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the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SHARI RILEY, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

v.

PRIMITIVE COMPANY, a California
corporation; and Jubal Jones, an individual; Mitch
Bhatia, an individual, Paul Rodriguez, Jr., an
individual; and DOES 1 through 50, inclusive;

Defendants.

CASE NO.: 20STCV07175

CLASS ACTION

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

Date: November 29, 2021
Time: 9:00 a.m.
Dept.: 17

Assigned to the Hon. Maren E. Nelson Dept
17

Complaint filed: 2/25/20

Trial date: None

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

1 **PLEASE TAKE NOTICE** that on November 29, 2021 at 9:00 a.m., or as soon thereafter as
2 counsel may be heard, in Department 17 of the above-captioned court, located at 312 North Spring
3 Street, Los Angeles, CA 90012, the Honorable Maren E. Nelson presiding, Plaintiff Shari Riley
4 will, and hereby do, move this Court to:

5 1. Preliminarily approve the settlement set forth in the Stipulation of Settlement,
6 attached as Exhibit A to the Declaration of Preston H. Lim;

7 2. Conditionally certify the Settlement Class;

8 3. Appoint Shari Riley as the representatives for the Settlement Class;

9 4. Appoint Lim Law Group, P.C. and Law Offices of Lloyd Lee as class counsel for
10 the Settlement Class;

11 5. Approve distribution of the proposed Notice of Class Action Settlement to the
12 Settlement Class, attached as Exhibit B to the Declaration of Preston H. Lim;

13 6. Appoint Phoenix Settlement Administrators as the Settlement Administrator; and

14 7. Set a hearing date for final approval of the settlement. This Motion is based upon:
15 (1) this Notice of Motion and Motion; (2) the Memorandum of Points and Authorities in Support
16 of Motion for Preliminary Approval of Class Action Settlement; (3) the Declaration of Preston Lim;
17 (4) the Declaration of Lloyd Lee; (5) Declaration of Shari Riley; (6) Declaration of Jodey Lawrence;
18 (7) Stipulation of Settlement; (8) the Notice of Class Action Settlement; (9) the [Proposed] Order
19 Granting Preliminary Approval of Class Action Settlement; (10) the records, pleadings, and papers
20 filed in this action; and (11) upon such other documentary and oral evidence or argument as may
21 be presented to the Court at or prior to the hearing of this Motion. As this Motion is unopposed,
22 the Parties respectfully request relief from the page limit requirement set by California Rules of
23 Court, Rule 3.1113(d).

24 Pursuant to Labor Code section 2699(l)(2), on November 2, 2021, a copy of the Stipulation
25 of Settlement, this motion and declarations in support thereof, have been filed concurrently with
26 the Labor and Workforce Development Agency ("LWDA").
27
28

1 Dated: November 2, 2021

LIM LAW GROUP, P.C.
LAW OFFICES OF LLOYD LEE

2
3 By: */s/ Preston H. Lim*

4
5 PRESTON H. LIM

LLOYD LEE

6 Attorney for Plaintiffs individually, and on behalf
7 of all others similarly situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Shari Riley ("Plaintiff") seek Court approval of a global settlement of this action
4 filed against Primitive Company ("Primitive"), Jubal Jones, Mitch Bhatia, and Paul Rodriguez, Jr.
5 (collectively, "Defendants") for Labor Code violations. The Plaintiff and Defendants (collectively,
6 the "Parties") have agreed to settle the claims at issue for a non-reversionary Class Settlement Fund
7 \$100,000. The principal terms of the Settlement Agreement are as follows.

8 (1) A Settlement Class defined as: All current and former non-exempt or hourly paid
9 employees of Primitive that have worked for Primitive in the State of California at any time from
10 February 25, 2016 through the date of the Preliminary Approval by the Court ("Settlement Class"
11 or "Settlement Class Members").

12 (2) A Class Settlement Amount of \$100,000. The Class Settlement Amount includes:

13 (a) A Net Settlement Amount of approximately \$31,700.00 (the Class
14 Settlement Amount (\$100,000) minus Settlement Administration Costs (not
15 to exceed \$10,000), \$10,000 to PAGA (\$7,500 will go to the LWDA, and
16 \$2,500 ("PAGA Amount") to the PAGA Group Members), attorneys fees
17 (\$33,300) and costs (not to exceed \$10,000) and the requested Class
18 Representative Enhancement Payments (not to exceed \$5,000), which will
19 be paid to each Participating Settlement Class Members on a pro-rata basis
20 according to the number of weeks each Settlement Class Member worked
21 during the Class Period.

22 (b) Settlement Administration Costs, currently estimated not to exceed \$10,000,
23 to be paid to the jointly selected Settlement Administrator, Phoenix
24 Settlement Administrators.

25 (c) A \$10,000 payment to the California Labor Workforce Development
26 Agency ("LWDA") pursuant to the Labor Code Private Attorneys General
27 Act of 2004 ("PAGA"); and

28 (d) Class Representative Enhancement Payments of \$5,000 to Shari Riley

1 for her services on behalf of the Settlement Class, and for general releases
2 of all claims arising out of her employment with Defendants.

3 (3) Attorneys' fees and costs, not to exceed one third (1/3) of the total Class Settlement
4 Amount, to Law Offices of Lloyd Lee and Lim Law Group, P.C. (collectively,
5 "Plaintiffs' Counsel").

6 An objective evaluation of the Settlement confirms that the relief negotiated on the Class'
7 behalf is fair, reasonable, and valuable. The Settlement was negotiated by the parties at arm's length
8 with the helpful guidance from James (J.J.) Johnston of the Mediation Offices of James Johnston,
9 Inc., an experienced class action mediator, and the Settlement confers substantial benefits to
10 Settlement Class Members. The relief offered by the Settlement is particularly impressive when
11 viewed against the difficulties encountered by plaintiff pursuing wage and hour cases. Indeed, by
12 settling now rather than proceeding to trial, Settlement Class Members will not have to wait
13 (possibly years) for relief, nor will they have to bear the risk of class certification being denied or
14 of Defendants prevailing at trial.

15 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
16 approval under California law and falls within the range of reasonableness. Accordingly, Plaintiff
17 respectfully request that this Court grant preliminary approval of the Settlement Agreement.

18 Pursuant to Labor Code section 2699(l)(2), on November 2, 2021, a copy of the Stipulation
19 of Settlement, this motion and declarations in support thereof, have been filed concurrently with
20 the Labor and Workforce Development Agency ("LWDA"). (Declaration of Preston Lim ("Lim
21 Decl.") ¶ 6.)

22 **II. FACTS AND PROCEDURE**

23 **A. Plaintiff Riley Files and Litigates a Class Action**

24 Plaintiff Riley filed her action on February 25, 2020 in Los Angeles Superior Court.
25 Plaintiff's complaint alleges that Defendant systematically violated various Labor Code, including:
26 (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide
27 compliant meal and rest periods; (4) waiting time penalties; (5) failure to reimburse business
28 expenses; (6) failure to provide accurate itemized statements; and (7) Unfair Business Practices.

1 (Lim Decl. ¶ 2.)

