

1 GRAHAMHOLLIS APC
2 Graham S.P. Hollis (SBN 120577)
3 ghollis@grahamhollis.com
4 Vilmarie Cordero (SBN 268860)
5 vcordero@grahamhollis.com
6 Hali M. Anderson (SBN 261816)
7 handerson@grahamhollis.com
8 Nathan Reese (SBN 283150)
9 nreese@grahamhollis.com
10 Erik Dos Santos (SBN 309998)
11 edossantos@grahamhollis.com
12 3555 Fifth Avenue Suite 200
13 San Diego, California 92103
14 Telephone: 619.692.0800
15 Facsimile: 619.692.0822

9 GAINES & GAINES, APLC
10 Daniel F. Gaines (SBN 251488)
11 daniel@gaineslawfirm.com
12 Alex P. Katofsky (SBN 202754)
13 alex@gaineslawfirm.com
14 Evan S. Gaines. (SBN 287668)
15 evan@gaineslawfirm.com
16 4550 East Thousand Oaks Boulevard, Suite 100
17 Westlake Village, CA 91362
18 Telephone: (818) 703-8985
19 Facsimile: (818) 703-8984

20 Attorneys for Plaintiffs

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

22 **COUNTY OF SAN DIEGO**

23 ANA SANTANA, individually and on behalf of
24 all similarly situated current and former and/or
25 aggrieved employees of DEFENDANTS in the
26 State of California,

27 Plaintiff,

28 v.

29 HARBOR FOODS, INC., HARBOR FOODS
30 #2, INC., HARBOR FOODS #3, INC,
31 HARBOR FOODS #4, INC. and DOES 1
32 THROUGH 50, inclusive,

33 Defendants.

Case No.: 37-2020-00026743-CU-OE-CTL

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

[IMAGED FILE]

Date: April 21, 2023
Time: 9:00 a.m.
Judge: Hon. James A. Mangione
Dept: C-75

Complaint Filed: July 30, 2020
Trial Date: None Set

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I. INTRODUCTION

Plaintiffs ANA SANTANA and MARIA GOMEZ (“Plaintiffs”) seek preliminary approval of a non-reversionary \$500,000 class and PAGA action settlement on behalf of themselves and other similarly situated and aggrieved non-exempt employees who worked for Harbor Foods, Inc., Harbor Foods #2, Inc., Harbor Foods #3, Inc., and Harbor Foods #4, Inc. (“Defendants” or “Harbor Foods”) in California. Defendants are related Colorado corporations with their principal places of business located in San Diego, California. Defendants own and operate OGGI’s and Denny’s restaurant franchises throughout San Diego County. Plaintiff Ana Santana is a former employee of Defendants, who, at all relevant times, was employed as a server and hostess and worked for Defendants in a non-exempt position in San Diego. (Declaration of Ana Santana (“Santana Decl.”) at ¶¶ 3-5.) Plaintiff Maria Gomez is a former employee of Defendants, who, at all relevant times, was employed as a server and hostess and worked for Defendants in a non-exempt position in San Diego. (Declaration of Maria (“Gomez Decl.”) at ¶1.) The parties reached the Settlement after extensive investigation, including a thorough analysis and review of Defendants’ employment policies, Class Members’ payroll records during the Class Period, in-depth Class Member interviews, a full-day mediation before the Tripper Ortman, Esq., an experienced mediator well-versed in wage and hour class actions, extensive continued discussions and a mediator’s proposal thereafter, and an expert review of Defendants’ financial records. (Hollis Decl. at ¶¶ 26-28, 38-37.) The Settlement, if approved, will provide a significant monetary recovery to the approximately 1,540 Class Members that worked for Defendant as non-exempt employees in California from April 6, 2016 to December 31, 2022. (*Id.* at ¶¶ 49-64.)

II. FACTUAL BACKGROUND

A. Procedural Background

Plaintiff Ana Santana filed a class and PAGA action in San Diego County Superior Court on July 30, 2020 against Defendants Harbor Foods, Inc., Harbor Foods #2, Inc., Harbor Foods #3, Inc., and Harbor Foods #4, Inc. The operative complaint alleges the following causes of action on behalf of Plaintiffs and the members of the putative class: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure to Pay Minimum & Regular Wages; (4) Failure to Pay Overtime Wages; (5) Failure to Reimburse All Necessary Business Expenses; (6) Failure to Provide Accurate

Itemized Wage Statements; (7) Failure to Timely Pay All Wages Due Upon Separation of Employment; (8) Violation of Business & Professions Code section 17200; and (9) Violation of Cal. Labor Code §§ 2698, *et seq.* (PAGA). (Hollis Decl. at ¶ 15.)

Plaintiff Maria Gomez filed a PAGA action in San Diego County Superior Court on June 12, 2020 against Harbor Foods #3, Inc. The operative complaint alleges a PAGA cause of action on behalf of Plaintiffs and aggrieved employees for: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure to Pay Minimum & Regular Wages; (4) Failure to Pay Overtime Wages; (5) Failure to Provide Adequate Seating; (6) Failure to Provide Accurate Itemized Wage Statements; and (7) Failure to Timely Pay All Wages Due Upon Separation of Employment. (*Id.* at ¶ 17.) Both cases were related by the Court. (*Id.* at ¶ 18.)

