

BOYAMIAN LAW, INC.

Michael H. Boyamian (SBN 256107)

Armand R. Kizirian (SBN 293992)

550 North Brand Boulevard, Suite 1500

Glendale, California 91203

Telephone: 818.547.5300

Facsimile: 818.547.5678

Email(s): michael@boyamianlaw.com,

armand@boyamianlaw.com

HARTOUNIAN LAW FIRM, P.C.

Alex Hartounian (SBN 252210)

234 E. Colorado Blvd., Suite 800

Pasadena, California 91101

Telephone: (818) 794-9675

Facsimile: (818) 459-6997

Email: alex@h-lf.com

Attorneys for Plaintiff SOFIJA MARKOVIC, individually

And on behalf of others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

SOFIJA MARKOVIC, an individual, on behalf
of herself, and all others similarly situated

Plaintiff,

v.

BBG SD4 LLC d/b/a Raglan Public House, a
California Limited Liability Company; BBG
SD5 LLC d/b/a Dunedin New Zealand Eats, a
Delaware Limited Liability Company; BBG
SD3 LLC d/b/a Queenstown Public House, a
California Limited Liability Company; BBG
Cal, LLC d/b/a Bare Back Grill; a California
Limited Liability Company, and Arbor SD,
LLC d/b/a Queenstown Bistro, a California
Limited Liability Company; and DOES 1
through 100, Inclusive,

Defendants.

CASE NO. 37-2020-00016435-CU-OE-CTL

*[Assigned for All Purposes to the Hon.
Katherine A. Bacal, Department C-69]*

**PLAINTIFF'S NOTICE OF MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL**

*[Filed concurrently with the Declaration of
Armand R. Kizirian; [Proposed] Order]*

Date: April 21, 2023

Time: 1:30 p.m.

Dept.: C-69

Complaint Filed: May 26, 2020

FAC Filed: June 2, 2020

Trial Date: None Set

1 **TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD, AND ALL**
2 **INTERESTED PARTIES:**

3 **PLEASE TAKE NOTICE** that on April 21, 2023 at 1:30 p.m. or as soon thereafter as the
4 matter may be heard in Department C-69 of the above-entitled Court, Plaintiff Sofija Markovic
5 (“Plaintiff”), individually and on behalf of all similarly situated individuals, as proposed
6 representative of the Class that Plaintiff requests be provisionally certified for settlement purposes,
7 will and hereby does move this Court for the following:

- 8 1. Preliminary and conditional certification of the Class described in the proposed
9 Settlement Agreement (attached as Exhibit “1” to the Declaration of Armand R. Kizirian filed
10 concurrently herewith) between Plaintiff and Defendants for purposes of settlement.
- 11 2. Preliminary approval of Plaintiff Sofija Markovic as Class Representative.
- 12 3. Preliminary approval of Michael H. Boyamian and Armand R. Kizirian of
13 Boyamian Law, Inc., and Alex Hartounian of Hartounian Law Firm, P.C. as Class Counsel.
- 14 4. Preliminary approval of a settlement of claims as set forth in the Settlement
15 Agreement in which Defendants have agreed to a gross non-reversionary settlement payment in the
16 amount of \$400,000.00 (four hundred thousand dollars and zero cents).
- 17 5. Approval as to the form and content of the proposed Notice of Proposed Class
18 Action Settlement, Request for Exclusion Form, and Change of Address Form attached to the
19 Settlement Agreement as Exhibits “A”, “B”, and “C”.
- 20 6. Approval of the appointment of Simpluris, Inc. (“Simpluris”) as Settlement
21 Administrator and preliminary approval of the costs of administration of the Settlement for up to
22 \$35,000, with payment coming out of the Settlement. The bid provided by Simpluris is attached as
23 Exhibit “2” to the Kizirian Declaration.
- 24 7. Preliminary approval of the payment of a “service award” in the amount of \$10,000
25 (ten thousand dollars) to Plaintiff Sofija Markovic to be deducted from the Gross Settlement
26 Amount.

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1 8. Preliminary approval of the application for payment to Class Counsel of reasonable
2 attorneys' fees of \$133,333.33 (33.33% of gross settlement) and costs and expenses not to exceed
3 \$30,000, with payment coming out of the Settlement.

4 9. Issuance of a schedule for implementation of the terms of the Settlement
5 Agreement, including a date for a hearing for Final Approval of the Settlement.

6 This notice and motion is made pursuant to California Rules of Court, rule 3.769 and on the
7 grounds that the proposed class settlement is fair, reasonable and adequate and in the best interests
8 of the proposed class. The motion is unopposed by Defendants who are parties to the proposed
9 settlement.

10 This motion is also based upon this notice; the Memorandum of Points and Authorities
11 submitted herewith; the Declaration and exhibits filed concurrently herewith; the other records,
12 pleadings, filed in this action; and upon such other documentary and oral evidence or argument as
13 may be presented to the Court at the hearing of this motion.

14
15 DATED: March 29, 2023

BOYAMIAN LAW, INC.
HARTOUNIAN LAW FIRM, P.C.

16
17 By: 
18 ARMAND R. KIZIRIAN
19 Attorneys for Plaintiff SOFIJA MARKOVIC,
20 Individually and on Behalf of All Others
21 Similarly Situated, Other Aggrieved Employees,
22 and the General Public
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1 **I. INTRODUCTION**

2 Plaintiff SOFIJA MARKOVIC (“Plaintiff”) seeks preliminary and conditional approval of
3 the proposed class action settlement with Defendants BBG SD4 LLC d.b.a. RAGLAN PUBLIC
4 HOUSE; BBG SD5 LLC d.b.a. DUNEDIN NEW ZEALAND EATS; BBG SD3 LLC d.b.a.
5 QUEENSTOWN PUBLIC HOUSE; BBG CAL, LLC d.b.a. BARE BACK GRILL; and ARBOR
6 SD LLC d.b.a. QUEENSTOWN BISTRO (“Defendants”). Subject to Final Approval of this
7 Court, Defendants have agreed to settle this action for a non-reversionary amount of four hundred
8 thousand dollars and zero cents (\$400,000.00). The case would settle the claims of those
9 individuals who, according to Defendants’ personnel and payroll records, worked for Defendants
10 as non-exempt employees between May 26, 2016 and December 31, 2022 (“Class Period”). The
11 case would also settle the claim pursuant to the Private Attorneys General Act (“PAGA”) alleged
12 in this lawsuit based on underlying Labor Code sections during the period of March 30, 2019 to
13 December 31, 2022 (“PAGA Claims”) (“PAGA Period”).

