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on behalf of herself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ORANGE**

MEYBELL PEREZ, on behalf of herself and all  
others similarly situated

Plaintiff,

vs.

BLOWER-DEMPSAY CORPORATION, a  
California corporation, LYNEER STAFFING  
SOLUTIONS, LLC, a Delaware limited  
liability company and DOES 1 through 50,  
inclusive,

Defendants.

Case No. 30-2020-01140589-CU-OE0CXC  
ASSIGNED FOR ALL PURPOSES TO:  
JUDGE: Hon. Peter Wilson  
DEPT: CX101

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT; [PROPOSED] ORDER**

[Declaration of James R. Hawkins  
Concurrently Filed Herewith]

Date: March 23, 2023  
Time: 2:00 p.m.  
Dept.: CX101

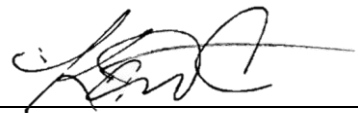
1           **PLEASE TAKE NOTICE THAT** on March 23, 2023 in Department CX 101 of the  
2 above-entitled court located at 751 W. Santa Ana Blvd., Santa Ana, California 92701, Plaintiff  
3 Meybell Perez (“Plaintiff”) will and hereby does move the Court for an Order (1) provisionally  
4 certifying the Class for Settlement purposes only; (2) provisionally approving James Hawkins  
5 and Isandra Fernandez from the law firm of James Hawkins, APLC, as counsel for Plaintiff and  
6 the Class Members in this matter, (3) provisionally approving Meybell Perez as the Class  
7 Representative; (4) approving Simpluris, Inc. as the Settlement Administrator; (5) preliminarily  
8 approving the class action settlement; and (6) approving and directing distribution of the Notice  
9 of Class Action and PAGA Settlement, Request for Exclusion Form and Objection Form.

10           This motion is made pursuant to Rule 3.769 of the California Rules of Court, which  
11 provides for court approval of the settlement of a purported class action and allows the Court to  
12 preliminarily certify a class for settlement purposes. The basis for this motion is that the  
13 proposed Settlement is fair, adequate, and reasonable and the procedures proposed by the Parties  
14 are adequate to ensure the opportunity of Class Members to participate in, opt out of, or object to  
15 the Settlement.

16           This motion will be based on the Memorandum of Points and Authorities included herein,  
17 the declaration of James R. Hawkins, the Settlement Agreement and Stipulation to Resolve Class  
18 Action and PAGA Claims attached to the Declaration of James R. Hawkins as Exhibit 1, and  
19 upon the oral arguments of counsel (should there be any) and upon the complete records and file  
20 herein.

21 Dated: December 22, 2022

**JAMES HAWKINS, APLC**

22  
23 

24 \_\_\_\_\_  
25 James R. Hawkins, Esq.  
26 Isandra Y. Fernandez, Esq.  
27 Kacey E. Cook, Esq.

28 Attorneys for Plaintiff  
Meybell Perez

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On April 22, 2020, Plaintiff Meybell Perez filed this wage and hour class action on behalf  
4 of herself and all employees employed by, or formerly employed by Blower Dempsay  
5 Corporation and Lyneer Staffing Solutions, LLC and Does 1 through 50, who occupied non-  
6 exempt hourly positions in the state of California. The lawsuit seeks recovery of alleged unpaid  
7 wages, premium wages and penalties pursuant to California Labor Code, California Industrial  
8 Welfare Commission (“IWC”) Wage Order No. 11010, Bus. & Prof. Code § 17200 and the  
9 Private Attorney General Act of 2004 (“PAGA”) Labor Code section 2699 *et seq.* The action  
10 further seeks an award of attorneys’ fees, interest and costs.

11 After over two and half years of litigation and subject to court approval, Plaintiff and  
12 Defendants Blower Dempsay Corporation (“Blower Dempsay”) and Lyneer Staffing Solutions,  
13 LLC (“Lyneer” and collectively with Blower Dempsay “Defendants”) have reached a settlement  
14 of the claims asserted on behalf of the class in this lawsuit for a total of Seven Hundred Forty  
15 Thousand Dollars (\$740,000.00) (“Gross Settlement Amount”). Defendants deny the claims  
16 alleged and dispute any liability for the damages sought. The Gross Settlement Amount  
17 (“GSA”) includes the individual settlement payments to the class members, attorneys’ fees and  
18 costs, named plaintiff/class representative enhancement payment, the costs of the settlement  
19 administrator, and payment to the California Labor Workforce Development Agency (“LWDA”)  
20 under PAGA (the “Settlement”). **This is a cash settlement.** Every Class Member who does not  
21 opt out of the Settlement will automatically be mailed an individual settlement payment.  
22 However, every Class Member who is also within the PAGA group will be mailed their  
23 respective individual settlement payment associated with the PAGA penalty portion of the  
24 settlement amount regardless of opt-out status. There is no claim filing process, and Class  
25 Members do not have to file a claim to be mailed a payment.

26 As discussed more thoroughly below, the proposed Settlement satisfies all of the criteria  
27 for preliminary settlement approval under California law and falls well within the range of  
28 proper approval. As such, Plaintiff moves this court to: (i) provisionally certify the proposed

1 Settlement Class; (ii) provisionally approve James Hawkins and Isandra Fernandez from the law  
2 firm of James Hawkins, APLC as class counsel for Plaintiff and the Class in this matter;  
3 (iii) provisionally approve named Plaintiff Meybell Perez as the Named Plaintiff; (iv) appoint  
4 Simpluris, Inc. as the settlement administrator; (v) grant preliminary approval of the Settlement  
5 Agreement and Stipulation to Resolve Class Action and PAGA Claims (“Settlement  
6 Agreement”); (vi) direct distribution of the Notice of Class Action and PAGA Settlement,  
7 Request for Exclusion Form and Objection Form (“Notice Packet”) on the terms and conditions  
8 set forth in the Settlement Agreement; and (vii) schedule a final approval hearing.

9 **II. FACTUAL BACKGROUND**

10 **A. Pleadings**

11 In the years since the filing of the original class action complaint on April 22, 2020,  
12 Plaintiff has filed one amendment to the Complaint. The current operative pleading is the First  
13 Amended Complaint, filed on June 30, 2020, which alleges that Defendants: (1) failed to pay all  
14 lawful wages; (2) failed to provide statutorily compliant meal periods and/or to pay one (1) hour  
15 of pay at the employees regular rate of compensation for each workday that the meal period was  
16 not properly provided; (3) failed to provide statutorily compliant rest periods and/or to pay one  
17 (1) hour of pay at the employees regular rate of compensation for each workday that the rest  
18 period was not properly provided; (4) failed to reimburse employee expenses; (5) failed to timely  
19 pay all wages owed at the termination of the class members’ employment; (6) failed to provide  
20 accurate itemized wage statements; (7) UCL violation and (8) PAGA (referred to herein as the  
21 “Litigation”) (See Declaration of James R. Hawkins (“Hawkins Decl.” ¶ 2.)