After conducting independent investigation of the allegations, the Parties agreed to engage in settlement negotiations and agreed to attempt to resolve Plaintiffs' claims through private mediation. (Hollis Decl. at ¶¶ 25-26). The Parties exchanged documents and information formally and informally to prepare for the mediation. (*Id.*) On March 24, 2022, the Parties participated in a private mediation with experienced mediator the Tripper Ortman, Esq., which, after extensive and extended negotiations between the Parties and review of Defendants' financial records, at and after the mediation, as well as a resulting mediator's proposal, resulted in the Parties ultimately reaching an agreement to settle all the class and PAGA claims. (*Id.* at ¶¶ 26-28.)

B. Plaintiffs' Class and PAGA Causes of Action

Plaintiff Ana Santana worked for Defendants as a full-time, non-exempt, hourly employee from March 2018 to September 2019 at one of Defendants' Denny's franchise locations. (See Santana Decl. at ¶¶ 3-5.) Ms. Santana was paid on an hourly basis and primarily hired as a server and subsequently moved to a host position after she was injured on the job. (Santana Decl. at ¶ 4; Hollis Decl. at ¶ 16.)

Plaintiff Maria Gomez was a part-time employee of Defendants who worked as a server from November 2013 to September 2019 at a Denny's location. Plaintiff was compensated at an hourly rate. (Hollis Decl. at ¶ 19; Gomez Decl. ¶ 3.)

Plaintiffs allege that pursuant to Defendants' common policies and procedures, Defendants failed to pay all Class Members minimum and overtime wages for work that employees had to do during their

1 meal periods and before and after their shifts. (Hollis Decl. at ¶20)

2 Plaintiffs allege that pursuant to Defendants' policies and procedures, they and Class Members
3 were regularly required to remain on-duty during meal and rest periods. (Hollis Decl. at ¶20; Santana
4 Decl. at ¶6; Gomez Decl. ¶3) As such, Plaintiffs allege that they and Class Members were required to
5 work through meal breaks, take untimely meal breaks, or take meal breaks that were less than thirty
6 minutes to tend to work-related activity. (Hollis Decl. at ¶20; Santana Decl. at ¶6; Gomez Decl. ¶3)
7 Similarly, Plaintiffs allege that Defendants failed to authorize and permit them to take legally compliant
8 rest periods for the same reasons. (Hollis Decl. at ¶21; Santana Decl. at ¶6; Gomez Decl. ¶3.) Plaintiffs
9 also allege that although Defendants maintained a pattern and practice of not providing Plaintiff and
10 Class Members with off-duty meal and rest periods, Defendants did not pay meal period premiums until
11 after the lawsuits were filed and have never paid rest period premiums to Plaintiffs and Class Members.
12 (Hollis Decl. at ¶22.)

13 Plaintiffs further allege that they and other employees were required to buy their own server
14 equipment in the discharge of their duties, and Defendants failed to indemnify them for those expenses.
15 (Hollis Decl. at ¶23) Plaintiffs also allege direct wage statement claims as the wage statements issue to
16 Class Members fail to show the incorrect legal entity and fail to have the correct address of the legal
17 entity. (Hollis Decl. at ¶24.) In addition, Plaintiffs allege derivative claims for Defendants' failure to
18 provide Plaintiffs and Class Members with accurate itemized wage statements, and its failure pay
19 Plaintiffs and Class Members all wages due and owed within the time frame specified by California law.
20 (Hollis Decl. at ¶24.)

21 **C. Defendants Strongly Denies Plaintiffs' Class and PAGA Claims**

22 Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in
23 the Actions, and further deny that the Actions are appropriate for class treatment for any purpose other
24 than settling this Litigation, and in particular, that class treatment is inappropriate. (Hollis Decl. at ¶¶ 29-
25 37.) Defendants contend that they complied with all of their meal and rest period obligations under
26 California law, and that all written meal period policies comply with California law. (*Id.* at ¶¶30-33.)
27 Defendants also contend that they do not require employees to purchase any work equipment. (*Id.* ¶ at
28 34). In regards to the wage statement claims, Defendants have maintained that while Plaintiffs may

1 argue confusion with regard to some wage statements, they contain all of the required items under Labor
2 Code 226, and any such alleged violations, if any, were not knowing or intentional. (*Id.* at ¶35.) Further,
3 Plaintiffs will have to show that these meal and rest premiums owed constitute wages owed for purposes
4 of Labor Code section 203, and the status of the law on this issue at the time of mediation was
5 unfavorable. (*See Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444.)

6 **III. CLASS AND PAGA ACTION DISCOVERY COMPLETED PRIOR TO MEDIATION**

7 The Parties have spent significant time and effort exchanging informal discovery, contacting and
8 communicating with putative class members, and reviewing and exchanging information relating to all
9 existing causes of action and the related PAGA claims. (Hollis Decl. ¶¶ 38-47.) The Parties engaged in
10 voluminous informal discovery in this case. After undertaking a thorough review of these documents,
11 and interviewing putative class members, Class Counsel prepared a comprehensive mediation brief that
12 outlined the factual and legal issues relevant to the litigation, contained a detailed synthesis of
13 Defendants’ timekeeping and payroll records, and presented a complete exposure analysis of the
14 potential liability Defendants faced if Plaintiffs succeeded on all claims at trial. (*Id.* at ¶¶ 38-47.) The
15 documents, information, and data obtained from Defendants were more than sufficient to analyze the
16 Labor Code violations alleged in both Plaintiffs’ complaints and make an informed decision about the
17 resolution of this case. (*Id.* at ¶ 47.) During mediation, the Parties engaged in good-faith, non-collusive
18 negotiations and discussed the realistic wage/penalty exposure to Defendants, the relative strength and
19 weaknesses of the claims, the risks and delays of further litigation, and the potential difficulty in
20 maintaining class certification. (*Id.* at ¶ 27.) Furthermore, the Parties’ utilized an expert to review
21 Defendants’ financial records and “inability to pay” claims. (Hollis Decl. ¶ 45.) The Parties are
22 represented by experienced class action attorneys well-versed in employment law. (Hollis Decl. ¶¶ 8-
23 14; Declaration of Daniel F. Gaines (“Gaines Decl.”) ¶¶ 3-6.)