14 With the assistance of an experienced wage and hour mediator, Hon. Steven R. Denton
15 (Ret.), the Parties participated in mediation and have decided to resolve the matter through
16 settlement instead of undergoing protracted discovery and litigation. Declaration of Armand R.
17 Kizirian (“Kizirian Decl.”), ¶¶ 18, 20. Accordingly, Plaintiffs seeks to certify for settlement
18 purposes the following Class: All current and former non-exempt employees of Defendants who
19 worked in the State of California at any time between May 26, 2016 and December 31, 2022.

20 The wage and hour claims concern unpaid wages, failure to pay minimum wages, failure
21 to pay overtime compensation, failure to provide meal periods, failure to provide rest breaks,
22 failure to furnish accurate itemized wage statements, waiting time penalties, unfair competition,
23 and penalties under Labor Code Section 2698 *et seq.* The settlement agreement (“Settlement
24 Agreement,” “Agreement,” or “Settlement”) is attached as Exhibit “1” to Kizirian Decl. and the
25 definitions contained therein are herein incorporated by reference. Defendants have agreed to pay
26 \$400,000.00 as a non-reversionary, all-in settlement (“Class Settlement Amount” or “CSA”). At
27 the time of this Motion, Plaintiff believes there are approximately 1,300 members of the
28 Settlement Class.

As discussed below, the proposed Settlement ensures due process, and is within the “range of reasonableness” for preliminary approval. Accordingly, Plaintiff respectfully requests that the Court enter an order: (1) preliminarily approving the terms of the Settlement; (2) provisionally certifying the proposed class for settlement purposes; (3) appointing Plaintiff’s Counsel as Class Counsel; (4) approving the form and method of providing notice to the proposed Settlement Class; and (5) scheduling a Final Approval/Fairness Hearing.

II. CASE SUMMARY: FACTUAL AND PROCEDURAL BACKGROUND

A. Relevant Factual Background

Defendants own and operate a collection of New Zealand themed and inspired full-service restaurants in the greater San Diego area and advertise themselves as being part of the “New Zealand Eats Group” or “NZ Eats Group” family. Plaintiff Sofija Markovic worked at Defendants’ restaurant for approximately two years. Plaintiff was employed by Defendants as a server and bartender primarily at Defendants’ Dunedin New Zealand Eats location and performed in those functions until her separation in or around July 24, 2019. Throughout her employment with Defendants, Plaintiff worked as a non-exempt, hourly employee. Kizirian Decl. ¶ 5.

While Plaintiff predominantly worked at the Dunedin New Zealand Eats location, she occasionally also worked at BBG’s Queenstown Public House restaurant because management sent her to that location. At the outset, this sparked an inquiry by Plaintiff’s Counsel into the relationship between the two restaurant locations. Through Plaintiff Counsel’s investigation, it became apparent that during the Class Period, Defendants maintained five restaurant operations under one common management group. Outreach efforts conducted by Plaintiff’s Counsel revealed that employees of any given restaurant entity are regularly sent to work in the facilities of another restaurant entity and that a common management team runs all five of the entities. In example, through Plaintiff’s Counsel’s review of Defendants’ liquor licenses, Plaintiff learned that the liquor licenses of all of the restaurants show a great degree of overlapping members/officers for the five LLCs that are the named Defendants in this suit. Kizirian Decl. ¶ 6.

Turning to the core of the suit, Plaintiff alleges that, during her employment, she and the other Class Members performed work off-the-clock and, as a result, were not compensated for all

1 hours worked, including overtime. Plaintiff principally alleges that the off-the-clock work stems
2 from (a) performing work before the start of the shift; (b) punching out to not trigger a meal
3 violation while still working, e.g., waiting on tables; (c) managers adjusting the time punches to
4 mask meal break violations and undo the recording of overtime; and (d) waiting after clocking out
5 for management to reconcile their tips and pay them out. Kizirian Decl. ¶ 7.

6 Moreover, Class Members, including Plaintiff, were not provided with legally compliant
7 meal periods and rest breaks. Defendants failed to schedule meal and rest periods. With respect
8 to rest breaks, Plaintiff and other Class Members were not provided any training about statutory
9 breaks under California law, were not scheduled to take rest breaks, and in fact, rest breaks were
10 not made available to them. Kizirian Decl. ¶ 8.

11 Class Members, including Ms. Markovic, were also required to purchase uniforms unique
12 to the NZ Eats Group in order to perform their work for Defendants. Specifically, Plaintiff
13 bought pants and shirts directly from Defendants for approximately \$80. These articles of
14 clothing were required to be worn by Plaintiff and Restaurant Employees when working at any of
15 the NZ Eats Group's locations. These items of clothing were not used by Class Members,
16 including Plaintiff, outside of their work at the NZ Eats Group. Kizirian Decl., ¶ 9.

17 The other alleged violations for penalties, including inaccurate wage statements and
18 waiting time penalties, are derivative of the failure of Defendants to provide statutory mandated
19 and compliant meal period and rest breaks to Plaintiff and Class Members. Kizirian Decl., ¶ 10.

20 In summary, Plaintiff alleges that as a result of Defendants' actions, approximately 1,300
21 Class Members were underpaid, denied statutory breaks and the premium pay owed for those
22 denials, were not reimbursed for the business expenses they incurred, and were not paid waiting
23 time penalties if and when they left their employment and were not provided with accurate wage
24 statements. Kizirian Decl., ¶ 11.