2 On April 30, 2020, after exhausting remedies with the Labor and Workforce Development
3 Agency (LWDA), Plaintiff filed a First Amended Complaint (“FAC”), adding a cause of action for
4 civil penalties under the Cal. Labor Code’s Private Attorney General Act (PAGA). (Lim Decl. ¶
5 3.)

6 From February 2020 to October 2020, the Parties exchanged records through informal
7 discovery. Over the following several months, Plaintiff and Defendants engaged in an exhaustive
8 meet and confer efforts, and ultimately agreed that Defendant would provide, *inter alia*: (1) key
9 information regarding class-wide payroll and timekeeping practices; and (2) a sampling of time and
10 pay records. Further, Defendants provided Plaintiff with the breakdown of all class members
11 according to their positions, hire date, terminate date, and status of employment for all 67 members
12 of the potential class. (Lim Decl. ¶ 3.). Based on these records, there are 13 aggrieved employees
13 regarding PAGA.

14 **B. The Parties Settled After Mediation**

15 On November 30, 2020, the Parties participated in a joint mediation with James Johnston
16 of the Mediation Offices of James Johnston, an experienced mediator who handles class action
17 cases. Mr. Johnston helped to manage the Parties’ expectations and provided a useful, neutral
18 analysis of the issues and risks to both sides. With Mr. Johnston’s guidance, the Parties were able
19 to come to a settlement agreement during mediation. (Lim Decl. ¶ 4.)

20 The terms of the settlement are set forth in complete and final form in the Stipulation of
21 Settlement. (Lim Decl., Ex. A (redline draft is attached as Ex. B).) At all times, the Parties’
22 negotiations were adversarial and non-collusive. The Settlement therefore constitutes a fair,
23 adequate, and reasonable compromise of the claims at issue. (Lim Decl. ¶ 4.)

24 **C. The Proposed Settlement Fully Resolves Plaintiff’s Claims**

25 **1. Composition of the Settlement Class and PAGA Group Members.**

26 The proposed Settlement Class consists of all current and former non-exempt employees
27 who were employed by Defendant in California at any time during the period from February 25,
28 2016, through the date of the Preliminary Approval by the Court. (Settlement Agreement ¶ 1.).

1 There are a total of 67 Settlement Class Members. For PAGA, there are 45 aggrieved employees,
2 which include all current and former non-exempt or hourly paid employees of Defendant that have
3 worked for Defendant in the State of California at any time from February 3, 2019 through the date
4 of the Preliminary Approval by the Court (“PAGA Group Members”). (Settlement Agreement ¶
5 1.)

6 **2. Settlement Consideration**

7 Plaintiff and Defendants have agreed to settle the underlying class claims in exchange for
8 the Class Settlement Amount of \$100,000. The Class Settlement Amount includes: (1) payments
9 to all Settlement Class Members; (2) Settlement Administration Costs currently estimated not to
10 exceed \$10,000; (2) a \$10,000 payment to the LWDA; (3) Class Representative Enhancement
11 Payments of \$5,000 to Shari Riley for her services on behalf of the Settlement Class and for general
12 releases of all claims arising out of her employment with Defendants; and (4) a payment for
13 Plaintiff’s Counsel’s attorneys’ fees in an amount not to exceed one-third (1/3) of the total Class
14 Settlement Amount and costs not the exceed \$10,000. (Settlement Agreement ¶ 3B.)

15 Subject to the Court approving the Settlement Administration Costs, the payment to the
16 LWDA and the Class Representative Enhancement Payments, the Net Settlement Amount will be
17 paid to Participating Settlement Class Members by check. (Settlement Agreement ¶ 4E.)

18 **3. Formula for Calculating Payments from the Net Settlement Amount**

19 Each Settlement Class Member of the Net Settlement Amount and each PAGA Group
20 Members of the PAGA Amount will be proportional to the number of weeks he or she worked
21 during the Class Period and PAGA Period, respectively. (Settlement Agreement ¶ 4B.) The
22 Settlement Administrator will calculate payments from the Net Settlement Amount and PAGA
23 Amount according to the following formula:

24 Defendant will provide the Claims Administrator with information from Defendants’
25 records showing the number of weeks worked (“Eligible Workweeks”) by all Settlement Class
26 Members during the Class Period and pay periods for PAGA Group Members from February 3,
27 2019 through the date of the Preliminary Approval by the Court (“PAGA Period”). (Settlement
28 Agreement ¶ 4Bii and iii.)

1 If a Settlement Class Member and PAGA Group Members worked only one day, such
2 Settlement Class Member and PAGA Group Members will be credited with having worked one
3 workweek for purposes of the Settlement.

4 All workweek disputes will be resolved and decided by the Claims Administrator, and the
5 Claims Administrator's decision on all workweek disputes will be final and binding.

6 The amount to be paid per workweek to eligible Settlement Class Members of the Net
7 Settlement Amount will be calculated by the Claims Administrator by multiplying the remaining
8 Net Settlement Fund by a fraction, the numerator of which is the participating Settlement Class
9 Member's Eligible Workweeks during the Class Period, and the denominator of which is the total
10 Eligible Workweeks of all participating Settlement Class Members during the Class Period. The
11 same applies for the PAGA Group Members regarding the PAGA Amount.

12 Any Settlement Class Member who opts out of the Settlement is not a Settlement Class
13 Member and is ineligible to object to the Settlement or to participate in the Settlement. (Settlement
14 Agreement ¶ 9E.).

15 Given that there are approximately 67 Settlement Class Members, and an estimate class
16 recovery of \$31,700, the average net recovery per class member is approximately \$473.13. As for
17 PAGA, there are approximately 45 PAGA Group Members. With the PAGA Amount at \$2,500,
18 the average net recovery per each PAGA Group Member is approximately \$55.55. (Lim Decl. ¶¶
19 4, 19.)

20 **4. Release by the Settlement Class**

21 In exchange for the Class Settlement Amount, Plaintiff and Participating Settlement Class
22 Members will agree to release the Released Claims:

23
24 Upon the date the Court enters an order granting final approval of the Settlement
25 and Defendants funding the Gross Settlement Amount, and the employer's share of
26 payroll taxes Plaintiff and every member of the Settlement Class (except those who
27 opt out, as described below) who do not submit a valid and timely Request for
28 Exclusion to exclude themselves from the Settlement will fully release and
discharge Defendants, and all of their past and present owners, officers, directors,
shareholders, unit holders, managers, employees, agents, principals, heirs,
representatives, accountants, auditors, consultants, and its respective successors
and predecessors in interest, subsidiaries, affiliates, parents and attorneys,
(collectively the "Released Parties") for all claims, demands, rights, liabilities and

1 causes of action that were pled or could have been pled in any of the Complaints in
2 the Lawsuit based on the factual allegations therein, that arose during the Class
3 Period with respect to the following claims: (a) failure to pay meal and rest period
4 compensation (Cal. Lab. Code §§ 226.7, 512); (b) failure to pay compensation for
5 all hours worked, minimum wage violations, and overtime (Cal. Lab. Code §§ 216,
6 510, 1194, 1194.2, 1197); (c) waiting time penalties (Cal. Lab. Code § 203); (d)
7 failure to provide accurate itemized statements (Cal. Lab. Code § 226, IWC Wage
8 Order); (e) failure to reimburse business expenses (Cal. Lab. Code §2802); (f) all
9 claims arising out of unfair business practices under Business & Professions Code
§ 17200, *et seq.* that could have been premised on the facts, claims, causes of action
or legal theories described above; and (g) all claims under California’s Private
Attorneys General Act of 2004 that could have been premised on the facts, claims,
causes of action or legal theories described above (collectively, the “Released
Claims”). For members of the Settlement Class who do not validly opt out, the
release period shall run from February 25, 2016, through the date of Preliminary
Approval by the Court (“Class Period”).
(Settlement Agreement ¶ 2.)