22 Plaintiff, on behalf of herself and all Class Members, bring this action pursuant to Labor  
23 Code sections 201, 202, 203, 204, 210, 218.6, 226, 226.3, 226.7, 510, 511, 512, 558, 1174(d),  
24 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2699 *et seq.* California Code of  
25 Regulations, Title 8, section 11010 *et seq.* and any other applicable Industrial Welfare  
26 Commission (“IWC”) Wage Orders, seeking unpaid lawful wages, unpaid rest and meal period  
27 compensation, penalties and other equitable relief, and reasonable attorneys’ fees and costs.  
28

1 Throughout this litigation, Defendants have denied Plaintiff's allegations and raised  
2 defenses to her claims, individually and on a class wide basis. Defendants maintain that their  
3 policies and/or practices meet the requirements of the Labor Code and applicable Wage Orders.  
4 (Hawkins Dec. ¶ 3.) To date, no motion for class certification has been filed, no class has been  
5 certified and the court has not made any findings that Defendants engaged in any wrongdoing or  
6 in violation of any state law, rule or regulation, with respect to the issues presented in the  
7 litigation. (Hawkins Decl. ¶ 4.)

8 **B. Discovery and Mediations**

9 Through both formal and informal discovery, Plaintiff and Defendants have exchanged  
10 extensive documents and information. (Hawkins Decl. ¶ 5.) Plaintiff has propounded written  
11 discovery on the named Defendants and responded to discovery propounded by Defendant  
12 Blower-Dempsey. (*Id.*) Defendants have responded to Plaintiff's formal and informal requests  
13 for information and documentation related to the claims asserted. (*Id.*) Defendants have  
14 produced thousands of pages of information, including timecard and payroll records, reports  
15 related to putative class members, and data relating to the class members (e.g., dates of  
16 employment and pay rates). (Hawkins Decl. ¶ 6.)

17 Defendants provided to Plaintiff her complete personnel file, information regarding the  
18 number of non-exempt employees during the relevant time period and corporate documents  
19 reflecting Defendants' wage and hour policies and practices. (Hawkins Decl. ¶ 7.) After  
20 conducting extensive formal and informal discovery, exchanging relevant information, and  
21 engaging in numerous discussions regarding the claims alleged, on September 14, 2021 the  
22 Parties participated in a mediation with Gig Kyriacou, Esq., an experienced wage and hour class  
23 action mediator. (Hawkins Decl. ¶ 8.) At the mediation, the Parties exchanged further  
24 information and documentation concerning Plaintiff's claims and Defendants' defenses, but they  
25 did not reach a settlement. (Hawkins Decl. ¶ 9.) Subsequent to the mediation, the Parties  
26 continued in settlement discussions through mediator Gig Kyriacou, Esq. (Hawkins Decl. ¶ 10.)

27 After numerous settlement discussions, in or about late May, 2022, the Parties reached a  
28 settlement in principle. (Hawkins Decl. ¶ 11.) Thereafter, the Parties continued negotiations

1 regarding the specific terms of the settlement and in the process exchanged additional  
2 information regarding the same. (*Id.*) Starting in or about June 2022, the Parties exchanged  
3 numerous drafts of the long-form settlement agreement and notice, and engaged in discussions  
4 regarding proposed revisions thereto. (Hawkins Decl. ¶ 12.) The principal terms and provisions  
5 of the settlement were approved by all the Parties in or about October, 2022. (Hawkins Decl.  
6 ¶ 13.)

7 After further analysis, discussions and exchange of proposed further revisions, the  
8 parties agreed to the final terms and provisions of the Settlement Agreement, which is now  
9 before this Court for preliminary approval. (Hawkins Decl. ¶ 14.; Exhibit 1- Settlement  
10 Agreement)

11 Based on their own respective independent investigations and evaluations and after  
12 considering the sharply disputed factual and legal issues involved in this matter, the risks  
13 attending further prosecution in light of certification issues faced due to the *Brinker Rest. Corp.*  
14 *v. Super. Ct.*, (2012) 53 Cal. 4th 1004 (“*Brinker*”) decision, the discovery and investigation  
15 conducted to date and the benefits received under the settlement, Plaintiff and her counsel are of  
16 the opinion that settlement for the consideration and on the terms set forth in the Settlement  
17 Agreement is fair, reasonable, and adequate and is in the best interests of the named Plaintiff and  
18 the Class Members. (Hawkins Decl. ¶ 15.)

### 19 **III. SUMMARY OF SETTLEMENT TERMS**

#### 20 **A. Class Members**

21 Class/Class Members means: means all current and former non-exempt employees who  
22 (1) were employed by either Blower-Dempsay Corporation or Lyneer Staffing Solutions, LLC;  
23 and (2) worked in the Pacific Western Container division (“PWC”) of Blower-Dempsay  
24 Corporation during the Class Period from May 16, 2016 to the earlier of (a) the date the Court  
25 enters the Order preliminarily approving the Settlement; or (b) February 28, 2023 (“Class  
26 Period.”) (Settlement Agreement p. 2, ¶ 6,8.)

#### 27 **B. Allocation of Settlement Amount**

28

1           1.       The total maximum amount of settlement is Seven Hundred Forty Thousand  
2 Dollars (\$740,000) to be paid by Defendants pursuant to this Settlement (“Gross Settlement  
3 Amount”) The Gross Settlement Amount includes, but is not limited to, payments to be made  
4 to Participating Class Members, Class Counsel’s Attorneys’ Fees and Costs, Enhancement  
5 Award to the Named Plaintiff, the PAGA Payment, settlement administration fees and costs. The  
6 Gross Settlement Amount shall not include Defendants’ share of taxes on the wages portion of  
7 Individual Settlement Payments, which will be paid by Defendants separately and in addition to  
8 the Gross Settlement Amount. (Settlement Agreement p. 3, ¶ 15; p. 10, ¶ 42.)

9           2.       Subject to Court approval, the law firm of James Hawkins, APLC shall be paid  
10 Two Hundred Forty-Six Thousand, Six Hundred Sixty-Six Dollars and Forty-Two Cents  
11 (\$246,666.42) in attorneys’ fees (i.e., 33 1/3% of the Gross Settlement Amount) and actual costs  
12 not to exceed \$18,000. (Settlement Agreement p. 2, ¶ 4.)