25 **B. Procedural Background**

26 On May 26, 2020, Plaintiff Sofija Markovic filed the instant class action lawsuit in San
27 Diego Superior Court on behalf of herself and a putative class of all of Defendants' non-exempt
28 California-based restaurant employees. Plaintiffs' suit included nine causes of action: (1) Failure

1 to Provide Meal Periods (Lab. Code §§ 226.7 and 512); (2) Failure to Provide Rest Periods (Lab.
2 Code § 226.7); (3) Failure to Pay Overtime Compensation (Labor Code § 510); (4) Failure to Pay
3 Minimum Wages (Labor Code § 1194 et seq.); (5) Failure to Reimburse For Necessary Business
4 Expenditures (Lab. Code § 2802); (6) Failure to Provide Reporting Time Pay (Labor Code §
5 1198); (7) Failure to Furnish Accurate Wage and Hour Statement (Lab. Code § 226); (8) Waiting
6 Time Penalties (Lab. Code §§ 201-203); and (9) Unfair Competition (Bus. & Prof. Code § 17200
7 et seq.). Kizirian Decl., ¶ 12

8 On June 2, 2020, Plaintiff filed the operative First Amended Complaint, which added a
9 tenth cause of action for civil penalties pursuant to the Private Attorneys General Act of 2004
10 (Lab. Code § 2699 et seq.). Plaintiff's operative complaint seeks damages on behalf of herself
11 and a class including unpaid wages, statutory penalties, interest, and attorney's fees and costs.
12 Kizirian Decl., ¶ 13.

13 Throughout this litigation, the Parties have engaged in formal discovery. Plaintiff served
14 written document requests on February 1, 2021, consisting of Special Interrogatories, Form
15 Interrogatories – Employment, Requests for Production of Documents, and Requests for
16 Admissions. After Plaintiff served her discovery, but before Defendants responded, the Parties
17 attended a full-day mediation on August 31, 2021 with the Hon. Steven R. Denton (Ret.). In
18 advance of this mediation, the Parties engaged in an informal exchange of discovery. The
19 mediation was not successful, and the Parties continued litigating the matter. Kizirian Decl., ¶ 14.

20 On November 15, 2021, Defendants provided objections and responses to Plaintiff's
21 outstanding discovery. After meeting and conferring, when the Parties could not come to an
22 agreement, Plaintiff filed a series of motions to compel further responses on January 28, 2022.
23 The Parties briefed these motions but, before the Court issued its ruling as to all of these motions,
24 the Parties agreed to attend a second mediation with Judge Denton (Ret.). Kizirian Decl., ¶ 15.

25 Meanwhile, Defendants had served their own set of discovery, consisting of Special
26 Interrogatories, Form Interrogatories – Employment, Form Interrogatories – General, and
27 Requests for Admissions on March 25, 2022. Defendants followed this up by serving Plaintiff
28

1 with Requests for Production of Documents on April 26, 2022. Plaintiffs responded to this set of
2 discovery on May 27 and May 31, 2022. Kizirian Decl., ¶ 16.

3 Defendants thereafter served a Notice of Deposition to Plaintiff on July 11, 2022.
4 Similarly, Plaintiffs served deposition notices for Defendants' person most knowledgeable on
5 July 22, 2022. Moreover, Plaintiffs also served a series of discovery requests, including Special
6 Interrogatories, Form Interrogatories – Employment, Requests for Production of Documents, and
7 Requests for Admissions on some of the Defendants on July 22, 2022. Kizirian Decl., ¶ 17.

8 The Parties attended their second full-day mediation with Judge Denton (Ret.) on October
9 18, 2022. After extensive negotiations, and with Judge Denton's assistance, the Parties were able
10 to reach the instant settlement. After such substantial litigation, the Parties and their counsel are
11 sufficiently familiar with the facts of this case and the applicable laws to make an informed
12 judgment as to the fairness of the Settlement, the respective strengths and weaknesses of the
13 claims of the class Plaintiff sought to certify, and the risks of proceeding in litigation. The Parties
14 are represented by competent counsel and had the opportunity to consult with counsel prior to the
15 signing the Settlement Agreement. Kizirian Decl., ¶ 18.

16 **III. SUMMARY OF THE TERMS OF THE SETTLEMENT**

17 The basic terms of the proposed settlement are as follows:

18 1. Defendants shall pay the Gross Settlement Amount of \$400,000.00 (Four Hundred
19 Thousand Dollars and Zero Cents) on a non-reversionary basis which shall include payment to
20 the class, attorneys' fees, reasonable litigation expenses and costs, employee-side payroll taxes,
21 enhancement awards to the Class Representative, costs of administration, and PAGA payment.
22 (Settlement Agreement, ¶ 3.16, Kizirian Decl., ¶ 18, Exhibit "1").

23 2. Plaintiff seeks attorneys' fees in the amount of \$133,333.33 (33.33% of the gross
24 settlement) as well as reimbursement of their costs and expenses not to exceed \$30,000, which
25 will not be opposed by Defendants. (Settlement Agreement, ¶ 8.2).

26 3. The Settlement Administration costs are estimated at \$21,666, but shall not exceed
27 \$35,000. (Settlement Agreement, ¶ 8.3).

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1 4. Plaintiff seeks a service award in the amount of \$10,000, to be deducted from the
2 Gross Settlement Amount. (Settlement Agreement, ¶ 8.5).

3 5. A total of \$20,000 from the Gross Settlement Amount shall be to resolve any and
4 all claims alleged in the Actions for violations of the Private Attorneys General Act (“PAGA”)
5 (Labor Code Sections 2698, *et seq.*) of which 75% or \$15,000 shall be paid to the California
6 Labor Workforce Development Agency (“LWDA”). (Settlement Agreement, ¶ 8.4).

7 6. In the event that more than seven and a half percent (7.5%) of the putative class
8 members opt out of the settlement, Defendants have the option to withdraw from the settlement.
9 (Settlement Agreement, ¶ 13.1).

10 7. The Net Settlement Amount is to be divided among all Class Members based on
11 their pro-rata percentage of workweeks (determined by dividing the number of weeks worked by
12 the Class Members as an esthetician for Defendants during the Class Period, by the total number
13 of weeks worked by all Class Members as non-exempt employees for Defendants during the
14 Class Period), such that the Class Members shall receive a dollar amount calculated by
15 multiplying each of their respective percentages by the Net Settlement Amount. (Settlement
16 Agreement, ¶ 8.7.1).