24 **IV. SETTLEMENT TERMS AND RELIEF OBTAINED**

25 The general structure and terms of the settlement are straightforward: following preliminary
26 approval, the notice packet will be distributed to all Class Members. All Class Members who do not opt-
27 out of the settlement (collectively, the “Participating Class Members”) will receive their individual
28 settlement allocations following final approval. (Hollis Decl., Ex. 1 (the “Settlement Agreement” or

1 “SA”.) The basic terms of the Settlement Agreement are as follows.

2 **A. Settlement Class**

3 The Class is defined all current and former non-exempt employees who worked for Defendants
4 in California from April 6, 2016 to December 31, 2022 and have not already released their claims with
5 Defendants through a Settlement Agreement (or if any such person is incompetent, deceased, or
6 unavailable due to military service, the person’s legal representative or successor in interest evidenced
7 by reasonable verification). (SA at ¶ 14.B)

8 **B. Settlement Amounts**

9 1. Gross Settlement Amount. Defendants will pay the total, all-in amount of Five Hundred
10 Thousand Dollars (\$500,000) to resolve all claims in the Litigation. (SA at ¶ 14.K) However, this
11 amount does not include Defendants’ share of all state and federal payroll taxes, which Defendants will
12 pay separately and apart from the Gross Settlement Amount to the Settlement Administrator. None of
13 the Gross Settlement Amount will revert to Defendants.

14 2. Net Settlement Amount. The term “Net Settlement Amount” means the amount of funds
15 available for distribution to the Settlement Class after deducting from the Gross Settlement Amount the
16 following amounts: (i) the attorneys’ fees and costs awarded to Class Counsel; (ii) the enhancement
17 awards to Plaintiffs as provided herein, (iii) the PAGA payment to the LWDA, (iv) payment to the
18 PAGA Affected Employees, and (v) third party administration Costs Any amounts not awarded as part
19 of the Enhancement Awards and any amounts not awarded as Class Counsel’s attorneys’ fees and costs
20 will be retained in the Net Settlement Amount and distributed to the Class Members. The Net Settlement
21 Amount is currently estimated to be \$239,500.00. (Hollis Decl. ¶¶ 69-71; SA ¶14.O)

22 3. Not to Exceed Administration Costs. The Parties selected ILYM Group, Inc. to serve as the
23 Settlement Administrator after considering several different administration bids. ILYM Group is an
24 experienced Settlement Administration, and it provided a case estimate of \$16,950, and the parties
25 expect that the administration costs will not to exceed \$20,000. (Hollis Dec. ¶ 72. *See generally* the
26 Declaration of Lisa Mullins, President of ILYM Group, Inc.)

27 4. Service Awards to Plaintiff. Plaintiffs will request Class Representative Enhancement Awards
28 of \$17,500 to Plaintiffs (\$10,000 to Plaintiff Gomez and \$7,500 to Plaintiff Santana). (Hollis Dec. ¶ 74;

1 SA at ¶61.)

2 5. Class Counsel's Attorney's Fees and Reimbursement of Costs. Class Counsel will seek an
3 award of fees and costs for the services rendered and yet to be rendered on behalf of the Class. Class
4 Counsel will seek, and Defendants will not oppose, an award of \$175,000.00 for attorney's fees (equal
5 to thirty-five percent of the Gross Settlement Amount), and the reimbursement of reasonable litigation
6 costs actually incurred, in an amount not to exceed \$28,000. (Hollis Decl. at ¶ 75; SA at ¶¶ 58-60.) Class
7 Counsel's fees shall be split as follows, regardless of lodestar and how much the Court awards: 60% to
8 GrahamHollis, APC, 26 2/3% to Gaines & Gaines, APLC, and 13 1/3% to Davtyan Law Firm. Plaintiffs
9 have acknowledged and consented to this fee split in writing through a separate Joint Prosecution
10 Agreement which complies with the California Rules of Professional Conduct. (Hollis Decl. at ¶ 75.)

11 6. PAGA Allocation. The Parties agreed to allocate the sum of \$20,000 to settle the claims for
12 civil penalties pursuant to PAGA. (SA at ¶ 62) Of this amount, 75% (\$15,00.00) will be paid to the
13 LWDA from the Gross Settlement Amount for the State of California's share of the total civil penalty
14 amount, with the remaining 25% (\$5,000.00) made available for distribution to PAGA Employees.

15 C. Calculation of Individual Settlement Payments to Class Members

16 Class Members will be paid their Individual Settlement Payments from the Net Settlement
17 Amount. Relying on the personnel records maintained by Defendants, the Settlement Administrator will
18 calculate the number of Compensable Workweeks each Settlement Class Member worked during the
19 Class Period. Settlement Class Members shall be allocated a pro-rata portion of the Net Settlement
20 Amount available for distribution based upon their respective number of Compensable Workweeks in
21 comparison to the total number of Compensable Workweeks that all Class Members worked for
22 Defendants. (Hollis Decl. at ¶¶ 76-85.) For purposes of this Motion, Class Counsel estimates there are
23 approximately 97,293 Compensable Workweeks for the entire Class during the Class Period.