13           3.       Subject to Court approval, the Named Plaintiff Meybell Perez (aka “Class  
14 Representative”) shall be paid up to \$5,000 as an Enhancement Award in addition to her  
15 Individual Settlement Payment, in recognition of her efforts and work in prosecution of the  
16 Action. (Settlement Agreement p. 3, ¶ 12.)

17           4.       Subject to Court approval, \$15,000 will be set aside from the Gross Settlement  
18 Amount to cover the Settlement Administrator’s costs of administering this Settlement.  
19 (Settlement Agreement p.5, ¶ 28; p.11, ¶ 43(b).)

20           5.       Subject to Court approval, \$25,000 will be set aside from the Gross Settlement  
21 Fund for the PAGA Payment, out of which 75% (\$18,750) will be paid to the LWDA (the  
22 “LWDA Payment”) and 25% (\$6,250) will be distributed among the Aggrieved Employees.  
23 (Settlement Agreement p.4, ¶ 21; p.11, ¶ 43(d).)

24           6.       PAGA Payment to each Class Member: After deducting the approved amounts  
25 specified in Sections 43(a)-43(d) of the Settlement Agreement, each Participating Class Member  
26 will be entitled to a pro rata portion of the remaining amount. Individual Settlement Payments  
27 will be calculated from the Net Settlement Amount based on the respective number of  
28

1 Workweeks worked by each Participating Class Member in a non-exempt position during the  
2 Class Period, rounded up (Settlement Agreement p.12, ¶ 43(e).)

3 7. Individual Settlement Payments will be distributed only to Participating  
4 Class Members. PAGA Payments will be distributed to all Aggrieved Employees. The Individual  
5 Settlement Payments allocated to Class Members who opt out of the Settlement will be  
6 distributed to Participating Class Members on a *pro rata* basis (Settlement Agreement p.12, ¶  
7 43(g).)

8 8. All settlement payments paid to Participating Class Members, Aggrieved  
9 Employees, and the Named Plaintiff, will be paid in a net amount after applicable state and  
10 federal tax withholdings, including all payroll taxes, have been deducted (Settlement Agreement  
11 p.1, ¶ 45.)

12 Here, there are approximately 860 putative Class Members and thus the average net  
13 recovery is estimated to be \$508 (estimated NSA of \$436,583.58/ 860) if the Court approves the  
14 amounts set forth above. This average net recovery is significantly more than other wage and  
15 hour class action settlements approved by California state and federal courts. *See, e.g., Ressler v.*  
16 *Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net  
17 recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-  
18 *JWJx* (C.D. Cal.) (average net recovery of approximately \$65); *Sorenson v. Defendants, Inc.*,  
19 Case No. 2:06-CV-02674-JAM-DAD (E.D.Cal.) (average net recovery of approximately \$60);  
20 *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average  
21 net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A.  
22 Super. Ct.) (average net recovery of approximately \$20); and *Jones v. Bath & Body Works, Inc.*,  
23 No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately \$50).

24 **C. Released Claims Summary**

25 **1. Release as to All Class Members.**

26 Upon the Effective Date, for the Class Period, Plaintiff Meybell Perez and all members of  
27 the Class waive, release, discharge, and promise never to assert in any forum any and all wage-  
28 related claims against Blower-Dempsey Corporation, Lyneer Staffing Solutions, LLC, and their

1 respective past, present, and future predecessors, successors, assigns, shareholders, members,  
2 owners, officers, directors, investors, employees, managers, managing agents, partners, affiliated  
3 companies or entities, parents, holding companies, divisions, agents, attorneys, insurers, and  
4 representatives (“Released Parties”) (Settlement Agreement p. 4 ¶ 26), that were alleged in the  
5 Litigation or that could have been alleged in the Litigation based on or arising from the same or  
6 similar facts, allegations, and/or claims pleaded in the Litigation, including: claims for failure to  
7 pay the minimum wage, failure to pay regular wages, failure to pay overtime compensation and  
8 other premium wages, off-the-clock work, failure to provide and maintain complete and accurate  
9 itemized wage statements that included all information required by the California Labor Code;  
10 failure to provide meal periods and rest breaks or additional pay in lieu thereof; failure to  
11 reimburse business expenses; untimely payment of wages during and at the time of termination;  
12 violations of California Labor Code §§ 201, 202, 203, 204, 210, 218.6, 226, 226.3, 226.7, 510,  
13 511, 512, 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, the applicable  
14 California Wage Order, and all related or corresponding federal laws, including the Fair Labor  
15 Standards Act; violation of California Business and Professions Code Section 17200 *et seq.*; and  
16 claims under California Labor Code Section 2698 *et seq.* (“Settled Claims”) (Settlement  
17 Agreement p. 4,5, ¶ 27.)

## 18 **2. Aggrieved Employees Release of PAGA Claim**

19 In exchange for the PAGA Amount recited in this Agreement, the Named Plaintiff, as the  
20 representative for the State of California and all Aggrieved Employees, and on behalf of their  
21 current, former, and future heirs, executors, administrators, attorneys, agents, and assigns will  
22 forever completely release and discharge the Released Parties from the PAGA Claims that arose  
23 during the PAGA Period. The Aggrieved Employees and the State of California will be deemed  
24 by operation of the Final Order and Judgment to have agreed not to sue or otherwise make a  
25 claim against any of the Released Parties for the PAGA Claims that arose during the PAGA  
26 Period (Settlement Agreement p. 9,10 ¶ 40.)

## 27 **D. Notice Procedure**

28

1 Subject to Court approval of the Settlement, Within 10 business days after entry of the  
2 Preliminary Approval Order, Defendants will provide to the Settlement Administrator a list of  
3 Class Members that identifies each Class Member by name, Social Security Number, and last-  
4 known address; specifies the employment dates of each Class Member in a non-exempt position  
5 during the Class Period; and provide the number of Workweeks worked by each Class Member  
6 during the Class Period and the PAGA Period and the amount payable to each Class Member  
7 (the “Class List”) (Settlement Agreement p. 14, ¶ 46.)

8 Within fifteen (15) calendar days after receipt of the Class List from Defendants, the  
9 Settlement Administrator will send the Class Notice (Attached as Exhibit A to the Settlement  
10 Agreement), in English and in Spanish, to each Class Member via First Class U.S. Mail. Receipt  
11 of the Class Notice shall be presumed as to each and every Class Member whose Class Notice is  
12 not returned to the Settlement Administrator as undeliverable within 15 calendar days after  
13 mailing (Settlement Agreement p. 14, ¶ 46(c).)