17 8. The Net Settlement Amount (subject to the Court’s approval of the requested
18 attorneys’ fees (\$133,333.33) and expenses (up to \$30,000), service awards (\$10,000), PAGA
19 payment to the LWDA (\$15,000) and administration expenses (up to \$35,000) is approximately
20 \$176,666.67. Based on approximately 1,300 class members, the average Class Member should
21 receive a net payment of approximately \$135.90 although each Class Member’s recovery will be
22 determined by the length of time he or she worked for Defendants as a non-exempt employee
23 during the Class Period.

24 9. The \$5,000 of the \$20,000 of the PAGA penalties coming from the Gross
25 Settlement Amount will be paid to the Aggrieved Employees as part of a separate calculation
26 from the class distribution, but based again on a pro-rata percentage of the workweeks worked by
27 the Aggrieved Employees during the PAGA Period. (Settlement Agreement, ¶ 8.4).

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1 10. The Settlement Class Member Released Claims include any and all claims that
2 were “alleged, [arose] from, or reasonably relate[] to” the allegations set forth in Plaintiff’s
3 original Complaint or operative First Amended Complaint. (Settlement Agreement, ¶ 11.1).

4 11. Class Members give a separate PAGA release, defined as the Aggrieved
5 Employees’ Released Claims. (Settlement Agreement, ¶ 11.2). Class Members who opt-out of
6 settling their class claims, i.e., opt out of the Settlement, are nevertheless bound by this PAGA
7 release, which encompasses “claims alleged in, or that may arise out of, the Complaint, First
8 Amended Complaint and/or LWDA Letter” sent by Plaintiff. *Id.*

9 12. While full notice of the terms of the settlement will be provided to all Class
10 Members, this is a non-claims made settlement such that Class Members are not required to
11 participate in a claims procedure in order to receive a check. (Settlement Agreement, ¶ 9.6).
12 Unless a Class Member submits a request to be excluded (*i.e.*, opts out), the Class Member will
13 receive a settlement payment. *Id.* Notice will be mailed to all Class Members via first class mail
14 by the Claims Administrator. (Settlement Agreement, ¶ 9.4). Class Members shall have 45 days
15 to submit a request for exclusion, extended by 15 days for any Notices that are remailed.
16 (Settlement Agreement, ¶ 3.25). A Class Member may object to the Settlement by submitting
17 their objection to the Claims Administrator who will then provide it to the Parties for filing with
18 the Court. (Settlement Agreement, ¶ 9.8). Alternatively, the Class Member may object to the
19 Settlement by appearing on their own behalf, or through separate counsel, at the Final Approval
20 Hearing. (Settlement Agreement, ¶ 9.9).

21 13. Payments to Class Members shall be allocated as follows: 25% of the Individual
22 Settlement Payment shall be attributed to wages (reported on an IRS Form W-2 with legally
23 applicable tax withholdings and deductions; 75% of the Individual Settlement Payment shall be
24 treated as penalties and interest reportable on IRS Form 1099. (Settlement Agreement, ¶ 8.8).
25 However, the entirety of the Individual PAGA Payments shall be allocated as 100% penalties and
26 reported on IRS Form 1099. (Settlement Agreement, ¶ 8.4).

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14. Any settlement checks that remain uncashed ninety (90) or more calendar days after issuance by the Settlement Administrator shall be voided. Uncashed checks will be voided, and the funds redistributed to those Class Members who cashed their first check and calculated pro rata based on each such Class Member's respective workweeks relative to the workweeks worked by all such Class Members. These second checks will also remain valid for a period of ninety (90) days. Any uncashed, remaining funds after this second distribution will be provided to Legal Aid at Work, the designated *cy pres* beneficiary. (Settlement Agreement, ¶ 10.6).

IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT AS IT IS FAIR, REASONABLE AND ADEQUATE

A class action may not be dismissed, compromised, or settled without approval of the Court. *See* Cal. Civ. Code § 1781(f); Cal. Rules of Court 3.769. The decision to approve or reject a proposed settlement is committed to the sound discretion of the Court. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001). The law favors the settlement of lawsuits, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding time, expense and rigors of protracted litigation. *Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992); *Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 53 (2000).

The purpose of the preliminary evaluation of a proposed class action settlement is to determine only whether the settlement is within the range of possible approval, and thus whether notice to the class of the terms and conditions and the scheduling of a formal fairness hearing are warranted. *Wershba*, 91 Cal. App. 4th at 234-235, 251. To make the fairness determination, the Court should consider several factors, including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *see also In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006). “The list of factors is not exclusive, and the court is free to engage in a balancing and

1 weighing of the factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th
2 at 245.

3 The Court should begin its analysis with a presumption that the proposed Settlement is fair:

4 [A] presumption of fairness exists where: (1) the settlement is reached through arm’s-
5 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
6 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
percentage of objectors is small.

7 *Dunk*, 48 Cal. App. 4th at 1802; *see also Wershba*, 91 Cal. App. 4th at 245. As shown below, the
8 settlement proposed here is fair, adequate, and reasonable, and should be preliminarily approved
9 by this Court.

10 **A. The Amount Offered in Settlement Is Fair and Reasonable.**

11 The total settlement amount is \$400,000 which includes payment to Class Members, the
12 Plaintiff’s service award, the costs of administration of the settlement, attorneys’ fees and costs,
13 and payment to the LWDA in the amount of \$15,000. Plaintiff requests, and Defendants do not
14 oppose, an award of attorneys’ fees and costs in the amount of \$133,333.33 for all work
15 previously performed in connection with the action and all remaining work to be performed, as
16 well as reimbursement for costs and expenses not to exceed \$30,000. Further, Plaintiff requests,
17 and Defendants do not oppose, a service award of \$10,000 to Ms. Markovic to be deducted from
18 the Gross Settlement Amount. Plaintiff expects settlement administration costs to amount to
19 approximately \$21,666, but in any event not exceed \$35,000. The Net Settlement Amount
20 (approximately \$176,666.67) will be available for distribution to Class Members pursuant to the
21 formula described above. Kizirian Decl., ¶ 19. As discussed more fully below, the proposed
22 settlement is fair and reasonable under all of the relevant circumstances.