24 D. Taxation and Withholding

25 The amount paid to each Settlement Class Member who has not opted-out of the Settlement shall
26 be allocated as follows: ten percent (10%) shall be attributed to wages, and ninety percent (90%) shall be
27 attributed to non-wage statutory damages and interest. The ten percent (10%) of the Net Settlement
28 Payments to the Class Members that will be treated as payments in settlement of wage claims will be

1 subject to W-2 reporting. The recipients of payments pursuant to the Settlement Agreement shall be
2 exclusively responsible for all applicable tax obligations other than the employers' share of payroll taxes
3 allocated to unpaid wages. Applicable tax deductions and payroll withholdings for Employee Taxes will
4 be taken from this portion of the Net Settlement Payments. Defendants will be responsible to satisfy the
5 Employer Tax obligations relating to the wage portion of the Net Settlement Payments prior to
6 distribution of the settlement payments to the Settlement Class Members. The Settlement Administrator
7 will issue a Form W-2 to each Settlement Class Member who has not opted-out of the Settlement
8 reflecting the wage portion of each individual Net Settlement Payment.

9 The Parties agree that one hundred percent (100%) of the settlement payments to the PAGA
10 Employees will be treated as payments in settlement of claims for penalties and interest sought in the
11 Action. The settlement payments made to the PAGA Employees will be made subject to an IRS form
12 1099 payment, with no taxes or other withholdings taken. (Ex. 1, SA at ¶ 26.)

13 **E. Disposition of Unclaimed Funds**

14 The residue, if any, including (1) funds from checks which were unable to be delivered due to
15 the Settlement Administrator's inability to obtain a valid mailing address as set forth in this provision,
16 (2) funds from checks that remain uncashed after 180 days from the date of the check, and (3) any
17 related tax refunds or returns, will be delivered to the Controller of the State of California to be held
18 pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et seq.*, for the benefit of those
19 Settlement Class Members who did not cash their checks until such time that they claim their property.
20 The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure
21 Code § 384, as the entire Net Settlement Amount will be paid out to Settlement Class Members, whether
22 or not they all cash their Settlement Checks. (Hollis Decl. at ¶91; SA at ¶ 57.)

23 **F. Limited Scope of the Class Members' Release**

24 Subject to the occurrence of the Effective Date and Defendants' payment of all sums due,
25 Plaintiffs and every member of the Settlement Class (except those who timely opt out) will fully and
26 forever completely and irrevocably release and discharge the Released Parties of all claims related to all
27 facts and legal theories contained in Plaintiffs' Complaints including, but not limited to, all of the
28 following claims for relief: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3)

1 Failure to Pay Minimum & Regular Wages; (4) Failure to Pay Overtime Wages; (5) Failure to
2 Reimburse All Necessary Business Expenses; (6) Failure to Provide Accurate Itemized Wage
3 Statements; (7) Failure to Timely Pay All Wages Due Upon Separation of Employment; (8) Violation of
4 Business & Professions Code section 17200; and (9) Failure to Provide Seating (collectively, the
5 “Released Claims”). The definition of “Released Claims” for the Settlement Class Members shall
6 expressly exclude all claims for vested benefits, wrongful termination, unemployment insurance,
7 disability, social security, workers’ compensation, claims while classified as exempt, PAGA claims, and
8 claims outside of the Class Period. The Released Claims only encompass claims which arose for Class
9 Members during the Class Period. (Hollis Decl. at ¶ 86, SA at ¶¶ 14.AA, 31)

10 **V. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

11 Settlement of a class action requires court approval to prevent fraud, collusion or unfairness to
12 the class. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1800-1801.) The purpose of the
13 preliminary evaluation of class action settlements is to determine whether the proposed settlement is
14 within the range of possible approval, and whether notice to the class of the settlement terms and
15 conditions and the scheduling of a formal fairness hearing are worthwhile. (*Wershba v. Apple Computer,*
16 *Inc.* (2001) 91 Cal. App. 4th 224, 234-35.) The purpose of the Court’s preliminary evaluation of the
17 proposed Settlement is to determine whether it is within the “range of reasonableness,” and thus whether
18 notice to the Class and a formal fairness hearing are appropriate. (See *Alba Conte & Herbert Newberg*, 4
19 *Newberg on Class Actions* (2002) (“*Newberg*”), §§ 11.25.)

20 A trial court must exercise its discretion through the application of several well-recognized
21 factors when deciding whether a class action settlement is fair. (*Id.* at 799.) The list of factors, which “is
22 not exhaustive and should be tailored to each case,” includes “the strength of plaintiff’s case, the risk,
23 expense, complexity and likely duration of further litigation, the risk of maintaining class action status
24 through trial, the amount offered in settlement, the extent of discovery completed and the stage of the
25 proceedings, the experience and views of counsel, the presence of a governmental participant, and the
26 reaction of the class members to the proposed settlement.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
27 Cal. App. 4th 116, 128 [quoting *Dunk*, 48 Cal. App. 4th at 1801].) The most important factor the trial
28 court should consider at the preliminary approval stage in determining whether to preliminarily approve

1 a class action settlement is the strength of the case for plaintiff on the merits, balanced against the
2 amount offered in settlement. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.
3 App. 4th 399, 407-408; *Kullar* 168 Cal. App. 4th at 130.)