14 The Settlement Administrator will re-mail any notice packet returned by the United  
15 States Postal Service with a forwarding address on or before the expiration of the Notice Period.  
16 (Settlement Agreement p. 15, ¶ 46(d).) “Notice Period” means the time period commencing on  
17 the date the Class Notice is mailed to Class Members and ending 45 calendar days thereafter  
18 (Settlement Agreement p. 4 ¶ 18.) It shall be conclusively presumed that those Class Members  
19 whose re-mailed Class Notices not returned to the Settlement Administrator as undeliverable  
20 within 15 calendar days after remailing, received the Class Notice. Class Members who receive a  
21 re-mailed Class Notice shall have their Notice Period extended 15 calendar days (Settlement  
22 Agreement p. 15, ¶ 46(d).)

23 The Class Notice will include a procedure by which a Class Member may dispute the  
24 number of Workweeks allocated to the Class Member by submitting a written dispute sent via  
25 U.S. Mail to the Settlement Administrator postmarked no later than the expiration of the Notice  
26 Period (“Workweek Dispute”) (Settlement Agreement p. 16 ¶ 47)

27 **IV. CALIFORNIA RULES OF COURT § 3.769 APPROVAL PROCESS**

28 A class action may not be dismissed, compromised or settled without approval of the

1 Court. (*Wershba v Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 240; Cal. Rules of Court,  
2 Rule 3.769.) The approval or rejection of the proposed settlement is committed to this Court's  
3 sound discretion. (*Wershba*, 91 Cal. App. 4th at pp. 234-235.) A court's decision to approve a  
4 class action settlement may be reversed only upon a strong showing of "clear abuse of  
5 discretion." (*Class Plaintiff v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276.) The purpose  
6 of the court's preliminary evaluation of the proposed settlement is to determine whether it is  
7 within the "range of reasonableness" and thus, whether the notice to the class is appropriate.  
8 (NEWBERG, §11.25 at 11-36-37.)

9 According to this procedure, Plaintiff requests that this Court provisionally certify the  
10 proposed Class for settlement purposes – conditional upon final approval of the settlement. The  
11 practical purpose of provisional class certification is to facilitate distribution to all Class  
12 Members of notice of the terms of the proposed Settlement and the date and time of the  
13 final approving hearing. Additionally, Plaintiff requests this Court to preliminarily approve the  
14 Settlement as fair, adequate and reasonable as set forth below.

15 **V. PRELIMINARY APPROVAL OF SETTLEMENT IS APPROPRIATE**

16 The law favors settlement, particularly in class actions and other complex cases in  
17 which substantial resources can be conserved by avoiding the time, cost and rigors of formal  
18 litigation. (*City of Seattle* 955 F.2d at p. 1276; *Potter v Pacific Coast Lumber Company* (1951)  
19 37 Cal. 2d. 592, 602-603; 4 NEWBERG § 11.41.) To grant preliminary approval of this class  
20 action settlement, the Court need find only that the settlement falls within the "range of  
21 reasonableness." (*North County Contractor's Ass. Inc. v. Touchstone Ins. Svcs.* (1994) 27 Cal.  
22 App. 4th 1085, 1089-1090.) In determining whether a class settlement is fair, adequate and  
23 reasonable, courts must consider the following relevant factors: the strength of the plaintiff's  
24 case, the risk, expense, complexity and likely duration of further litigation, the risk of  
25 maintaining class action status through trial, the amount of offered settlement, the extent of  
26 discovery completed and the range of the proceedings, and the experience and views of counsel.  
27 (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *Clark v American Residential*  
28 *Services, LLC* (2009) 175 Cal. App. 4th. 785, 799.) The list of factors is not exclusive, and the

1 court is free to engage in a balancing and weighing of the factors depending on the circumstances  
2 of each case. (*Clark*, 175 Cal. App. 4th at p. 799; *Wershba*, 91 Cal. App. 4th at p. 245.)

3 Furthermore, courts must give “proper deference to the private consensual decision of the  
4 parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement  
5 negotiated between the Parties to a lawsuit must be limited to the extent necessary to reach a  
6 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion  
7 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and  
8 adequate to all concerned.” (*Hanlon v Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

9 **A. The Terms of the Proposed Settlement Are Fair**

10 A preliminary review of the terms of the Settlement Agreement provides no reason to  
11 doubt its fairness. A presumption of fairness exists where: 1) the settlement is reached through  
12 arms-length negotiations; 2) investigation and discovery are sufficient to allow counsel and the  
13 court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of  
14 objectors is small. (*Dunk v. Ford Motor Co.*, *supra*, at p. 1802.) The first three of these factors  
15 apply at the preliminary approval stage; the percentage of objectors is determinable only at the  
16 final approval stage.

17 1. The Settlement Was Reached Through Extensive Arm’s Length Bargaining and  
18 Negotiation.

19 As already discussed herein, the Parties have conducted themselves in informed, good  
20 faith, arm's-length negotiations after exchanging extensive information about the claims and  
21 defenses of this lawsuit and engaging in pre-mediation and post mediation discussions aimed at  
22 settling their dispute. After engaging in formal discovery, in attempts to settle this lawsuit, the  
23 Parties participated in a full day mediation on September 14, 2021 with Gig Kyriacou, Esq.  
24 (Hawkins Decl. ¶ 8.) During this mediation, a settlement was not reached. (Hawkins Decl. ¶ 9.)  
25 The Parties continued in settlement negotiations, including with the assistance of the mediator,  
26 and ultimately reached a settlement. (Hawkins Decl. ¶¶ 11-14.)

27 In sum, armed with all of the relevant information and with the help of the mediator,  
28 counsel for the Parties participated in lengthy, serious, and informed negotiations

1 which has resulted in the proposed Settlement Agreement that is now placed before this Court  
2 for preliminary approval.

3 2. Investigation and Discovery Were Sufficient for the Parties to Evaluate the  
4 Risks Intelligently

5 As discussed herein, Plaintiff has conducted significant investigation of the facts and law  
6 both before and after the Litigation was filed. Plaintiff's counsel reviewed voluminous  
7 supporting documents provided by Defendant through formal and informal discovery and in  
8 exchanges of information in preparation for the mediation. (Hawkins Decl. ¶¶ 5-10.)

9 3. Plaintiff's Counsel is Experienced in Similar Litigation

10 Moreover, counsel for Plaintiff and Defendants have represented, mediated, and settled  
11 other employee class actions in wage and hour litigation and have knowledge of the strengths  
12 and weaknesses of the claims against Defendants and the benefits of the proposed Settlement  
13 under the circumstances of the case. (Hawkins Decl. ¶¶ 16-17.)