23 The settlement value was proposed by the mediator in this action, the Hon. Steven R.
24 Denton (Ret.). Plaintiff conducted an extensive investigation into class certification, merits, and
25 damages. Plaintiff determined based on this investigation and discovery that the settlement
26 amount proposed by the mediator was fair and reasonable and that a significant risk of recovering
27 nothing existed if the litigation continued. Indeed, should the Court not approve the Settlement,
28 Class Members run the very real risk of receiving nothing. That is because consistently

1 throughout this litigation, Defendants have represented that they are not on sound financial
2 footing and would not be able to satisfy a large judgment should Plaintiff secure it through a class
3 action trial. To this end, Defense Counsel provided Plaintiff's Counsel with financial documents
4 which corroborated Defendants' representation regarding their financial condition. Kizirian Decl.,
5 ¶ 20.

6 Moreover, even before a class action trial were to be held, Plaintiff would first still need to
7 pursue further discovery, secure class certification, and survive a likely motion for summary
8 judgment. Moreover, throughout all of this, Plaintiff would need to convince the Court that all
9 five entities, each holding a different restaurant, are part of the same common enterprise and
10 should remain in this suit, even if Ms. Markovic herself only worked at two out of the five
11 restaurants. Kizirian Decl., ¶ 21.

12 Finally, Plaintiff would need to ultimately prevail on the merits at trial, in a case in which
13 Defendants vigorously dispute liability as well as the amount of damages, before Plaintiff is in a
14 position to collect anything on behalf of Class Members. Throughout such a process, attorneys'
15 fees and litigation costs would increase significantly if Plaintiff were to take this case through
16 class certification, summary judgment, and a class action trial, with no guarantee of success.
17 Kizirian Decl., ¶ 22.

18 For these reasons, as well as the reasons stated below, the Settlement is a fair and
19 reasonable outcome for the Class Members.

20 **B. An Assessment of the Claims and Defenses Asserted, and Other Relevant Factors,**
21 **Weigh Strongly in Favor of Approving the Settlement.**

22 As set forth below, the settlement considers the strengths and weaknesses of both Parties'
23 respective positions. Plaintiff's Counsel communicated with numerous Class Members and also
24 engaged in formal and informal discovery receiving policies, procedures, and data from
25 Defendants, specifically time and pay data that took a significant time to review with Plaintiff's
26 retained expert. Class Counsel believes that Plaintiff and the class has viable claims in that
27 Defendants implemented and engaged in unlawful wage and hour policies and practices by
28

1 requiring employees to work outside of their shifts while off the clock, and working through meal
2 and rest breaks. Kizirian Decl., ¶ 23.

3 The maximum potential damages support the proposed settlement. Based on the time and
4 pay data provided by Defendants, and based on various assumptions provided by Plaintiff's
5 Counsel given their outreach to Class Members, Plaintiff's retained expert calculated up to a
6 *maximum* of \$4,800,686 in damages for the class claims. This was broken down by Plaintiff's
7 expert to \$763,340 in unpaid wages, assuming 15 minutes of work off the clock each shift, 20%
8 of which was overtime; \$1,237,354 in meal break penalties assuming no valid meal break waiver
9 was in place; \$2,631,591 in rest break penalties assuming Class Members were unable to take rest
10 breaks; and \$168,400 in unreimbursed business expenses assuming \$80 per employee in such
11 expenses. In addition to this amount, Plaintiff's expert calculated \$2,810,627 in waiting time
12 penalties and \$2,502,100 in inaccurate wage statement penalties. Kizirian Decl., ¶ 24.

13 Of course, it is unlikely that Plaintiff would be able to show violations quite to this
14 degree. While Plaintiff believes wage and hour compliance at Defendants' restaurants were poor,
15 Plaintiff does not believe a court would find Defendants' policies to be facially unlawful, thus
16 making it unlikely that a 100% violation would apply to the meal and rest breaks. While Plaintiff
17 feels more confident about the off-the-clock figure as an average for the class, it is also possible
18 that this figure is not as substantial across all of Defendants' restaurants. Kizirian Decl., ¶ 25.

19 Similarly, while the potential for PAGA penalties can be much higher than the underlying
20 amount owed with the claims, it is nevertheless true that in awarding PAGA penalties after a
21 finding of liability, a court has "broad discretion to award PAGA penalties as the Court sees fit."
22 *Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1100 (N.D. Cal. 2019), *reversed in*
23 *part and vacated in part on other grounds*, 999 F.3d 668 (9th Cir. 2021); *see* Labor Code Section
24 2699(e)(2) ("...a court may award a lesser amount than the maximum civil penalty amount
25 specified by this part if, based on the facts and circumstances of the particular case, to do
26 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.").
27 Kizirian Decl., ¶ 26.

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1 In Plaintiff's assessment, it is not likely that this Court would award the full amount of the
2 available PAGA penalties in this suit given the facts of the case. Instead, Plaintiff believes that
3 the Court would likely award 20% of underlying core wage and claims as penalties. *See e.g.*
4 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504 (2018) (reducing the maximum PAGA
5 penalty amount by 90%, at \$5 per pay period). Thus, if after trial it were established that
6 Plaintiffs and Class Members were entitled to \$4,800,686 for unpaid wages, unpaid overtime,
7 meal break penalties, and rest break penalties, Plaintiff believes the high end of damages in
8 PAGA penalties would be \$960,137.20. Kizirian Decl., ¶ 27.

9 All in all then, with \$4,800,686 in core wage and hour class damages, \$2,810,627 in
10 waiting time penalties, \$2,502,100 in inaccurate wage statement penalties, and \$960,137.20 in
11 PAGA penalties, the likely high watermark of a Plaintiff victory at trial would be \$11,073,550.20.
12 The settlement of \$400,000 therefore represents approximately 3.6% of the maximum total
13 damages. Kizirian Decl., ¶ 28.