10 **5. Release by the PAGA Group Members**

11 In exchange for the Class Settlement Amount, Plaintiff and Participating PAGA Group
12 Members will agree to release the Released PAGA Claims:

13
14 Upon the date the Court enters an order granting final approval of the Settlement
15 and Defendants funding the Gross Settlement Amount, Plaintiff and every member
16 of the PAGA Group, including the State of California, will fully release and
17 discharge the Released Parties from any and all claims for civil Penalties under
18 PAGA [Cal. Lab. Code §§ 2699, *et seq.*] based on the labor code violations alleged
and that are based upon or arise from the factual allegations in Plaintiff’s notice(s)
sent to the LWDA and alleged in the operative Complaint, including all attorneys’
fees and costs related thereto (“Released PAGA Claims”).
(Settlement Agreement ¶ 2.)

19 **III. ARGUMENT**

20 **A. The Court Should Preliminarily Approve the Proposed Class Action 21 Settlement**

22 **1. Courts Review Class Action Settlements to Ensure that the Terms Are 23 Fair, Adequate, and Reasonable**

24 California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of
25 class action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the
26 trial court; and (2) a subsequent “final” review after notice of the settlement has been distributed to
27 class members for their comments and objections. Rules 3.769(c)-(g); *Cellphone Termination Fee*
28 *Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement”
and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).

1 The motion for preliminary approval must be accompanied by (1) the settlement agreement, (2)
2 proposed notice to the class, and (3) the proposed order. Rule 3.769(c). The motion must also
3 identify any agreement concerning the payment of attorneys' fees. Rule 3.769(b).

4 If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court
5 to (1) schedule a final approval hearing and (2) approve the method by which the parties are to
6 provide notice to the class of the hearing and "an explanation of the proposed settlement." The
7 court must also approve a procedure for class members to file objections to the settlement. Rule
8 3.769(f). At the final approval hearing, the court must conduct an inquiry into the fairness of the
9 proposed settlement. Rule 3.769(g).

10 Although Rule 3.769 does not provide detail as to the scope of review of the proposed
11 settlement, preliminary approval is warranted if the settlement falls within a "reasonable range."
12 *See North County Contractor's Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085,
13 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002)
14 ("Newberg"). Reasonableness and fairness are presumed where: (1) the settlement is reached
15 through "arms-length bargaining;" (2) investigation and discovery are "sufficient to allow counsel
16 and the court to act intelligently;" (3) counsel is "experienced in similar litigation;" and (4) the
17 percentage of objectors "is small." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).
18 The presumption of fairness is consistent with California's public policy goal of favoring
19 settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) ("the law wisely favors
20 settlements"); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135,
21 1151 (2000) ("voluntary conciliation and settlement are the preferred means of dispute resolution .
22 . . [t]his is especially true in complex class action litigation").

23 Additionally, in reviewing the fairness of a class action settlement, due regard should be
24 given to what is "otherwise a private consensual agreement between the parties." *Cellphone*
25 *Termination Fee Cases*, 186 Cal. App. 4th at 1389. The inquiry "must be limited to the extent
26 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
27 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
28 whole, is fair, reasonable and adequate to all concerned." *Id.*

1
2 **2. Class Counsel Conducted an Investigation of the Factual and Legal**
3 **Issues and Was Thus Able to Objectively Assess the Settlement's**
4 **Reasonableness**

5 Each side has apprised the other of their respective factual contentions, legal theories, and
6 defenses resulting in extensive arms-length negotiations taking place among the Parties. Plaintiff
7 has received hundreds of pages of documents via formal discovery, and also received hundreds
8 more electronic pages of time and/or payroll data in an informal exchange of information prior to
9 mediation. These documents which represented a substantial sampling of the putative class, were
10 used to estimate the damages exposure for the Class. (Lim Decl. ¶ 5.) In sum, Plaintiff has obtained
11 sufficient discovery on both liability and damages to apprise the Court of the fairness of the
12 settlement.

13 Plaintiff estimated the maximum value of actual loss to be somewhere around \$809,151.08.
14 This was based on the following calculations:

15 Meal Period: Plaintiff contends that she was unable to take her meal period on time or did
16 not receive her meal periods at all on some occasions. Defendants refute Plaintiff's contention
17 claiming that it's meal period policy was lawful and that late lunches by the choice of each
18 employee rather than caused by Defendant. Defendants contend that employees were not prevented
19 from taking their lunch breaks on time and had every opportunity to take their meal periods in a
20 timely manner. Based on the records, the total number of shifts over 5 hours in length to was
21 approximately 18,585. Based on that figure, the records indicated approximately 6,483 shifts where
22 meal breaks were recorded after the end of the 5th hour. There were approximately 197 shifts with
23 no meal breaks recorded between the 5th and 6th hour and approximately 560 shifts where no meal
24 break was recorded for hours more than 6th hours. There were approximately 4,527 shifts where
25 meal periods were less than 30 minutes for shifts greater than 5 hours. Based on these figures, there
26 were meal period violations totaling approximately 11,767 shifts (approximately 63% violation
27 rate). Using an average rate of pay of \$17.31/hr, the total estimated damages is approximately
28 \$203,686.77. (Lim Decl. ¶ 8.)

Rest Breaks: Plaintiff contends that she was unable to take timely rest break approximately

1 three times per week. Defendants refute Plaintiff's contention claiming that it's rest period policy
2 was lawful and that late rest breaks by the choice of each employee rather than caused by
3 Defendant. Defendants contend that employees were not prevented from taking their rest periods
4 on time and had every opportunity to take their rest periods in a timely manner. Assuming a similar
5 violation rate as the meal periods, at 63%, Plaintiff estimates that of the 19,838 total shifts,
6 approximately 12,497.94 shifts resulted in late rest periods. Based on these figures, Plaintiff
7 estimates approximately \$216,339.34 in total premiums that were unpaid (12,497.94 x \$17.31/hr).
8 (Lim Decl. ¶ 9.)

9 Unpaid Wages: Plaintiff alleges that Defendants failed to compensate putative class
10 members for off-the-clock work relating to responding to text messages before and/or after their
11 shifts. Defendants contend that text messages were not sent by Plaintiff. Defendants contend that
12 while chats were used using computers, they were not in use prior to or after an employee's shift
13 and that the chat was not installed in personal cell phones. Notwithstanding, assuming
14 approximately 6 minutes per shift for responding to text messages off-the-clock, Plaintiff estimates
15 a value of \$51,509.37 (6 minutes (0.1) of average overtime rate (\$25.97) x 19,838). (Lim Decl. ¶
16 10.)

17 Wage Statement Penalties: There were approximately 1,400 pay periods during the relevant
18 liability period, which equates to \$134,050 in wage statement penalties. (Lim Decl. ¶ 11.)