14 **B. The Settlement Provides For Reasonable Compensation To Class Members**

15 In seeking approval, a settling party must provide sufficient information to "enable the  
16 court to make an independent assessment of the adequacy of the settlement terms." *Kullar v.*  
17 *Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled  
18 law that a cash settlement amounting to only a fraction of the potential recovery will not per se  
19 render the settlement inadequate or unfair." *See Officers for Justice v. Civil Serv. Comm'n of City*  
20 *& Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). "The proposed settlement is not to  
21 be judged against a hypothetical or speculative measure of what might have been achieved by  
22 the negotiators." *Id.* at 625. "Estimates of a fair settlement figure are tempered by factors such as  
23 the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery  
24 (often measured in years)." *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit*  
25 *Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in  
26 valuing the claims within a realistic range of outcomes, the settling plaintiff should discount the  
27 value of the settled claims for risks such as changes in the law, the probability of success, and  
28 other factors.

1           Settling parties are not, however, required to partake in a hypothetical accounting  
2 exercise: “**Kullar does not ... require any such explicit statement of [maximum] value;** it  
3 requires a record which allows ‘an understanding of the amount that is in controversy and the  
4 realistic range of outcomes of the litigation.” *Munoz v. BCI Coca-Cola Bottling Co.*, (2010), 186  
5 Cal. App. 4th 399, 409-10 (citing *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall,  
6 “the most important factor” in determining “whether a settlement is fair and reasonable” is the  
7 “strength of the case for plaintiffs on the merits, balanced against the amount offered in the  
8 settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As discussed further  
9 below, the recovery of \$740,000 for the Class Members is well within the range of  
10 reasonableness and undeniably fair, adequate and reasonable considering the risks and hurdles of  
11 continued litigation.

12           The damage model used in calculating potential liability was largely based on the number  
13 of class members (broken down into current and former employees), the number of workweeks,  
14 the average rate of pay and a random sample of time records, wage statements and documents  
15 produced by Defendants in preparation for mediation. Based on the information provided by  
16 Defendants, the estimated number of workweeks for the class period is 30,544 (22,827- Blower  
17 Dempsay and 7,717- Lyneer) and the average hourly rate of pay is approximately \$22. The  
18 estimated range amounts for potential violations were calculated as follows: (Hawkins Decl. ¶  
19 18.)

20           a.     Failure to Pay Lawful Wages- Plaintiff’s class claim for failure to pay lawful  
21 wages is based on allegations that Plaintiff and putative class members were not paid for the time  
22 spent “off the clock” under the direction and control of Defendants prior to the start of their work  
23 shifts. Specifically, Plaintiff alleges that she and putative class members were instructed to be at  
24 their work stations and ready to work by the time the first bell rang at 6:00 a.m. signaling the  
25 start of the shift. Upon arriving at the Blower-Dempsay facility, for the start of their shift,  
26 Plaintiff and class members claim that they were required to drop of personal items such as bags,  
27 purses and lunches in the break area before entering the work area. Plaintiff further alleges that,  
28 due to the large number of employees clocking in at the same time, she and putative class

1 members were required to arrive to the facility five to ten minutes before the scheduled start of  
2 their shift in order to ensure that they are able to be at their work station by the time the bell rings  
3 at 6:00 a.m. Additionally, Plaintiff alleges that, during the Class Period, Defendants  
4 implemented a timekeeping policy and practice for employees that rounded their clock-in and  
5 clock-out times in a manner that resulted in a loss of time worked.

6 Defendants adamantly dispute Plaintiff's allegations that employees were required to  
7 arrive and perform any work "off the clock" prior to the start of the work shift and claimed that  
8 Plaintiff lacked evidence of any "off the clock" work. As per the analysis conducted on the  
9 sample provided by Defendants, the maximum off-the-clock work based on estimated 10  
10 minutes per shift was calculated at \$817,264. Taking into consideration the nature of the claim  
11 and Defendants' defenses thereto including the inability to establish the violation with respect to  
12 all of the Class Members, this claim was valued in the 20% to 10% violation rate and thus  
13 between \$163,453 and \$81,726.4.

14 Further, Defendants contend that any time clock rounding was neutral and that employees  
15 were not actually underpaid. The analysis of the random sample of time records confirms a more  
16 neutral rounding. For purposes of settlement this claim was valued at \$0.

17 b. Meal Period Claim - The meal break violation claim is based primarily on  
18 Defendants' alleged failure to provide minimum thirty (30) minute meal periods when Plaintiff  
19 and class members worked shifts over five (5) hours and/or in excess of ten (10) hours a in  
20 violation of California Labor Code §§226.7 and 512 and IWC Wage Order 1-2001. Specifically,  
21 Plaintiff alleges that, during the class period, Blower-Dempsay implemented a bell system to  
22 signal the start and end of meal periods, rest breaks and end of the work shift. When the bell  
23 rang for meal breaks, Plaintiff and similarly situated Class Members stopped working and got in  
24 line to punch out for a scheduled 30-minute meal period. Plaintiff alleges that by the time the  
25 second bell rang, signaling the end of the meal period, employees were required to clock back in  
26 for the end of their meal break. Thus, due to the time spent waiting in line to clock back in by  
27 the end of the meal period, Plaintiff alleges that she and similarly situated Class Members were  
28 not able to take a full 30-minute meal period. Further, Plaintiff contends that she and similarly

1 situated Class Members were not provided a second 30-minute meal period when they worked  
2 shifts in excess of 10 hours.

3 Defendants fervently deny Plaintiff's allegations and maintain that she and class  
4 members were provided with the opportunity to take full, 30-minute meal periods to which they  
5 were entitled as per compliant company policies. Further, Defendants adamantly dispute the  
6 propriety of certification in this case. Defendants' position is that, under the holding in *Brinker*  
7 and other state and federal decisions, Defendants fulfilled their legal obligations to non-exempt  
8 employees by providing them with timely and proper meal periods.

9 As per the analysis conducted on the documents produced by Defendants, the maximum  
10 number of shifts with potential meal break violations was calculated at 32,978, which equates to  
11 an estimated maximum potential liability of \$725,516 (\$22 x 32,978) assuming 100 % violation  
12 rate. Taking into consideration the nature of the claim, Defendants' defenses and issues faced  
13 due to *Brinker Rest. Corp. v. Super. Ct.*, (2012) 53 Cal. 4th 1004 ("*Brinker*"), for purposes of  
14 settlement, the meal break claim was valued between an estimated maximum of \$362,758 (40%)  
15 and \$217,655 (30%).(*Id.*)

16 c. Rest Break Claim - The rest break claim is premised on allegations that Plaintiff  
17 and putative class members were not provided compliant rest breaks during their work shifts as a  
18 result of Defendant's practice and policies. Specifically, Plaintiff alleges that, as with the meal  
19 period, a bell rang signaling the start and end of the two scheduled ten-minute rest breaks that  
20 Plaintiff and class members were provided during their shifts. When the first bell rang,  
21 employees were required to leave the work area and walk to the break room. Depending on  
22 where the employees' work station was located, Plaintiff alleges that it could take anywhere  
23 from one (1) to five (5) minutes to walk to the break room and the same amount of time to walk  
24 back when the second bell rang signaling the end of the rest break. Therefore, Plaintiff contends  
25 that employees were not authorized and permitted a net ten-minute rest break as required by law.