4 Here, the proposed Settlement meets all the criteria for preliminary approval because it is
5 supported by experienced Counsel, reached after hard fought negotiations; it extinguishes the risk of
6 continued litigation, provides significant monetary recovery to Class Members, and provides a fair and
7 adequate distribution of Settlement proceeds to Settlement Class Members. (Hollis Decl. at ¶¶ 48-64.)

8 **A. The Settlement is the Result of Arms' Length Negotiations and Presumptively Fair**

9 California courts recognize that a “presumption of fairness exists where (1) the settlement is
10 reached through arm’s-length bargaining; (2) sufficient investigation allows counsel and the court to act
11 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
12 small.” (*Dunk*, 48 Cal. App. 4th at 1802.) Courts presume the absence of fraud or collusion in the
13 negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption
14 that the negotiations were conducted in good faith. William B. Rubenstein, et al., *Newberg on Class*
15 *Actions* § 13:45 (5th ed. 2011-2017). Here, the Settlement is the result of extensive, non-collusive
16 negotiations between the Parties, conducted at arm’s length, and informed by substantial factual and
17 legal investigation. (Hollis Decl. ¶¶ 27, 38-47.) The Parties participated in a full-day mediation with
18 Tripper Ortman, Esq. a well-respected, neutral third-party mediator well-versed and experienced in
19 wage and hour class actions, who helped the Parties reach a Settlement after mediation, lengthy
20 negotiations thereafter, and after a review of Defendants financial records with an expert. (Hollis Decl.
21 at ¶¶26-28.) At all times the Parties’ negotiations were hard-fought and conducted at arm’s length
22 between attorneys with substantial wage and hour class action experience. (Hollis Decl. at ¶¶ 8-14, 26-
23 27.)

24 **B. The Proposed Settlement Was Reached After Substantial Investigation**

25 A proposed settlement is fair and reasonable when there has been sufficient investigation and
26 discovery to permit counsel and the court to act intelligently, and counsel are experienced in similar
27 litigation. *Dunk*, 48 Cal.App.4th at 1802. Here, a lengthy and thorough investigation into the merits of
28 Plaintiffs’ class action claims and Class Counsel devoted a considerable amount of time and effort to the

1 legal and factual investigation of Plaintiff's claims. (Hollis Decl., ¶¶ 38-47.)

2 **C. Class Counsel is Highly Experienced and Supports Preliminary Approval**

3 Plaintiffs and the Class have been represented by well-qualified counsel who have more than half
4 a century of collective experience in wage and hour class action litigation. (Hollis Decl., ¶¶ 8-15; Ex. 4
5 to Hollis Decl; Gaines Decl. ¶¶ 3-6, Ex. A). Class Counsel believes the Settlement is fair, adequate, and
6 reasonable, and in the best interest of all Class Members.

7 **D. The Settlement Provides Substantial Monetary Relief to the Class**

8 Courts must be provided with "basic information about the nature and magnitude of the claims in
9 question and the basis for concluding that the consideration being paid for the release of those claims
10 represents a reasonable compromise." (*Kullar*, 168 Cal. App. 4th at 133; *Clark*, 175 Cal. App. 4th at
11 799.) A settlement is not judged against what might have been recovered had a plaintiff prevailed at
12 trial, nor does the settlement have to provide 100% of the recovery sought to be fair and reasonable.
13 (*Wershba*, *supra*, 91 Cal. App. 4th at 246, 250.) Here, the Settlement results in a substantial benefit to all
14 Class Members and the Gross Settlement Amount of \$500,000 is an excellent result.

15 **1. The Amount of the Settlement is Fair and Reasonable Based on the Potential Value**
16 **of the Claims in Light of the Strengths and Weaknesses of the Claims Presented**

17 In reaching this settlement, Class Counsel carefully considered the strength of the case versus the
18 amount offered in settlement, the risk, expense, complexity and likely duration of litigation and of
19 maintaining class certification through trial, the present state of the law as it applies to wage and hour
20 class actions, and the burdens of proof necessary to establish liability against Defendants. (Hollis Decl.,
21 ¶¶48-64.) Class Counsel analyzed the merits of the class claims, which presented significant hurdles
22 and risks. (*Id.* at ¶¶ 38-54.) Although Plaintiffs maintain the claims are meritorious, Plaintiffs
23 acknowledge that Defendants possessed legitimate defenses to liability in the action. (Hollis Decl. ¶¶ 29-
24 37, 48-64.) Defendants contend that it complied with all of their meal and rest period obligations under
25 California law, and that all written meal period policies comply with California law. (*Id.* at ¶¶29-31.)
26 Defendants also contend that none of their employees were required to work off-the-clock and that if
27 they would have known, they would have paid their employees for that time. (*Id.* at ¶ 33.) Defendants
28 also contend that they do not require employees to purchase any work equipment. (*Id.* ¶ at 34). In regard

1 to the wage statement claims, Defendants have maintained that while Plaintiffs may argue confusion
2 with regard to some wage statements, they contain all of the required items under Labor Code 226, and
3 any such alleged violations, if any, were not knowing or intentional. (*Id.* at ¶35.) Further, Plaintiffs will
4 have to show that any meal and rest premiums owed constitute wages owed for purposes of Labor Code
5 section 203, and the status of the law at the time of mediation was unfavorable at mediation and just
6 recently overturned in *Naranjo v. Spectrum Sec. Servs., Inc.* (2022)13 Cal.5th 93.