14 While on the lower end, Plaintiff's Counsel is of the belief that the settlement amount is
15 reasonable here because of (1) the financial condition of Defendants where a large award could
16 lead to the filing of bankruptcy, (2) the hurdles Plaintiff faces in pursuing this action on behalf of
17 all restaurants, which are incorporated as different entities, and (3) and the risk of not being able
18 to secure class certification given the variances in experiences of the Class Members. For all
19 these reasons, Plaintiff's Counsel believes that the amount here is a fair and reasonable. Kizirian
20 Decl., ¶ 29.

21 **C. The Discovery and Investigation Completed Weigh in Favor of Approving the**
22 **Settlement.**

23 The discovery and investigation conducted in this case have allowed both Parties to act
24 prudently in coming to an informed settlement. The Parties engaged in extensive formal and
25 informal discovery in advance of the mediation. Plaintiff's Counsel communicated with
26 numerous Class Members and also engaged in informal discovery, including receiving data from
27 Defendants, specifically extensive time and pay records of the Class. Based on this and other
28 documentation and information obtained directly from Class Members, Plaintiff's Counsel

1 completed an extensive and detailed analysis of the Plaintiffs' claims and Defendants' potential
2 liabilities. Kizirian Decl., ¶ 30.

3 In addition to the above discovery, Plaintiffs' Counsel performed a substantial amount of
4 other work in these cases, including but not limited to the following:

- 5 • Plaintiff's counsel spent many hours reviewing the relevant case law, Wage Orders,
6 and applicable statutes related to the merits of the Plaintiff's potential claims;
- 7 • Contacted and interviewed numerous Class Members about issues relevant to the case;
- 8 • Reviewed voluminous documents and data concerning the recordation of time and
9 corresponding pay information for Class Members, and worked with an expert
10 statistician to develop a damages analysis on which to guide Plaintiff's position at
11 mediation;
- 12 • Engaged in substantial formal discovery, and brought several motions to compel
13 further responses when Defendants did not provide satisfactory replies
- 14 • Prepared a detailed mediation brief;
- 15 • Achieved a substantial settlement on behalf of the Settlement Class after extensive
16 negotiations before, during and after the mediation; and
- 17 • Negotiated terms of settlement and drafted settlement agreement and notice and
18 prepared motion for preliminary approval.

19 Kizirian Decl., ¶ 31.

20 As the above makes clear, at the time of settlement, Plaintiff's counsel had a wealth of
21 information upon which to make an informed decision about the appropriate value at which to
22 settle this case. The Parties had sufficient information and extensive knowledge about the
23 strengths and weaknesses of each other's cases to allow for negotiation of a fair settlement.

24 **D. The Settlement Is the Product of Serious, Informed, Non-Collusive and Good-Faith**
25 **Negotiations.**

26 The proposed settlement follows a lengthy investigation, informal discovery, litigation
27 and negotiations between the Parties. The prospect of settlement of the case was discussed over a
28 period of many months and multiple meetings, and negotiations were, at all times, adversarial,

1 non-collusive, in good faith, and at arms-length. Indeed, as a result of various issues that arose
2 during the course of negotiating the terms of the Settlement Agreement, the Parties did not
3 finalize the terms of the agreement until recently. Thus, the Settlement Agreement is the product
4 of extensive and informed negotiations between counsel with substantial litigation experience,
5 who are fully familiar with the legal and factual issues in this case, and who have experience
6 litigating and settling complex and class action cases, including employment cases. Kizirian
7 Decl., ¶ 32.

8 **E. The Requested Service Award to the Plaintiff Is Reasonable and Comparable to**
9 **Those Routinely Awarded.**

10 Plaintiff seeks a service award of \$10,000 to Ms. Markovic. Plaintiff's Counsel is of the
11 opinion that the service award is reasonable and proper and is supported by the particular
12 circumstances of this case as well as the applicable law. Plaintiff greatly assisted Plaintiff's
13 Counsel in developing the claims at issue in this case. Plaintiff continually made herself available
14 throughout the course of this litigation, including for the mediation. Moreover, the assistance
15 Plaintiff provided allowed Plaintiff's Counsel to effectively press the class's claims through
16 mediation until such a time where resolution was reached in this matter. Kizirian Decl., ¶ 33.

17 Moreover, Plaintiff is providing a general release to Defendants as part of this settlement
18 and a release of all unknown claims pursuant to Civil Code Section 1542. This is something that
19 is not being asked of the Class Members and should bear on the amount of the service award.
20 Kizirian Decl., ¶ 34.

21 Notably, courts have long acknowledged that active litigants are entitled to be
22 compensated for bearing the risk and time to represent others. *See Bell v. Farmers Ins. Exch.*,
23 115 Cal. App. 4th 715, 725 (2004) (upholding service payments to named plaintiffs for their
24 efforts in bringing class case); *In re Southern Ohio Correctional Facility*, 175 F.R.D. 270, 272
25 (S.D. Ohio 1997) ("Courts routinely approve incentive awards to compensate named plaintiffs for
26 the services they provided and the risks they incurred during the course of the class action
27 litigation"); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995).

1 Accordingly, the requested enhancement award for Plaintiff is fair and reasonable in light of all of
2 the circumstances.

3 **F. The Requested Attorneys' Fee Award Is Reasonable and Comparable to Those**
4 **Routinely Awarded.**

5 California Rule of Court 3.769(b) states: "Any agreement, express or implied, that has
6 been entered into with respect to the payment of attorney's fees or the submission of an
7 application for the approval of attorney's fees must be set forth in full in any application for the
8 approval of the dismissal or settlement of an action that has been certified as a class action." In
9 the present case, Plaintiff's Counsel requests, and Defendants do not oppose, an award of
10 attorneys' fees in the amount of \$133,333.33 to include all work previously rendered by
11 Plaintiffs' counsel and all future work to be rendered in connection with this case.

12 The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that
13 Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense
14 that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has
15 shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of
16 the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases
17 that Class Counsel had to turn down in order to devote its time and efforts to this matter. The
18 proposed Class Notice provides Class Members with information about the amount allocated
19 toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be
20 sought, as provided for by the Settlement.