26 Defendants dispute Plaintiff's allegations and contend that employees are  
27 provided a minimum 10-minute rest break. Specifically, Defendants contend  
28 that the bell system implemented by Blower- Dempsay ensured that Plaintiff  
and putative class members received d timely, complete 10 minute rest

1 breaks. Further, Blower Dempsay's written policy states that the 10 minutes  
2 do not include the reasonable time it takes to walk to and from the break area.

3 Further, Defendants claim that in addition to ensuring rest breaks, it provides a procedure  
4 for employees to report missed rest breaks – either at the time they are not receiving the rest  
5 break or later to Human Resources if not corrected. According to Defendants, these processes  
6 not only undermine liability but also class certification.

7 As per the analysis conducted on the documents produced by Defendants, the maximum  
8 number of rest break eligible shifts was 147,619 which equates to an estimated maximum  
9 potential liability of \$3,247,618(147,619 x \$22) assuming 100 % violation rate. However, given  
10 Defendants' defenses to this claim including a facially valid policy and certification issues faced  
11 due to the *Brinker* decision, for purposes of settlement, the rest break claim was valued between  
12 an estimated maximum of \$649,524 (20%) and \$0. (*Id.*)

13 d. Failure to Provide Accurate Itemized Wage Statements-Under Lab. Code §  
14 226(e), an employee suffering “injury as a result of a knowing and intentional failure by an  
15 employer” to provide accurate wage statements is entitled to \$50 for the initial violation and  
16 \$100 for each subsequent violation up to \$4,000. As per the analysis conducted on the random  
17 sample provided by Defendants, the estimated maximum potential liability was calculated at  
18 \$717,600 based on an estimated 11,205 pay periods from May 26, 2017 through September 14,  
19 2021 mediation date.

20 Defendants contend that the wage statements issued to the employees fully  
21 complied with Labor Code section 226. Defendants state that because they believe no wages are  
22 unpaid, there can be no derivative penalties. Further, Defendants argue that, if any wage  
23 statements were in fact inaccurate, they did not “knowingly and intentionally” fail to provide  
24 accurate statements and that Plaintiff and the class did not suffer any “injury” from such  
25 inaccurate wage statements. For purposes of settlement negotiations, said claim was valued  
26 between \$215,280 (30%) and \$71,760 (10%).(*Id.*)

27 e. Failure to Timely Pay Wages- This claim is derivative of the other claims  
28 asserted. Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant

1 statutory period (i.e., three years before the filing of the initial Complaint) is entitled to 30 days'  
2 worth of wages as a waiting time penalty for not being paid all wages upon the separation of  
3 employment. Plaintiffs allege that penalties are owed under Labor Code section 203 due to, at a  
4 minimum, Defendants' failure to pay wages for all hours worked and failure to pay premium  
5 wages.

6 With respect to Lab. Code §203 claim, there were an estimated 254 Class  
7 Members to whom this claim applied. The estimated maximum potential liability was  
8 determined to be \$1,341,120 based on estimated average daily pay rate of \$176 x 30 days=  
9 \$5,280 x 254 Class Members).

10 Defendants once again defend that no unpaid wages are owed as Defendants did not  
11 fail to pay the correct overtime wages nor did they fail to pay accrued vacation pay. Defendants  
12 further contend that their actions were not willful as required for penalties to issue and that, thus,  
13 waiting time penalties cannot be awarded. For purposes of settlement negotiations, said claim  
14 was valued between \$402,336 (30%) and \$134,112 (10%)(*Id.*)

15 f. Failure to Reimburse Expenses- Failure to Reimburse Expenses-The claim for  
16 business expense reimbursement under Lab. Code §2802 is premised on Plaintiff's allegation  
17 that Blower -Dempsey failed to reimburse her and similarly situated class members for the use of  
18 their personal tools in the performance of their job duties. Specifically, Plaintiff and similarly  
19 situated employees were required to use box cutters in the performance of their job duties.  
20 Plaintiff alleges that, due to the fact that Blower- Dempsey provided box cutters which were too  
21 heavy and somewhat dangerous to use, she and similarly situated employees purchased their own  
22 box cutters and blades in order to effectively perform their job duties. (*Id.*)

23 Defendants adamantly disputes this claim and maintains that it was Plaintiff's choice to  
24 use her own tools in the performance of her job duties. Upon further review and evaluation of  
25 the facts and circumstances surrounding this claim and taking into consideration that it would  
26 require individualized inquiries into whether and to what extent class members used their own  
27  
28

1 tools, this claim was valued in the range of from 1% to 0% violation rate and therefore between  
2 \$169.17 and \$0 (*Id.*).

3 g. Bus. & Prof. Code § 17200 et seq. (“UCL”) Claim. The only remedies available  
4 under the unfair competition law (“UCL”) Business and Professions Code Section 17200 et seq.  
5 are restitution and injunction, as opposed to damages *Clark v. Superior Court*, (2010) 50 Cal.  
6 4th605, 610.The UCL provides that “[t]he court may make such orders or judgments ... as may  
7 be necessary to restore to any person in interest any money or property, real or personal, which  
8 may have been acquired by means of such unfair competition.” (Bus. & Prof. Code, § 17203.)  
9 Restitution under the UCL includes “earned wages.” *Cortez v. Purolator Air Filtration Prods.*  
10 *Co.*, (2000) 23 Cal. 4th 163, 177-78.

11 h. Lab. Code § 2699 (PAGA Claim) Plaintiff’s claims under PAGA are predicated  
12 on or derivative of the claims discussed above, and suitable seating claim. Plaintiff’s claim for  
13 failure to provide suitable seating is premised on allegations that, during the PAGA liability  
14 period, she and similarly situated employees were required to stand during their shifts except for  
15 when they took rest or meal breaks. Plaintiff alleges that despite the fact that they were able to  
16 perform certain job functions while seated, Defendants did not provide any seats for them to use  
17 in accordance with applicable IWC Wage Order and California law. Defendant adamantly  
18 disputes Plaintiffs’ allegations and contends that it provides suitable seating to its employees.

19 The estimate maximum PAGA penalty was calculated as \$1,084,100. This figure  
20 attributes a \$100 penalty to each of the estimated 10,8415 pay periods in scope during the PAGA  
21 Period. This figure is based on an assumption that there is a 100% violation rate during the  
22 PAGA Period, such that every single pay period in question involved at least one Labor Code  
23 violation, despite disputes regarding Defendant’s liability. However, PAGA claims under the  
24 facts and circumstances of this case may result in no award or at best a very minimal award by  
25 the trial court. See specifically §2699(e)(2) which states in its pertinent part: “... a court may  
26 award a lesser amount than the maximum civil penalty amount specified by this part if, based on  
27 the facts and circumstances of the particular case, to do otherwise would result in an award that  
28 is unjust, arbitrary and oppressive, or confiscatory.”