7 Although the parties have engaged in a significant amount of investigation, the parties are far
8 from completing formal discovery. (Hollis Decl. at ¶ 60) For example, the parties have not conducted all
9 their written discovery, witnesses' depositions, expert depositions, exposure analysis for trial purposes,
10 among others. (*Id.*) Similarly, there would be a significant amount of motion practice. (*Id.* at ¶ 61.) Even
11 if Plaintiffs were successful in proving the merits of the class action claims, Defendants would likely file
12 an appeal. (*Id.* at ¶ 59.) Thus, the parties will have to engage in expensive and protracted appellate
13 practice absent settlement at this juncture. (*Id.*) Notwithstanding the merits of Plaintiffs' claims,
14 Defendants financial records that were reviewed by Plaintiffs' expert painted a bleak picture, which was
15 highly likely to result in a bankruptcy filing. (Hollis Decl. at ¶62.)

16 This settlement avoids all those risks, and the accompanying expense, and instead provides
17 immediate and substantial monetary relief. The Settlement here commits Defendants to create a
18 settlement fund of \$500,000.00 to compensate class members for alleged unpaid wages and penalties,
19 whereas continued litigation would be costly and time consuming, and appeal from the class
20 certification decision and appeal from any judgment would likely occur.

21 **2. The Amount Offered in Settlement Given the Estimated Value of the Claims**

22 **Similarly Favors Preliminary Approval of the Settlement**

23 After reviewing the records and conducting interviews, Plaintiffs calculated the maximum
24 possible exposure for all of the class claims, alleged including the PAGA claims, to be \$9,893,794.82.
25 (Hollis Decl. ¶¶ 50-53.) Plaintiffs calculated the corresponding civil penalties under the PAGA by
26 assuming an (inflated and unrealistic) 100% liability for the PAGA aggrieved employees. (*Id.* at ¶ 47g.)

27 The \$500,000 settlement amount is an excellent result considering the risks of prevailing at trial
28 given Defendants' financial condition, the relative strength of Defendants' defenses, and risks presented

1 given the uncertainty of the law. Here, the possibility of recovering a multimillion-dollar amount on
2 behalf of the Class is remote, particularly in light of the relative strength of Defendants’ defenses and the
3 existence of potential variations among Class Members – which will reduce the overall value of the
4 claims.

5 Moreover, the reasonableness of the proposed settlement is underscored by the fact that
6 Defendants have potentially viable grounds for not only challenging their liability and Plaintiffs’ right to
7 assert class claims, but also Plaintiffs’ estimate of the potential value of each class claim. (*Id.* at ¶¶ 29-
8 37, 48-64.) By contrast, the Individual Settlement Payments are substantial, estimated at an average of
9 approximately \$155.52 for each Class Member if all estimated 1,540 Class members participate. This
10 will provide fair and reasonable recovery to the entire Class without further delay. (Hollis Decl., ¶¶ 8-
11 85.) While the amount paid to Class Members represents a discount on Plaintiffs’ estimate of the overall
12 exposure to Defendants, this reduction in the amount of recovery represents an extremely reasonable
13 compromise considering the substantial risks Plaintiffs would face in the Litigation and the real potential
14 of Defendants filing for bankruptcy. (*Id.* at ¶¶ 48-64.)

15 **3. The Settlement Has No Obvious Deficiencies and Does Not Grant Improper**
16 **Preferential Treatment to Part of the Class or the Class Representative**

17 The Settlement provides the fairest way to distribute the Settlement proceeds to Class Members.
18 (Hollis Decl. at ¶¶ 76-85.) Each one of the class members shall be entitled to receive a *pro-rata* portion
19 of the Net Settlement Amount available for distribution based upon his or her respective number of
20 compensable work weeks. (*Id.*) Class Members who worked more shifts and that have a larger number
21 of compensable workweeks during the Class Period will be entitled to a larger portion of the Net
22 Settlement Amount than those who worked fewer. All Class Members are treated equitably and fairly.

23 **E. The Penalties Allocated to PAGA Are Reasonable**

24 Where settlements negotiate a good faith amount for PAGA penalties and “there is no indication
25 that this amount was the result of self-interest at the expense of other” class members, such amounts are
26 generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-
27 0844 EDL, 2009 WL 928133, at *1, 9.) Courts routinely approve of amounts for PAGA penalties in the
28 range of zero to two percent of the total maximum amount of the Settlement. (*See McKenzie v. Fed.*

Express Corp. (C.D. Cal. Jan. 23, 2012) No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 [acknowledging that courts approve PAGA settlements in the range of zero to two percent of the total Settlement].) The parties negotiated to allocate 4% of the Settlement to PAGA penalties in good faith and this amount is reasonable considering that the maximum PAGA penalties were estimated to be \$2,510,400.00 (which assumed a 100% violation rate) out of the \$9,893,794.82 (or roughly 25%) estimated value of the Class' claims. (Hollis Decl. ¶ 50g.)