21 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
22 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
23 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced
24 trial judge is the best judge of the value of professional services rendered in his court." *Ketchum*
25 *v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should
26 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
27 incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82
28 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can

1 be “monetized” with a reasonable degree of certainty, the trial court should “ensure that the fee
2 awarded is within the range of fees freely negotiated in the legal marketplace in comparable
3 litigation.” *Id.* at 50. In cases where class members present claims against a settlement fund and
4 the settlement agreement provides that the defendant agrees to paying the attorneys a percentage
5 of the same, use of that percentage method is appropriate. *Id.* at 32.

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

13 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
14 depending on the circumstances of the case. Newberg, § 14.03; *see also In re Ampicillin Antitrust*
15 *Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3
16 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979)
17 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California
18 courts routinely approve class action attorneys’ fee awards averag[ing] around one-third of the
19 recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n. 11 (lower court found 20 to
20 40 percent range of contingency fee in marketplace was appropriate in class actions); *see also*
21 *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May
22 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646
23 (Sept. 2006) (wage and hour).

24 Further, the requested award is more than justified in that Plaintiff’s Counsel achieved a
25 just settlement that will result in monetary payment to Class Members which likely would not
26 have been possible without the extensive investigation, discovery and negotiation conducted by
27 Plaintiff’s Counsel. *See Kizirian Decl.*, ¶¶ 14-18, 30-32. Moreover, Plaintiff’s Counsel’s work is
28 not yet complete, as they will spend a significant amount of time overseeing and participating in

1 the administration process and final approval proceedings. For these reasons, Plaintiff submits
2 that the requested attorneys' fee award is fair and reasonable. Plaintiff's Counsel will make a
3 separate motion for their attorneys' fees with their motion for final approval of class action
4 settlement, should the Court grant preliminary approval of this settlement.

5 **V. THE PROPOSED SETTLEMENT CLASS SHOULD BE CONDITIONALLY**
6 **CERTIFIED FOR SETTLEMENT PURPOSES**

7 The court has broad discretion to certify a class for purposes of a class action settlement.
8 *Dunk*, 48 Cal. App. 4th 1807 n.19 (holding that class certification in settlement cases is subject to
9 a "lesser standard of scrutiny"). Provisional and conditional class certification is appropriate at
10 the preliminary approval stage where, as here, the proposed Settlement Class as it is defined in
11 the parties' Settlement Agreement has not previously been certified by the Court, and the
12 requirements for certification are met. The practical purpose of provisional and conditional
13 certification is to facilitate distribution to all Class Members of notice of the terms of the
14 proposed Settlement, and the date and time of the final approval hearing. The additional rulings
15 sought on this motion – approving the form, content and distribution of the Settlement Notice,
16 and scheduling a formal fairness hearing – facilitate the settlement approval process, and are also
17 typically made at the preliminary approval stage. *See* Cal. R. Ct. 3.769. The Court may grant
18 such relief upon motion by either settling party, and may conduct any necessary hearing in court
19 or in chambers, at its discretion. *See id.*

20 Under California law, a settlement class must meet the following criteria for certification:
21 (1) the individuals in the settlement class are so numerous that joinder would be impractical; (2)
22 there is a commonality of interest between the plaintiffs and the members of the settlement class;
23 (3) plaintiffs' claims are typical of the claims of the absent settlement class members; and (4)
24 plaintiffs and their counsel will fairly and adequately represent the interests of the absent
25 settlement class members. *See* California Rule of Court 3.769(d); Cal. Code Civ. Proc. § 382; *see*
26 *also Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326-27 (2004). In the present
27 case, for the reasons explained below, all of these factors are met and preliminary approval of the
28 parties' request for certification of a settlement class is appropriate.

1 **A. Numerosity Is Satisfied.**

2 The numerosity requirement is met if the class is so large that joinder of all members
3 would be impracticable. Cal. Code Civ. Proc. § 382. Here, with approximately 1,300 members
4 in the Settlement Class, the proposed class is sufficiently numerous. *See Hebbard v. Calgrov*, 28
5 Cal. App. 3d 1017, 1030 (1972) (no set minimum to meet numerosity requirement and class as
6 few as 28 members is acceptable). Numerosity also requires that the identities of class members
7 may be ascertained. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 706 (1967). Ascertainability is
8 determined largely by examining the class definition, the size of the class, and the means
9 available for identifying class members. *See Bufil v. Dollar Financial Group, Inc.*, 162 Cal. App.
10 4th 1193, 1207 (2008). Here, the proposed class is ascertainable because all of the Class
11 Members would have had to of been hired to work at Defendants' restaurants. Through formal
12 discovery and the informal exchange of information prior to the mediation, Defendants gathered
13 and provided the time and payroll information of the Class Members. Kizirian Decl. ¶ 35.

14 **B. Plaintiff Satisfies the Typicality Requirement.**

15 Typicality requires only that the proposed class representative's interests in the action be
16 significantly similar to those of the other members of the proposed class. The proposed
17 representative's claim need not be identical to the claims of other members of the class; it is
18 sufficient that the representative is similarly situated, so that he or she will have the motive to
19 litigate on behalf of all class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983).
20 Here, typicality is easily met. The claims of the Plaintiffs are typical of the claims of the whole
21 Settlement Class because they arise from the same factual basis, and are based on the same legal
22 theory, as those applicable to the Class Members. *See Wehner v. Syntex Corp.*, 117 F.R.D. 641,
23 644 (N.D. Cal. 1987). The existence of numerous common issues of fact and law, and the well-
24 defined community of interests among the Class Members, ensure that the claims of the Plaintiffs
25 are typical of the Settlement Class. *See Classen*, 145 Cal. App. 3d at 46.

26 **C. Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class.**

27 In order to fairly and adequately protect the class, the named plaintiff must (1) be
28 represented by counsel qualified to conduct the litigation, and (2) not have interests that are

1 antagonistic to those of the class. *McGhee v. Bank of America*, 60 Cal. App. 3d 442, 450 (1976).
2 With respect to the first requirement, proposed Class Counsel is experienced in litigating
3 employment actions such as this and have successfully litigated a significant number of class
4 action cases. Kizirian Decl., ¶¶ 2-4. Accordingly, Plaintiff's Counsel is more than qualified to
5 represent the interest of the Settlement Class.