1 For instance, in *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a  
2 federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%,  
3 because the court found maximum penalties "unjust" because the employees had suffered no  
4 injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code  
5 violations are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, \*5-7 (2nd Dist.  
6 Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County  
7 Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist.  
8 LEXIS 48557, \*40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

9 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each  
10 of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.  
11 Dist. LEXIS 13126, \*10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff  
12 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of  
13 the Labor Code by the defendant."). Here, Plaintiff would need to prove that each PAGA  
14 Aggrieved Employee suffered all violations for each pay period the employee worked. As  
15 discussed herein, the nature of the PAGA based claims (i.e. rest break, meal period, wage  
16 statements, failure to pay all wages owed and to timely pay wages) and Defendants' asserted  
17 defenses thereto present a strong risk that some or all of the PAGA penalties sought may not be  
18 awarded.

19 Defendants deny that a violation for each pay period can be established. Defendants state  
20 that because the PAGA Action heavily relies on the same allegations made in the Class Action,  
21 they are subject to the same defenses, and, thus, for the same reason Defendants believe there  
22 will be no damages collectible in the class action, no PAGA penalties would be awarded, either.  
23 Defendants also assert that individualized issues predominate the PAGA claims, making the  
24 claims unmanageable for trial.

25 Finally, Defendants point out that there is no conduct shown by Plaintiff that would  
26 demonstrate any Labor Code violations by Defendants are knowing and intentional such that  
27 PAGA penalties would be justified. Defendants contend that an award of PAGA penalties in  
28 addition to class action damages is discretionary, and thus insist a Court is unlikely to exercise

1 its discretion to award any PAGA penalties in this Action where class action damages are  
2 available to Class Members. Defendants further contend that such an award of PAGA penalties  
3 in addition to class action damages would constitute an unjust, arbitrary, oppressive, or  
4 confiscatory double recovery. Given the nature of these claims, as analyzed above, Class  
5 Counsel believes it to be likely that if there would be any award it would be a minimal amount.  
6 Therefore, the amount of \$25,000 (which has been reserved for the PAGA claim) is both fair and  
7 reasonable.

8 Through her counsel, Plaintiff took into consideration the significant risks that class  
9 certification could be denied on the central claim, or that a merits decision on the central claim  
10 would not favor the Class. Plaintiff has considered the expense and length of continued  
11 proceedings necessary to continue the Action against Defendants through trial and any possible  
12 appeals. Plaintiff is also aware of the burdens of proof necessary to establish liability for the  
13 claims asserted in the Action, Defendants' defenses thereto, and the difficulties in establishing  
14 Plaintiff's damages. (Hawkins Decl. ¶18)

15 The proposed Settlement requires Defendants to pay each Class Member who does not  
16 opt out a portion of the Net Settlement Amount as specifically set forth in the Settlement  
17 Agreement. (Hawkins Decl. ¶ 19.) The amount to be paid to the Class is undoubtedly fair,  
18 adequate and reasonable especially in light of the significant risk to Plaintiff and Class Members  
19 in continuing with the litigation and not prevailing on class certification or at trial. (*Id.*)

20 For all the foregoing reasons, the proposed Settlement Agreement is fair, adequate and  
21 reasonable, and is in the best interests of the Class Members.

22 **C. The Named Plaintiff Payment and Class Counsel Fees Are Reasonable**  
23 **And Should be Awarded**

24 The Settlement Agreement provides for an award to be paid to the Named Plaintiff.  
25 The primary purpose is to provide Plaintiff enhancement award, taking into consideration the  
26 risks, time, effort and expenses incurred by him in coming forward to provide invaluable  
27 information and litigate this matter on behalf of all Class Members and Aggrieved Employees.  
28 (Hawkins Decl. ¶ 20.) Plaintiff has actively participated in this litigation by providing

1 significant supporting documents and information and assisting counsel in developing  
2 information necessary to litigate and settle this case which has resulted in a favorable settlement  
3 for the putative Class Members and Aggrieved Employees (*Id.*) Thus, the payment of up to  
4 \$5,000.00 to Ms. Perez represents a small portion of the aggregate settlement amount and should  
5 be awarded.

6 Further, as will be discussed in more detail in Plaintiff's motion for final approval of the  
7 Settlement, Attorneys' Fees and Costs in the amount of \$246,666.42 (33 1/3% of the GSA) is  
8 reasonable within California's standard benchmark and well within the range customarily  
9 approved by the California courts in comparable class actions.

10 **VI. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE**

11 In addition to such terms as class definition, settlement amounts and payment procedures,  
12 the Settlement Agreement reached between the Parties contains a provision to which the parties  
13 stipulate to the Court's provisional certification of the Class, but do so for the purposes of this  
14 settlement only. Plaintiffs now request this Court to provisionally certify the Class.

15 It is well established that trial courts should use a lower standard for determining the  
16 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*  
17 *Co.* (1996) 48 Cal.App.4th at 1794, 1807, fn. 19. Under California law, a class action is  
18 appropriate when the Class is ascertainable and there is a "well defined community of interest in  
19 the questions of law and fact affecting the parties to be represented." (Code Civ. Proc., §382;  
20 *Dunk*, 48 Cal. App. 4th at p. 1806.) State law requirements under California Code of Civil  
21 Procedure section 382 for class certification largely mirror Federal Rules of Civil Procedure Rule  
22 23 – namely, numerosity and typicality of the class representative's claims, adequacy of  
23 representation, predominance of common issues and superiority. As discussed below, although  
24 Defendants adamantly disputed and continue to dispute Plaintiff's ability to certify a litigation  
25 class, all of the requirements of certification for settlement purposes are met for the proposed  
26 Settlement Class.

27 **A. The Proposed Class is Ascertainable**

28 Here, the proposed class is ascertainable because all of the Class Members are/were

1 employed directly by Defendants and received their compensation directly from Defendants. The  
2 class members have been identified through Defendant's employee and personnel files. See  
3 *Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 ["Class Members are 'ascertainable'  
4 where they may be readily identified without unreasonable expense or time by reference to  
5 official records"].)

6 **B. Numerosity of the Class is Sufficient**

7 If the class is sufficiently large that joinder of all members is impractical or that  
8 individual joinder is impractical, the numerosity requirement is met *Hebberd v. Colgrove* (1972)  
9 28 Cal. App. 3d 1017, 1030. Here, the proposed class consists of 859 class members,  
10 including current and former employees of Defendants. Therefore, joinder of individual claims  
11 would be impractical and the numerosity requirement is met.