19 Waiting Time Penalties: There are approximately 49 former employees who fall within the
20 liability period for this claim multiplied by \$4,154.40 (\$17.31 average hourly rate x 8 hours =
21 \$138.48 daily rate x 30 days = \$4,154.40) provides an exposure of \$203,565.60. (Lim Decl. ¶ 12.)

22 Here, the settlement is within a range of reasonableness in light of the fact the Gross
23 Settlement Amount accounts for 12.36% of the high estimate of actual loss. *See Sullivan v. DB*
24 *Investments, Inc.*, 667 F.3d 273, 325 (3rd Cir. 2011) (there appears to be "no authority that requires
25 a district court to assess the fairness of a settlement in light of the potential for trebled damages.");
26 *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988) ("A settlement can be
27 satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential
28 recovery."); *Balderas v. Massage Envy Franchising, LLC*, 2014 WL 3610945, at *5 (N.D. Cal. July

21, 2014) (granting preliminary approval on a net settlement amount representing 5% of the projected maximum recovery at trial).

The sample provided was sufficient for purposes of Settlement. According to statistical science, a 17-person sample for a class size of 67 resulted in a 21% margin of error with a 95% confidence level. Typically, if the sample were to be used to obtain an expert opinion for introduction at trial, a 5% margin of error would be used, which would arrive at a 58-person sample size. However, as the purpose of this sample was for mediation, a 21% margin of error is sufficient as Plaintiff expects this Court to grant approval based on the rough estimates of value of the claims and the reasonableness of the same. What this means is that with the 17-person sampling, there is a 95% chance that the actual damages derived from that small sample are between 79-121% of the sampled value. Thus, Plaintiff argues that even with an additional 21% increase in the value of the claims, the settlement would still be in the range of reasonableness. Especially as there is an equal chance based on the sampling science that the numbers would result in overvalues of 21%.

This means that if a sample of just 17 randomly selected data points out of 67 is too small, that sample could be increased. However, an increase in the sample size, and an increase in the cost of negotiating the settlement, is unnecessary because even assuming the maximum error rate, the settlement is still within the range of reasonableness. Only if the settlement is just outside the range of reasonableness would an increase in the sample size possibly result in a benefit, because only when the settlement is outside the range of reasonableness and the amount it is outside the range is within the margin of error could a reduced margin of error be achieved by an increased sample size to make a positive difference.

With a 21% margin of error at 95% confidence interval, which was the result of the sample size, adding 21% to the estimated actual loss still results in the settlement being within the range of reasonableness. Rather than 12.36%, the figure would be 10.21%, which is still within the range of reasonableness. For the purpose of mediation only, Plaintiff's counsel informally confirmed with her damages expert that the sampling would provide useful information to extrapolate damages figures for purposes of mediation. (Lim Decl. ¶ 13.)

In addition, the values provided do not include a discount for risk, given this is an early

1 settlement, pre-certification, and the bulk of the damages are related to meal and rest break claims,
2 this is a favorable settlement for the Class.

3 PAGA Penalties: There are approximately 2,839 pay periods during the relevant liability
4 period for this claim with approximately 45 aggrieved employees. The total aggregate amount of
5 PAGA penalties is \$600 for each initial pay period, and \$1,700 for each subsequent pay periods.
6 Even applying the initial pay period penalties, with 2,839 pay periods and 45 aggrieved employees,
7 the total penalties equal \$76,653,000. (Lim Decl. ¶ 14.)

8 Risk Evaluation: These figures are estimates of exposure. There are substantial risks
9 involving certification, maintaining certification through trial, summary judgment, and factual and
10 procedural risks, as well as the risk of appeal. The law is constantly changing and there is always
11 a chance that the law changes in a manner unfavorable to employees if a case continues for several
12 years, as class actions regularly do. There is considerable risk involved in meal and rest break
13 claims where the basis of the claim is not a common illegal policy. There a common issue is
14 practice, such as it appears here, the risk of certification is higher and the difficulty in proving class
15 wide damages is greater. Plaintiff's theories of liability and damages may not result in a full award
16 of the high end estimated value of the claims. With respect to off-the-clock work, although the
17 California Supreme Court has essentially eliminated the *de minimus* defense, there might be
18 instances where it could apply. Such as if the type of off-the-clock work was intermittent and
19 difficult to record. Plaintiff claims that the off-the-clock work was mainly responding to text
20 messages pre and/or post shift that were not compensated. These tasks, however, are varied as
21 different job positions may have resulted in different duties, and it may be that certification cannot
22 be maintained through trial and/or the damages cannot be proven to the high end estimated here.
23 Plaintiff was the only production assistant at the workplace. As such, the circumstances of her
24 workplace may be differed from that of a warehouse worker who were not required to correspond
25 via text message. All this pose significant risk factors that Plaintiff considered settling. (Lim Decl.
26 ¶ 15.)

27 The statutory penalty claims for inaccurate wage statement and late payment of wages as
28 the basis for waiting time penalties, are all derivative of the underlying wage claim and have the

1 same risk factors. However, in addition, there are additional elements for these derivative penalties,
2 including willfulness and suffering injury. So even if the trier of fact were to find in favor of
3 employees for the underlying wage claim, the penalties would not be awarded unless in addition to
4 the facts were willful and the inaccurate wage statements resulted in a suffering injury. These are
5 additional risk factors that were considered. (Lim Decl. ¶ 16.)

6 The PAGA penalties have additional and separate risks. Defendants assert that these civil
7 penalties are not mandatory but permissive and discretionary. The same risks apply as the PAGA
8 penalty depends on a finding of legal violation, just as the wage claims do. However, there is the
9 argument that the full penalties would be unjust. There is no clear law on what the Court should
10 use to determine whether the full penalties would be unjust. That said, given the award of the
11 underlying wage claims, it may necessity a finding that the additional penalties would be
12 unnecessary. (Lim Decl. ¶ 17.)

13 PAGA penalties are assessed on a pay period by pay period basis. As such, two employees
14 with two violations, who worked for two pay periods each. If the first employee's violations
15 occurred in two pay periods and the second employee's violations occurred in only a single pay
16 period, their damages would be very different. To that end, there is a likelihood that Plaintiff's
17 damage estimates of taking an average violation rate in fact over-estimates the available damages
18 in a PAGA claim. (Lim Decl. ¶ 18.)

19 Furthermore, with off-the- clock work, not every employee suffered the same way and for
20 every shift. As the nature of the work and duties differed, these violations would apply differently
21 in that some jobs may have consistent violations while other jobs having none at all. While the
22 policy may be uniform, the application could vary drastically depending on the facts of the job.
23 Because of the manner of assessing penalties under PAGA, damages would be over-estimated for
24 settlement calculations as compared to trial when it would be necessary to prove the damages per
25 pay period, per each aggrieved employee, which may very well result in a lesser maximum penalty
26 than estimated here. (Lim Decl. ¶ 19.) The amount allocated to PAGA is reasonable in light of the
27 real risks of only obtaining a modest award at trial, and especially in light of the goal of Plaintiff to
28 help negotiate a settlement of wages - a goal specifically approved of by the California Labor

1 Commissioner as State shares the same goal of favoring repayment of wages over assessment of
2 civil penalties. Proportionally, \$2,500 (25% of \$10,000) comes to approximately \$0.88/ per pay
3 period (45 aggrieved employees x 63 pay periods each). (Lim Decl. ¶ 19.)

