approval of the settlement is fair, adequate, and reasonable.

The Notice of Motion and Motion for Final Approval of Class Action Settlement filed by Edwin Enriquez on 05/08/2023 is Granted.

Hearing on Motion for Final Approval of Settlement is scheduled for 11/13/2023 at 09:00 AM in Department 17 at Spring Street Courthouse.

The Court's "Order Granting Motion for Preliminary Approval of Class Action Settlement on Condition" is filed and served on the parties via Case Anywhere this date.

Judicial Assistant to give notice.

Clerk's Certificate of Service By Electronic Service is attached.

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action, my business address is 24007 Ventura Blvd., Suite 210, Calabasas, CA 91302.

On July 10, 2023, I served on the parties of record in this action the foregoing document(s) described as:

NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Lonnie D. Giamela, Esq. lgiamela@fisherphillips.com FISHER & PHILLIPS LLP 444 South Flower Street, Suite 1500 Los Angeles, CA 90071	Labor & Workforce Development Agency 800 Capitol Mall, MIC-55 Sacramento, CA 95814
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Attorneys for Defendant The Johnny
Rockets Group, Inc.

(Filed online at
[https://www.dir.ca.gov/Private-Attorneys-
General-Act/Private-Attorneys-General-
Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html))

☒ **VIA ELECTRONIC SERVICE** – Based on a court order or agreement of the parties to accept service by electronic transmission, I caused the document(s) to be sent to the above persons listed at their electronic notification addresses by uploading the document(s) to the CASEANYWHERE service.

☒ **STATE** – I declare under penalty of perjury under the laws of the “State of California that the above is true and correct.

Executed on July 10, 2023 at Calabasas, California.

/s/Haik Hacobian

Haik Hacobian