6 The second requirement is also met here. Plaintiff is an adequate class representative
7 because she has raised claims that are similar to the claims of the other members of the Settlement
8 Class. In addition, there is no indication that there are, or ever will be, any conflicts between
9 Plaintiff and the Settlement Class. Further, Plaintiff has assisted the investigation and litigation
10 efforts undertaken by Plaintiff's Counsel. Kizirian Decl., ¶¶ 6, 33.

11 **D. Class-wide Settlement Is Superior to Other Available Methods of Resolution.**

12 Particularly in the settlement context, class resolution is superior to other available
13 methods for the fair and efficient adjudication of the controversy. In the present case, the
14 individual Class Members have relatively small amounts of damages. Thus, their claims would
15 be uneconomical to pursue on an individual basis, because the litigation costs would greatly
16 exceed potential recovery. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 714-15 (1967).

17 **VI. THE PROPOSED CLASS NOTICE IS MORE THAN ADEQUATE AND**
18 **INCLUDES ALL REQUIRED COMPONENTS.**

19 A court order preliminarily approving a class settlement must detail the notice to be given to
20 the class. Cal. R. Ct. 3.769(e). According to California Rule of Court 3.766(d), the notice must
21 include the following:

22 (1) A brief explanation of the case, including the basic contentions or denials of the
23 parties; (2) A statement that the court will exclude the member from the class if the
24 member so requests by a specified date; (3) A procedure for the member to follow in
25 requesting exclusion from the class; (4) A statement that the judgment, whether favorable
or not, will bind all members who do not request exclusion; and (5) A statement that any
member who does not request exclusion may, if the member so desires, enter an
appearance through counsel.

26 Cal. R. Ct. 3.766(d). The court has broad discretion in deciding whether to approve the proposed
27 class notice. *Wershba*, 91 Cal. App. 4th at 252.

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1 Here, the proposed Class Notice contains all of the required components. Specifically, it
2 includes: (1) the definition of the Settlement Class; (2) a description of the substantive issues and
3 proceedings to date; (3) a neutral description of the proposed Settlement; (4) the amount of
4 attorneys' fees and costs sought; (5) information regarding the right to request exclusion from
5 (i.e., "opt out" of) the Settlement, the procedure for doing so, and the date by which such action
6 must be taken; (6) information regarding the right to challenge one's number of eligible
7 workweeks, and the date by which such action must be taken; (7) information regarding the right
8 to file an objection regarding the Settlement, the procedure for doing so and the date by which
9 such action must be taken; (8) the consequences of remaining a member of the Settlement Class,
10 including the fact that one will be bound by the judgment; (9) the date, time and place of the final
11 approval hearing; (10) the identity of Plaintiff and Plaintiff's Counsel; and (11) contact
12 information for Plaintiff's Counsel and the Claims Administrator. See Kizirian Decl., Notice of
13 Class Action Settlement (Exhibit "A" to Exhibit "1" of the Kizirian Decl.).

14 Thus, the proposed Class Notice includes all required information. Further, the method of
15 notice, as outlined above, is more than adequate, in that the Class Notice will be mailed to Class
16 Members at their last known address and there are procedures in place to make reasonable efforts
17 to locate Class Members who no longer live at their last known address.

18 **VII. CONCLUSION**

19 For all the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
20 approve the proposed Settlement, conditionally certify the Settlement Class, and enter the
21 proposed order submitted concurrently herewith.

22 DATED: March 29, 2023

BOYAMIAN LAW, INC.
HARTOUNIAN LAW FIRM, P.C.

24 By: 
25 ARMAND R. KIZIRIAN
26 Attorneys for Plaintiff SOFIJA MARKOVIC,
27 Individually and on Behalf of All Others
28 Similarly Situated, Other Aggrieved
Employees, and the General Public

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 550 North Brand Boulevard, Suite 1500, Glendale, California 91203.

On March 29, 2023, I served, in the manner indicated below, the foregoing document described as:

- 1. PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**
- 2. DECLARATION OF ARMAND R. KIZIRIAN IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; and**
- 3. [PROPOSED] ORDER.**

on all interested parties in this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED MAILING LIST
(SERVICE BY MAIL UNLESS OTHERWISE INDICATED)

_____ BY REGULAR MAIL: I caused such envelopes to be deposited in the United States mail at Glendale, California, with postage thereon fully prepaid. I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service each day and that practice was followed in the ordinary course of business for the service herein attested to (C.C.P. § 1013(a)(3)).

_____ BY FACSIMILE: caused such document to be transmitted via facsimile to the offices of the addressee(s). (C.C.P. § 1013(a)(e)(f)).

_____ BY OVERNIGHT DELIVERY: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressee(s). (C.C.P. §1013(c)(d)).

_____ BY PERSONAL SERVICE: I caused the delivery of such documents to counsel for the party(ies) listed below. (C.C.P. § 1011(a)(b)).

 X BY ELECTRONIC SERVICE: I served said document(s) electronically on counsel of record by transmission via email to the email addresses listed below. (California Rule of Court 2.251).

1 X STATE: I declare under penalty of perjury under the laws of the State of
2 California that the foregoing is true and correct.

3 _____ FEDERAL: I declare that I am employed in the office of a member of
4 the bar of this Court at whose direction the service was made.

5 Executed on March 29, 2023 in Glendale, California.

6 
7 _____
8 Armand R. Kizirian

9 **MAILING LIST**

10 **Attorneys for Defendants**

11 **BBG SD4 LLC;**
12 **BBG SD5 LLC;**
13 **BBG SD3 LLC;**
14 **BBG Cal, LLC; and**
15 **Arbor SD, LLC.**

16 Janice P. Brown (SBN 114433)
17 jbbrown@meyersnave.com
18 Arlene R. Yang (SBN 297450)
19 ayang@meyersnave.com
20 MEYERS NAVE
21 600 B Street, Suite 1650
22 San Diego, California 92101
23 Telephone: (619) 330-1700
24 Facsimile: (619) 330-1701

25 Noah J. Woods (SBN 264823)
26 nwoods@littler.com
27 LITTLER MENDELSON, P.C.
28 501 W Broadway Suite 900
 San Diego, California 92101
 Telephone: (619)-232-0441