4 Summary of Risk Evaluation: Assuming the worst-case margin of error (21%) resulting
5 from the sample, the maximum exposure is approximately \$980,000 for a settlement. If Plaintiff
6 were to apply a 75% discount for certification risk and another 60% for the merits of the case, the
7 resulting figure would be a little less than \$100,000. It is difficult to assess the actual risks of
8 certification and proof at trial, but it is not outside the range of reasonableness to consider risk
9 percentages for this case as set forth here. This case is in this range of reasonableness. *See Rebney*
10 *v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139 (“Compromise is inherent and necessary
11 in the settlement process . . . even if the relief afforded by the proposed settlement is substantially
12 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
13 settlement because the public interest may indeed be served by a voluntary settlement in which
14 each side gives ground in the interest in avoiding litigation.”); *Officers for Justice v. Civil Serv.*
15 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting
16 to only a fraction of the potential recovery does not . . . render the settlement inadequate or unfair.”).

17 **3. The Settlement Was Reached Through Arm’s-Length Bargaining in**
18 **Which All Parties Were Represented by Experienced Counsel**

19 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a
20 proposed settlement’s fairness.” *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts
21 presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the
22 contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good
23 faith. Newberg, § 11.51.

24 The settlement that has been reached, subject to this Court’s approval, is the product of
25 substantial effort by the Parties and their counsel. The settlement was reached after extensive
26 factual and legal investigation and research, numerous discussions, exchanges of documents and
27 information, correspondence, and full day session of mediation. However, no depositions were
28 taken in this case and no witnesses were interviewed other than Plaintiff. (Lim Decl. ¶ 4.) The

1 settlement amount is, of course, a compromise figure. It took into account the risks related to
2 liability, damages, and all the defenses asserted by Defendants.

3 Both Class Counsel and Defendants' counsel have experience handling wage and hour class
4 action litigation. (Lim Decl. ¶¶ 22, 25-26); (Lee Decl. ¶¶ 2-8.). Class Counsel has been previously
5 approved as class counsel in wage and hour matters. (*Id.*). Moreover, as noted above and detailed
6 herein, Class Counsel conducted an investigation of the factual allegations involved in this case.
7 Thus, based upon such experience and knowledge of the current case, Class Counsel believe that
8 the current Settlement is fair, reasonable, and adequate. In sum, there should be a presumption of
9 fairness because the factors establishing such a presumption are satisfied.

10 **4. The Proposed Settlement Is Reasonable Given the Strengths of** 11 **Plaintiff's Claims and the Risks and Expense of Continued Litigation**

12 In advance of mediation, Plaintiff's counsel evaluated the claims in light of the risks of
13 continued litigation in order to determine a reasonable range of class relief for settlement purposes.
14 Although Plaintiff's counsel believe the class claims are strong, Plaintiff's counsel also recognize
15 that if the litigation had continued, they may well have encountered significant legal and factual
16 hurdles that could have prevented the Class from obtaining any recovery. To be sure, a number of
17 cases have found wage and hours actions to be especially amenable to class resolution.¹ However,
18 some courts have gone the other way, finding that some of the very claims at issue here—off-the-
19 clock and meal/rest period violations—were not suitable for class adjudication because they raised

20 ¹ See *Brinker Restaurant Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1033 (2012) (“Claims alleging that a uniform policy
21 consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and
22 properly, found suitable for class treatment . . . The theory of liability – that [the employer] has a uniform policy, and
23 that that policy, measured against wage order requirements, allegedly violates the law – is by its nature a common
24 question eminently suited for class treatment.”). Litigation of wage and hour claims on class-wide bases (1) encourages
25 the vigorous enforcement of wage laws (*Smith v. Super. Ct.*, 39 Cal. 4th 77, 82 (2006)); (2) “eliminates the possibility
26 of repetitious litigation” (*Sav-on Drug Stores, Inc. v. Super. Ct. (Rocher)*, 34 Cal. 4th 319, 340 (2004)); (3) affords
27 small claimants a method of obtaining redress (*id.*); (4) “deter[s] and redress[es] alleged wrongdoing” (*Jaimez v. Daihls*
28 *USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010)); (5) “avoid[s] windfalls to defendants” (*Brinker*, 53 Cal. 4th at 1054);
(6) avoids “inconsistent or varying adjudications” (*Aguiar v. Cintas Corp. No. 2*, 144 Cal. App. 4th 121, 129 (2006));
and (7) alleviates the concerns of employees about retaliation (*Gentry v. Super. Ct. (Circuit City Stores)*, 42 Cal. 4th
443, 462- 63 (2007); *Jaimez v. Daihls USA, Inc.*, 181 Cal. App. 4th at 1308). These policies are so strongly favored
that “class certifications should not be denied [in wage and hour cases] so long as the absent class members’ rights are
adequately protected.” *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 474 (1981); see also *Sav-On*, supra, 34 Cal.
4th 319 (upholding certification of an overtime class action based on a showing that all plaintiffs performed jobs that
were highly standardized, and as a result, class members performed essentially the same tasks, most of which were
non-exempt as a matter of law).

1 too many individualized issues. *See Ali v. U.S.A. Cab Ltd.*, 176 Cal. App. 4th 1333, 1341 (2009)
2 (affirming denial of certification because employees' declarations attesting to having taken meal
3 and rest periods demonstrated that individualized inquiries were required to show harm); *Campbell*
4 *v. Best Buy Stores, L.P.*, 2013 U.S. Dist. LEXIS 137792, at *30-41 (C.D. Cal. Sept. 20, 2013)
5 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break
6 classes due to lack of uniform policy); *Jimenez v. Allstate Ins. Co.*, 2012 U.S. Dist. LEXIS 65328
7 (C.D. Cal. Apr. 18, 2012) (denying motion to certify meal and rest period classes based on
8 employer's practice of understaffing and overworking employees); *Gonzalez v. Officemax N. Am.*,
9 2012 U.S. Dist. LEXIS 163853 (C.D. Cal. Nov. 5, 2012) (same); *Brown v. Fed. Express Corp.*, 249
10 F.R.D. 580, 587-88 (C.D. Cal. 2008) (denying certification of driver meal and rest period claims
11 based on the predominance of individual issues).

12 As the above examples illustrate, the prospect of certifying a wage and hour action is always
13 uncertain, and the risk of being denied class certification militates in favor of settlement. A denial
14 of class certification effectively forecloses continued litigation, as neither the individual nor his or
15 her attorney will have any incentive to proceed with an individual case when such small claims are
16 at stake. *See In re Baycol Cases I & II*, 51 Cal. 4th 751, 758 (2011) (explaining that a dismissal of
17 class claims is effectively the "death knell" of the case, despite survival of individual claims). In
18 other words, for cases where individual damages are relatively small, denial of class certification
19 results in a near-complete loss for plaintiffs as well as no recovery for the employees, who are shut
20 out of the action. Thus, if the putative Class had not been certified, the value of Plaintiff's case
21 would have been reduced to a fraction of the value of this Settlement; indeed, Defendants would
22 likely have offered no money to settle the class-wide claims if certification had been denied.