F. The Service Awards to Plaintiffs Fall Well Within the Range of Reasonableness

Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during the course of the class litigation. (*Bell*, 115 Cal. App. 4th at 726 [upholding "service payments" to plaintiffs for their efforts in bringing class case].) Courts frequently approve awards of \$10,000 or more. (*In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393-1395 [upholding \$10,000 service awards].) The factors courts use in determining the amount of an award include: (1) a comparison between the service awards and the range of monetary recovery available to the class; (2) time and effort put into the litigation; (3) whether the litigation will further the public policy underlying the statutory scheme; and (4) risks of retaliation. (*See Clark*, 175 Cal. App. 4th at 804-807.) Here, all four of these factors support the approval of the total \$17,500 service award to Plaintiffs, apportioned \$10,000 to Plaintiff Gomez and \$7,500 to Plaintiff Santana. Plaintiffs assisted and consulted with Class Counsel during the litigation, provided relevant information, identified witnesses, and helped during an all-day mediation, among others. (Hollis Decl., ¶¶ 111-112; Santana Decl. ¶¶ 16-35; Gaines Decl. ¶¶ 10-14; Gomez Decl. ¶¶ 2-11.) As Plaintiffs have explained in their declarations, Plaintiffs effectively and fairly represented the Class Members, and did not place their interests above those of any member of the putative Class. Plaintiffs faced real risks by bringing the class litigation, including payment of fees and costs to Defendants in the event they did not prevail on their claims. In addition, Plaintiffs also have agreed to a far broader release than the Class Members, and have consented to waive the protections of California Civil Code section 1542. Accordingly, the \$17,500 aggregate Service Awards are reasonable, appropriate, and justified.

G. The Work Performed by Class Counsel Supports the Fees and Costs Requested

Class Counsel has performed a significant amount of work in this class action, including

1 conducting extensive research, investigation and analysis of each potential cause of action, and
2 anticipates in engaging in additional work if this Court approves the Settlement. (Hollis Decl. at ¶¶ 102-
3 110; Gaines Decl. ¶¶ 7-9) Class Counsel's work resulted in the Settlement which provides significant
4 benefits to class members.

5 Courts have awarded common fund fees calculated using a percentage-of-fund method that is not
6 dependent on counsel's lodestar amount. (*Pearl, California Attorney Fee Awards* (CEB 3d ed. 2010) §
7 5.19 [citing *In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal. App. 4th 495, 512; *Bell v.*
8 *Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726; *Apple Computer, Inc. v. Superior Court* (2005)
9 126 Cal. App. 4th 1253, 1270). This common fund approach is especially suitable where, as here, a
10 readily settlement fund is available. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1808-
11 09.)

12 Here, the proposed Settlement provides that Class Counsel may seek attorney's fees of \$175,000
13 (thirty-five percent of the Gross Settlement Amount), in addition to reimbursement for the actual
14 litigation costs, in an amount not to exceed \$28,000. As demonstrated in the Declarations of Graham
15 S.P. Hollis and Daniel F. Gaines filed concurrently herewith, Class Counsel has already performed a
16 significant amount of work litigating this Actions, including performing extensive legal and factual
17 research, which Class Counsel measured against the relative strength of the claims in order to better
18 identify an appropriate range of settlement figures. (Hollis Decl. at ¶¶ 104-110.; Gaines Decl. ¶¶ 7-9)
19 Class Counsel's request for attorneys' fees will be detailed and argued further in the motion for
20 attorneys' fees that will be filed together with the final approval motion. Accordingly, for purposes of
21 this Motion, and as will be explained in detail in the fee application, the requested fee amount falls well
22 within the range of reasonableness. (*See e.g. Van Vranken v. Atl. Richfield Co.* (N.D. Cal. 1995) 901 F.
23 Supp. 294, 297 [noting class counsel fee awards of 30-50% are typical where the common fund is less
24 than \$10 million].)

25 VI. THE CLASS NOTICE SATISFIES DUE PROCESS

26 California Rules of Court, Rule 3.769(f) requires that class members be provided with notice of
27 the final approval hearing, as well as an explanation of the proposed settlement and objection
28 procedures. Procedural due process does not guarantee any particular procedure but requires notice

1 reasonably calculated to apprise interested parties of the pendency of the action affecting their interests
2 and an opportunity to present their objections. (*Ryan v. Cal. Interscholastic Fed’n – San Diego Section*
3 (2001) 94 Cal. App. 4th 1048, 1072.) Notice that meets this standard and is neutrally worded satisfies
4 due process. (*Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 812.)

5 **A. The Class Notice is Accurate and Informative**

6 Here, the proposed Class Notice provides all the information a reasonable person would need to
7 make a fully informed decision about whether or not to participate in the Settlement. (Hollis Decl. at
8 ¶¶ 92-101; Ex. 2 to Hollis Decl.) The Class Notice summarizes the Litigation, including the contentions
9 and denials of the Parties, and the proceedings to date, and explains the terms and conditions of the
10 Settlement in plain language in an informative and coherent manner. (*Id.*) It also fully informs Class
11 Members of their rights and options (i.e., to object, to Request Exclusion or opt out, and/or do nothing to
12 receive their share of the Settlement), as well as explains the consequences of exercising any of these
13 options. (*Id.*) The Class Notice makes clear that each Class Member will receive a Settlement Payment
14 and will release the Released Claims, unless they submit a Request for Exclusion within the Response
15 Deadline. The Notice clearly explains the process for doing Requesting Exclusion, as well as explains
16 the process for Class Members to object to the Settlement. (*Id.*) The Notice also notifies the class
17 members of their reported compensable workweeks and the estimated Individual Settlement Amount
18 they will receive if the Settlement is finally approved. (*Id.* at ¶ 93; Ex. 2 to Hollis Decl.) The Notice
19 explains the process to dispute the number of compensable workweeks reported by Defendants and how
20 to contact the Settlement Administrator in the event they want more information or to dispute the
21 number of workweeks reported. (Hollis Decl. ¶ 30; Ex. 2 to Hollis Decl., at p. 4.) The Notice also
22 informs the Class members that they can obtain a copy of the Settlement Agreement free of charge
23 through the Settlement Administrator's static website. (Ex. 2 to Hollis Decl., at p. 8.)