23 Finally, early resolutions save time and money that would otherwise go to litigation. Parties'
24 resources, as well as the Court's, will be further taxed by continued litigation. And if this action
25 had settled following additional litigation, the settlement amount would likely have taken into
26 account the additional costs incurred, and there may have been less available for Settlement Class
27 Members. Cost savings is one reason why California policy strongly favors early settlement. *See*
28 *Neary v. Regents of University of California*, 3 Cal. 4th 273, 277 (1992) (explaining the high value

1 placed on settlements and observing that “[s]ettlement is perhaps most efficient the earlier the
2 settlement comes in the litigation continuum.”). This concern also supports settlement.

3 At mediation, James Johnston, an experienced class action mediator, helped manage the
4 Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides.
5 *See In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS
6 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any
7 inference of a collusive settlement), *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a
8 “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
9 proceedings were free of collusion and undue pressure.”). Mr. Johnston guided the Parties’
10 negotiations that resulted in this Settlement. At all times, the Parties’ negotiations were adversarial
11 and non-collusive.

12 In summary, after balancing the relative strengths of Plaintiff’s claims and Defendants’
13 defenses, Class Counsel determined that the settlement is fair and reasonable. Despite the asserted
14 fairness of the Settlement, should any potential Settlement Class Members, upon review of the
15 Notice Packet, object to the terms of the Settlement as set forth therein, each has the right to file an
16 objection or seek exclusion from the Settlement. (Settlement Agreement ¶ 9F.). By such procedure,
17 Settlement Class Members may also attend the Final Approval and Fairness Hearing for the
18 purposes of objecting to one or more of the Settlement’s terms. Based on the above, the Settlement
19 for each participating Settlement Class Member is fair, reasonable, and adequate, given the inherent
20 risk of litigation, the risk and time of appeal, and the costs of pursuing such litigation.

21
22 **B. The Proposed Notice Properly Informs Settlement Class Members about the
Case and the Settlement**

23 Settlement Class Members are entitled to the best practical notice under the circumstances.
24 *Kass v. Young*, 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members
25 sufficient information to decide whether they should accept the benefits offered, opt out and pursue
26 their own remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*,
27 48 Cal. App. 3d 143, 151-52 (1975). The notice must advise class members “that they may be
28

1 excluded from the class if they so request and that they will be bound by the judgment, whether
2 favorable or not, if they do not request exclusion.” *Kass*, 67 Cal. App. 3d at 106. In a case such as
3 this involving a significant number of class members, California authorities generally require
4 service of the class notice by mail or similar reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275,
5 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).²

6 The Parties have jointly drafted the Class Notice which fairly and neutrally informs Class
7 Members of their rights and remedies in this action. (Lim Decl. ¶ 4. Ex A (Class Notice Packet
8 Attached, including Class Notice, Request for Exclusion Form, and Objection Form.) The proposed
9 Class Notice will be mailed to all Settlement Class Members by First Class mail, and will include
10 information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s
11 terms, the class definition, the procedure and time period within which to submit Requests for
12 Exclusion or objections to the Settlement, the date for the final approval hearing, the formula used
13 to calculate settlement payments, and the terms and scope of the Released Claims. (Settlement
14 Agreement, Ex. A.)

15 Before mailing the Class Notice, the Settlement Administrator will verify the addresses
16 produced by Defendants for each Settlement Class Member using the National Change of Address
17 Database. (Settlement Agreement ¶ 9B.) In the event Class Notices are returned as undeliverable,
18 the Settlement Administrator will attempt to locate a current address using, among other resources,
19 a class action locator service. (*Id.* at ¶ 9C.) This method was negotiated by the Parties to maximize
20 the Settlement Class Member response rate while ensuring cost effective administration of the
21 Settlement. In the past, similar notice methods to class members have resulted in strong response
22 rates.

23 Accordingly, both the method of disseminating the Class Notice and content of the Class
24 Notice satisfy due process and the requirements of California law. *See* C.R.C. 3.776(e)-(f); *State of*
25 *Cal. v. Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must “fairly apprise the class
26

27 ² Due process does not require that each class member actually receive a notice, but rather a procedure reasonably
28 certain to reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed.
1986). If appropriate notice is given, class members will be bound by the judgment even if they never actually receive
the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir. 1987).

1 members of the terms of the proposed compromise and of the options open to dissenting class
2 members.”).

3 **C. The Court Should Preliminarily Approve the Proposed PAGA Settlement**

4 Pursuant to the Settlement Agreement, \$10,000 from the Class Settlement Amount shall be
5 allocated to the resolution of the PAGA claim, of which 75% (\$7,500) will be paid directly to the
6 LWDA, and the remaining 25% will be paid to PAGA Group Members. (Settlement Agreement ¶
7 3B (5).) This result was reached after good-faith negotiation between the parties with input from
8 the mediator. Where PAGA penalties are negotiated in good faith and “there is no indication that
9 [the] amount was the result of self-interest at the expense of other Class Members,” such amounts
10 are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S.
11 Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal.
12 App. 4th 576, 579 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which
13 does not allocate any damages to the PAGA claims.”).

14 **D. The Court Should Preliminarily Approve the Negotiated Enhancement**
15 **Payments**

16 Enhancement payments “are fairly typical in class action cases.” *Cellphone Termination*
17 *Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000);
18 *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing *Newberg on Class*
19 *Actions* (4th ed. 2002) § 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs:*
20 *An Empirical Study*, 53 UCLA L. Rev. 1303 (2006). Enhancement payments “are intended to
21 compensate class representatives for work done on behalf of the class, to make up for financial or
22 reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness
23 to act as a private attorney general.” *Rodriguez*, 563 F.3d at 958–59. “[T]he rationale for making
24 enhancement or incentive awards to named plaintiffs is that they should be compensated for the
25 expense or risk they have incurred in conferring a benefit on other members of the class.” *Clark v.*
26 *American Residential Services LLC*, 175 Cal. App. 4th 785 (2009).

27 Approximately 67 current and former Defendants’ employees will share a \$31,700.00
28 settlement fund (minus costs and fees) due entirely to the effort and commitment of Plaintiff Riley.

1 Subject to Court approval, therefore, the Settlement provides for Enhancement Payments of \$5,000
2 to Riley (having put the most work in) as a class representative.³ (See generally Riley Declaration.).
3 The Enhancement Payments are fair and reasonable compensation for Plaintiff's efforts in pursuing
4 the action, serving as private attorneys general under PAGA, assisting counsel with the litigation
5 and settlement, regularly conferring with counsel on the status of her case and the strategies for
6 prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and
7 provide adequate relief for the Settlement Class, and agreeing to provide Defendants a general
8 release of all claims arising out of her employment.

9 Plaintiff will file a formal motion for the negotiated Enhancement Payments once
10 preliminary approval of the Settlement is granted. Plaintiff respectfully submit that the above
11 showing is sufficient for preliminary approval of the negotiated Enhancement Payment.

12 **E. The Negotiated Attorneys' Fees and Costs Are Reasonable**

13 Plaintiff is entitled to attorneys' fees under the fee-shifting provisions of California Labor
14 Code sections 226(e),⁴ 1194(a),⁵ and 2699(g)(1),⁶ because she has successfully litigated and settled
15 claims arising out of Defendants' alleged failure to pay overtime and minimum wages and
16 premiums owed to employees during employment and at separation, and to provide employees with
17

18 ³ Such amounts are reasonable by reference to the amounts that California courts (both federal and state) have
19 repeatedly found to be reasonable for wage and hour class action settlements: See *Restoration Hardware Wage and*
20 *Hour Cases*, No. JCCP4794 (L.A. County Super. Ct. April 28, 2016) (awarding \$10,000 enhancement payments to the
21 named plaintiffs); *Hoagland v. Brooks Brothers Group, Inc.*, No. BC511534 (L.A. County Super. Ct. July 16, 2015)
22 (awarding \$10,000 enhancement payment to the named plaintiff); *Baker v. L.A. Fitness Int'l, LLC*, No. BC438654
23 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs);
24 *Blue v. Coldwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding
\$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11,
2010) (awarding \$10,000 enhancement payments to the named plaintiffs); *Coleman v. Estes Express Lines, Inc.*, No.
BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal*
Health Services, Inc., No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement
payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27,
2012) (awarding \$10,000 enhancement payment).

25 ⁴ Labor Code section 226(e) ("An employee suffering injury as a result of a knowing and intentional failure by an
employer to comply with subdivision (a) is entitled to . . . an award of costs and reasonable attorney's fees.")

26 ⁵ Labor Code section 1194(a) ("[A]ny employee receiving less than the legal minimum wage or the legal overtime
27 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount
of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of
suit.")

28 ⁶ Labor Code section 2699(g)(1) ("Any employee who prevails in any action shall be entitled to an award of reasonable
attorney's fees and costs. Nothing in this part shall operate to limit an employee's right to pursue or recover other
remedies available under state or federal law, either separately or concurrently with an action taken under this part.")

1 compliant wage statements. These fee-shifting statutes are designed to create financial incentives
2 for qualified attorneys to take on meritorious cases in which the recoveries may be so small that it
3 would be unlikely for attorneys to accept the representation on a percentage-of-the-recovery basis.
4 *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 580 (2004) (“[A] lawyer who both bears the
5 risk of not being paid and provides legal services is not receiving the fair market value of his work
6 if he is paid only for the second of these functions.”); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132
7 (2001) (“[A] contingent fee contract, since it involves a gamble on the result, may properly provide
8 for a larger compensation than would otherwise be reasonable.”); see also *Jones v. Tracy School*
9 *Dist.*, 27 Cal. 3d 99, 111 (1980) (“Most employers . . . can more readily afford a protracted . . . suit
10 than can their employees. The mandatory award of attorney’s fees encourages aggrieved employees
11 to pursue meritorious but expensive claims, some . . . involving lost pay awards which are small
12 compared to the plaintiff’s attorney’s fees.”).

13 These fee-shifting statutes embody a strong policy providing a monetary incentive to
14 qualified attorneys to prosecute actions in which the recoveries may be so small that it would be
15 unlikely for an attorney to accept the representation on a contingency-fee basis. *Ketchum v. Moses*,
16 24 Cal. 4th 1122, 1132 (2001) (holding that fee-shifting brings “the financial incentives for
17 attorneys enforcing important constitutional [or statutory] rights . . . into line with incentives they
18 have to undertake claims for which they are paid on a fee-for-services basis.”). And to require
19 proportionality between the fee requested and the recovery obtained would reflect a
20 misunderstanding of the policy rationale for claims that, like those at issue here, provide for
21 statutory fee-shifting. See, e.g., *City of Riverside v. Rivera*, 477 U.S. 561, 578-79 (1986) (opinion
22 of Brennan, J.) (“A rule of proportionality would make it difficult, if not impossible, for individuals
23 with meritorious . . . claims but relatively small potential damages to obtain redress from the
24 courts,” and stating that such an approach would “seriously undermine Congress’ purpose in
25 enacting [its fee-shifting statute.]”).

26 Indeed, “[t]he whole purpose of fee-shifting statutes is to generate attorneys’ fees that are
27 disproportionate to the plaintiff’s recovery.” *Millea v. Metro-North R.R. Co.*, 2011 U.S. App.
28 LEXIS 16354, *31 (2d Cir. Aug. 8, 2011) (“especially for claims where the financial recovery is

likely to be small, calculating attorneys' fees as a proportion of damages runs directly contrary to the purpose of feeshifting statutes [by assuring that] claims of modest cash value can attract competent counsel"); *see also Beaty v. BET Holding, Inc.*, 222 F.3d 607, 612-613 (9th Cir. 2000) (a "trial court does not under California law abuse its discretion simply by awarding fees in an amount higher, even very much higher, than the damages awarded"). Moreover, any approach attempting to link the amount of recovery to the amount of attorneys' fees awarded would undermine the rationale for claims that, like those at issue here, provide for statutory fee-shifting. *City of Riverside v. Rivera*, 477 U.S. at 578-79.

If experienced and skilled plaintiff's attorneys are not provided with adequate incentives, they will not bring such actions. *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 41 (2000) ("[T]his kind of consumer class action litigation would not be pursued by counsel but for the expectation of receiving enhanced fee awards in successful cases."). Fee awards that are too small "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Id.* at 53.

In short, under California fee-shifting statutes, Plaintiff's counsel should be adequately compensated for successfully prosecuting this action on behalf of employees who would otherwise lack the financial incentive and/or means to vindicate their statutory Labor Code rights. At final approval, Plaintiff will seek Court-approval of the negotiated attorneys' fees and costs.

F. California Law Authorizes Provisional Certification for Settlement Purposes

1. The California Standard for Class Certification

Class actions are statutorily authorized "when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class certification is appropriate when there is an "ascertainable class and a well-defined community of interest among class members." *Sav-On*, 34 Cal. 4th at 326. Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. *Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207

1 (2008); *Sav-On*, 34 Cal. 4th at 333.

2 In California, there are two certification prerequisites: (1) the existence of an “ascertainable
3 class,” and (2) “a well-defined community of interest in the questions of law and fact involved
4 affecting the parties to be represented.” *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695,704 (citation
5 omitted). In addition, as set forth above, California courts utilize the procedures prescribed by the
6 Federal Rules of Civil Procedure in class actions filed in California. *Schneider v. Vennard* (1986)
7 183 Cal.App.3d 1340, 1345-46; *Daar*, 67 Cal.2d at 695; *Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800.
8 California Civil Code §1781(b) provides:

9
10 The court shall permit the suit to be maintained on behalf of all members to the
11 represented class if all of the following conditions exist: (1) It is impracticable to
12 bring all members of the class before the court. (2) The questions of law or fact
13 common to the class are substantially similar and predominate over the questions
affecting the individual members. (3) The claims or defenses of the representative
plaintiffs are typical of the claims or defenses of the class. (4) The representative
plaintiffs will fairly and adequately protect the interests of the class.