24 **B. The Notice Plan Satisfies Due Process**

25 There is no statutory or due process requirement that all class members receive actual notice and
26 as the Court of Appeals has explained, “[t]he notice given should have a reasonable chance of reaching a
27 substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50 Cal. App. 3d 960, 973-
28 974.) Here, the proposed notice plan is consistent with class notices approved by state and federal

1 courts, and, under the circumstances here, is the best notice practicable and is the method likely to give
2 the best actual notice to the greatest number of class members. Defendants' records should provide the
3 best-known address available for the majority of the Class, but the Settlement Administrator will
4 nevertheless attempt to locate the best possible mailing addresses *prior to the mailing*. (Hollis Decl. ¶
5 94.) Moreover, the Settlement Administrator will perform a second in-depth search if any Class Notice
6 is returned as undeliverable without a forwarding address. (*Id.*)

7 **VII. THE PROPOSED CLASS SHOULD BE CONDITIONALLY CERTIFIED FOR**
8 **SETTLEMENT PURPOSES**

9 Provisional certification is appropriate at the preliminary approval stage where, as here, the
10 Court has not yet certified the class and the requirements for certification are met. (Newberg on Class
11 Actions §§ 13:16-13:18 (5th ed. 2011-2017).) To certify a settlement class, the Court must find an
12 ascertainable class and be a well-defined community of interest in the questions of law and fact
13 involving the parties represented. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 809-811.)

14 **A. There is An Ascertainable and Sufficiently Numerous Class**

15 Here, Class Members are easily identifiable from Defendants' own records. There is a class size
16 of approximately 1,540 Class Members, easily meeting the numerosity requirement.

17 **B. There is a Well-Defined Community of Interest**

18 The community of interest requirement involves three factors: (1) predominant common
19 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
20 class representatives who can adequately represent the class. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th
21 429, 435.) The predominance tests whether proposed classes are sufficiently cohesive to warrant
22 adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal. App. 3d
23 605.) Here, common issues of fact and law predominate as to each of the claims alleged by Plaintiffs on
24 behalf of the Class because this action concerns Plaintiffs' allegations that Defendants' common policies
25 and practices at its restaurants failed to provide Class Members with compliant meal and rest periods;
26 failed to compensate Class Members for all hours worked, failed to provide accurate wage statements,
27 failed to reimburse all necessary business expenses, and failed to timely pay Class Members all wages
28 owed upon separation of their employment and each is united in its proof. (Hollis Decl. at ¶¶116-117;

1 Santana Decl. at ¶¶6-13; Gomez Decl., ¶3.) Common issues predominate because the challenged
2 practices apply uniformly to all Class Members based on systematic companywide policies and the
3 resolution of these over-arching questions will determine liability for the Class as a whole.

4 Here, Plaintiffs' claims are typical of the Class because Plaintiffs, like all Class Members, were
5 subject to the same allegedly non-compliant policies and procedures, or lack thereof, that were
6 applicable to the entire Class throughout the Class Period. (Santana Decl. at ¶¶6-13; Gomez Decl., ¶3)
7 Plaintiffs are further part of the classes they seek to represent, and they worked a typical number of
8 hours and shifts to those worked by the other class members. (Santana Decl. at ¶¶6-13; Gomez Decl. ¶3)
9 The adequacy of representation requirement is met by fulfilling two conditions: first, a named plaintiff
10 must be represented by counsel qualified to conduct the pending litigation; second, a named plaintiff's
11 interests cannot be antagonistic to those of the class. *Classen v. Weller*, (1983) 145 Cal. App. 3d 27, 46-
12 47. Here, both adequacy requirements are met. Plaintiff has no conflicts of interest with the Class.
13 (Santana Decl. at ¶¶6-13; Gomez Decl. ¶11) Plaintiffs worked toward a positive resolution of this case,
14 demonstrating their interest in prosecuting this Action and dedication to obtaining the best possible
15 recovery for the Class, and were involved during the litigation and settlement process. (Hollis Decl. at
16 ¶¶118-120; Gaines Decl., ¶¶10-12; Santana Decl. at ¶¶6-13; Gomez Decl., ¶3) In addition, because
17 Plaintiffs' interests are co-extensive with those of the Class and Plaintiffs seek relief identical to that of
18 every other Class Member, Plaintiffs can and will pursue the interests of all Class Members adequately.
19 (Hollis Decl. at ¶¶118-120; Gaines Decl., ¶11) Furthermore, Plaintiffs retained counsel with significant
20 wage and hour class action experience. (Hollis Decl. at ¶¶8-14, Ex. 4; Gaines Decl. ¶¶3-6, Ex. A.)

21 **VIII. CONCLUSION**

22 For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary
23 approval of their Settlement with Defendants.

24
25 Dated: March 29, 2023

26 By: 
27 GRAHAM S.P. HOLLIS
28 VILMARIE CORDERO
ERIK DOS SANTOS
Attorneys for Plaintiffs