14 Each of the criteria for class certification is clearly satisfied herein.

15 1. **Numerosity** - California law requires the class to be so numerous that utilization of
16 the class action procedure will inure to the benefit of the judicial system. *Richmond v. Dart Indus.*
17 *Inc.* (1981) 29 Cal.3d 462,470. The Defendants identified potential class members from its time
18 and payroll records and upon final preliminary approval have agreed to provide the class list to the
19 Claims Administrator. Defendants identified a total of approximately 67 Settlement Class
20 Members. This number exceeds the minimum number of individuals required to meet the
21 numerosity requirement.

22 2. **Commonality** - California law also requires that “questions of law or fact common
23 to the class [be] substantially similar and predominate over the questions affecting the individual
24 members.” Common issues predominate when they would be “the principal issues in any
25 individual action, both in terms of time to be expended in their proof and of their importance.”
26 *Vasquez*, 4 Cal.3d at 810. Common questions need only be “sufficiently pervasive to permit
27 adjudication in a class action rather than in a multiplicity of suits.” *Id* Commonality is easily
28 satisfied if there is one issue common to class members. *Hanlon v. Chrysler Corp.* (9th Cir. 1988)

1 150 F.3d 1011, 1019.

2 Here, common issues, without limitation, include whether Defendants violated applicable
3 wage laws, *i.e.*, failed to pay its non-exempt employees minimum and overtime wages, failed to
4 provide meal and rest breaks, failed to provide compliant wage statements, and failed to timely pay
5 all earned wages to terminated and/or resigned employees. Because there are common issues, this
6 requirement is satisfied for purposes of settlement.

7 3. **Typicality** - Typicality requires only that the named plaintiff's interests in the action
8 be significantly similar to those of other class members. A representative plaintiff's claims are
9 typical if they arise from the same event, practice, or course of conduct that gives rise to the claims
10 of other class members, and if his or her claims are based on the same legal theories. *Miller v.*
11 *Woods* (1983) 16 Cal.App.3d 862, 874. Indeed, when the same underlying conduct affects the
12 named plaintiff and the class sought to be represented, the typicality requirement is met irrespective
13 of any varying fact patterns that may underlie individual claims. *Daniels v. Centennial Group, Inc.*
14 (1993) 16 Cal.App.4th 467, 473 - named plaintiff's interests must only be significantly similar to
15 other class members.

16 In this case, the Plaintiff's claims are precisely the same as those of the class they seek to
17 represent. Like other members of the Class, they were employed by Defendants during the relevant
18 time period, performed similar duties for Defendants, and Defendants' policies were uniformly
19 applied to their employees.

20 As the court in *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341,
21 explained:

22 [I]t has never been the law in California that the class representative must have
23 identical interests with the class members. The only requirements are that common
24 questions of law and fact predominate and that the class representative be similarly
situated. *Id* at 1347 (citation omitted, emphasis in original).

25 Accordingly, Plaintiff's claims are typical of those of the Settlement Class Members.

26 4. **Adequacy of Representation** - To maintain a class action, the representative
27 plaintiff must adequately protect the interests of the class. California Civil Code §1781(b)(4).
28 Adequacy of representation consists of two components. First, there must be no disabling conflicts

1 of interest between the class representatives and the class. Second, the class representative must
2 be represented by counsel who are competent and experienced in the kind of litigation to be
3 undertaken. *McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442,450.

4 a. **No Disabling Conflict of Interest Exist Between the Class**
5 **Representative and the Class**

6 No conflicts, disabling or otherwise, exist between the Class Representative and Settlement
7 Class Members because the Plaintiff has allegedly been damaged by the same alleged conduct and
8 has the incentive to fairly represent all Settlement Class Members' claims to achieve the maximum
9 possible recovery. Indeed, the Class Representative stands in the same shoes as the Settlement
10 Class Members with the same incentive to maximize the overall recovery. *Richmond*. 29 Cal.3d at
11 473; *Harrison v. Bd. Of Supervisors* (1975) 44 Cal.App.3d 852, 863. *See also generally* Declaration
12 of Riley.

13 b. **Class Counsel are Experienced Class Action Attorneys**

14 Plaintiff is represented by competent counsel who have experience in litigating wage and
15 hour class action cases. (*See* Lim Decl. ¶¶ 19-26.) Plaintiff's counsel has successfully briefed,
16 argued, and gained court settlement approval of the same or similar class-wide causes of action that
17 are at issue in this case. (Lim Decl. ¶ 25.) Plaintiff's counsel's wage and hour class action
18 experience establishes that he is well-qualified to represent the interests of this Class.

19 Plaintiff's goals have been realized to have redress for the employees whose wage and hour
20 rights were violated. While Defendants deny liability, they have nonetheless agreed to settle the
21 matter to avoid any potential expense. Should the Court refuse to grant preliminary approval of
22 this Settlement, many of the Settlement Class Members may be denied any recourse for
23 Defendants' alleged violations.

24 5. **Superiority of Class Action** - Also relevant to the Court's certification decision is
25 whether a class action is the superior method of adjudication. *Schneider*, 183 Cal.App.3d at 1347.
26 The California Supreme Court has "repeatedly emphasized the importance of the class action
27 device for vindicating the rights asserted by large groups of persons." *Keating v. Sup. Ct.* (1982)
28 31 Cal.3d at 469 (recognizing that class actions are useful for fashioning effective and inclusive

1 group remedy). The class device is even more appropriate to adjudicate the rights of large numbers
2 of similarly situated victims who lack the sophistication, financial wherewithal, or individual
3 incentive to sue on their own. For example, in *Vasquez v. Sup. Ct.*, the California Supreme Court
4 emphasized that “[i]ndividual actions by each of the defrauded consumers is often impracticable
5 because the amount of individual recovery would be insufficient to justify bringing a separate
6 action; thus an unscrupulous seller retains the benefits of its wrongful conduct.” *Vasquez*, 4 Cal.3d
7 at 808. The Court in *Vasquez* also recognized several other benefits of class action treatment:

8 A class action by consumers produces several salutary byproducts, including a
9 therapeutic effect upon those sellers who indulge in fraudulent practices, aid to
10 legitimate business enterprises by curtailing illegitimate competition, and avoidance
11 to the judicial process of the burden of multiple litigation involving identical claims.
Id. *State v. Levi Straus & Co.* (1986) 41 Cal.Bd 460,471 (noting that consumer
class actions are “an essential tool for the protection of consumers against
exploitative business practices”).

12 This case is no exception. Given the size of the potential individual recovery, it would be
13 impracticable to bring each Settlement Class Members’ claim as an individual claims.

14 Accordingly, the Class meets all criteria for certification and should be certified for
15 purposes of effectuating this settlement. *Hogva v. Sup. Ct.* (1977) 75 Cal.App.3d 122 (if the action
16 satisfies the statutory criteria, the court must certify the class); *Dunk*, 48 Cal.App.4th at 1807 n. 19
17 (a lesser standard of scrutiny applies when evaluating these criteria for settlement purposes and
18 courts should take settlement into account in evaluating class certification); *Amchen Products, Inc.*
19 *v. Windsor* (1977) 521 U.S. 591, 620 (because the Court is certifying this action for settlement
20 purposes only, it need not determine whether the class would be manageable for litigation
21 purposes).

22 **IV. CONCLUSION**

23 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately
24 presented the materials and information necessary for preliminary approval, the Parties request
25 that the Court preliminarily approve the settlement.

1 DATED: November 2, 2021

LIM LAW GROUP, P.C.

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