12 **C. There are Common Questions of Law and Fact to the Class**

13 Commonality is met if there are common questions of fact and law to the class. *Hanlon*,  
14 150 F.3d at p.1019 ["The existence of shared legal issues with divergent legal factual predicates  
15 is sufficient, as is a common core of salient facts coupled with disparate legal remedies within  
16 the class"].) Here, Plaintiff alleges that the proposed Class Members' claims all stem from the  
17 same alleged conduct. Specifically, Plaintiff alleges that Defendants violated California wage  
18 and hour law because they: (1) failed to pay all lawful wages owed including overtime  
19 compensation; (2) failed to provide statutorily compliant rest and meal periods and/or to pay one  
20 (1) hour of pay at the employees regular rate of compensation for each workday that a compliant  
21 meal period and/or rest period was not properly provided; (3) failed to timely pay all wages  
22 owed at the termination of the class members' employment; (4) failed to indemnify employee  
23 expenses; (5) failed to provide accurate itemized wage statements. Plaintiff seeks recovery of  
24 alleged premium wages, penalties and interest pursuant to the California Labor Code, the  
25 California Industrial Welfare Commission ("IWC") Wage Orders, Business and Professions  
26 Code § 17200 and PAGA. Although Defendants disagree with Plaintiff's contentions for  
27 purposes of certifying a litigation class, for purposes of a settlement class, these circumstances  
28 create questions of law and fact common to all proposed Class Members.

1           **D.     The Typicality Requirement is Met**

2           The typicality requirement is met if the claims of the Named Plaintiff are typical of those  
3 of the class, though “they need not be substantially identical.” *Hanlon*, 150 F.3d at p. 1020.  
4 Factual differences may exist between the Class and the Class Representative so long as the  
5 claims arise from the same events or course of conduct and are based on the same legal theories.  
6 (*Id.*) Here, as set forth in the operative complaint, the claims of the Class Representative are  
7 typical of the other Class Members they represent because they arise from the same factual basis  
8 and are based on the same legal theories as those applicable to all Class Members. *Wherner v.*  
9 *Syntex*, (N.D. Cal. 1987) 117 F.R.D. 641, 644. Thus, for purposes of a settlement class, the  
10 typicality requirement is met.

11           **E.     The Adequacy Requirement is Met**

12           If the named representative and his or her counsel have no interests adverse to the interest  
13 of the proposed class members and are committed to vigorously prosecuting the case on behalf  
14 of the class, then the adequacy requirement is met. *McGhee v. Bank of America* (1976) 60 Cal.  
15 App.3d 442, 450. Here, under the proposed Settlement, the Class Representative/Named Plaintiff  
16 will receive a reasonable award for her time and effort assisting counsel with factual issues  
17 surrounding the case and risk incurred in bringing this action on behalf of the Class Members.  
18 Other than this specific payment, all Class Members who do not opt out of the Settlement will  
19 receive a percentage of the NSA based on the number of weeks each Class Member worked  
20 during the class period. Therefore, no “settlement allocation” questions are raised. *Hanlon*, 150  
21 F.3d at p.1020.

22           Finally, Class Members who wish to exclude themselves from the Settlement may do so.  
23 (Settlement Agreement, p.17, ¶ 48; Exhibit B to the Settlement Agreement.) As a result, there is  
24 no conflict of interest between the Named Plaintiff and the Class Members. Additionally, the  
25 Named Plaintiff and her counsel have prosecuted this action vigorously on behalf of the Class.

26           **F.     Common Issues Predominate and Class-Wide Settlement is Superior to**  
27           **Other Available Methods of Resolution**

28           Class certification is authorized where common questions of law and fact predominate

1 over individual questions and where class-wide treatment of a dispute is superior to individual  
2 litigation. *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469. The test is whether the  
3 proposed class is sufficiently cohesive to warrant adjudication by representation. *Hanlon*, supra,  
4 at p. 1022. Plaintiff contends that the proposed Class in this case is sufficiently cohesive, since  
5 all Class Members share a “common nucleus of facts and potential legal remedies.” Specifically,  
6 Plaintiff asserts that because all of the Class Members and the Class Representative seek  
7 compensation for alleged premium wages for failure to provide compliant meal and rest breaks,  
8 as well as penalties and interest for the allegations described herein; common questions about  
9 compensation or lack thereof for worked performed by Class Members predominate over  
10 individual questions, and the Class Members’ potential legal remedies are identical. Although  
11 Defendants disagrees with Plaintiff’s contentions; they have agreed the Class may be certified  
12 for settlement purposes only.

13 Additionally, particularly in the settlement context, class resolution is superior to other  
14 methods for the fair and efficient adjudication of the controversy. *Hanlon*, 150 F. 3d at p. 1023;  
15 *Dunk*, supra, 45 Cal. App. 4th at p. 1087. The superiority requirement involves a “comparative  
16 evaluation of alternative mechanisms of dispute resolution.” *Hanlon*, supra, at p. 1023. Here,  
17 the alternative methods of resolution are a plethora of individual claims from potentially over  
18 689 plaintiffs. The class action device can thus conserve judicial resources by avoiding the  
19 waste and delay of repetitive proceedings and prevent inconsistent adjudication of similar issues  
20 and claims. *Sav-On Drug Stores, Inc. v Superior Court* (2004) 34 Cal. 4th 319, 340; *Bell v*  
21 *Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 741.

22 Therefore, settlement on a class-wide basis is superior.

## 23 **VII. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

24 The Notice of Proposed Class Action Settlement ("Class Notice") is attached as Exhibit  
25 A to the Settlement Agreement. Should a Class Member wish to exclude himself/herself from the  
26 Settlement, he/she can send a request for exclusion to the Settlement Administrator as detailed in  
27 the Class Notice. Should a Class Member wish to object to the Settlement, he/she can object as  
28 described in the Class Notice. If a Class Member does nothing in response to the Class Notice,

1 the Class Member will be mailed an individual settlement payment.

2 **A. The Class Notice Satisfies Due Process**

3 California statutory and case law vests the Court with broad authority to fashion an  
4 appropriate notice process. (Cal. Rules of Court, Rule 3.760 et seq.) A proposed method of  
5 notice of a proposed settlement is fair, adequate, and reasonable if it has “a reasonable chance of  
6 reaching a substantial percentage of the class members.” *Cartt v. Superior Court* (1975) 50  
7 Cal.App.3d 960, 974. The Notice Procedure described herein entails mailing the Class Notice to  
8 all known and reasonably ascertainable Class Members based on Defendants’ payroll records  
9 and provides for a reasonable chance of reaching a significant percentage of Class Members.  
10 (Settlement Agreement p. 14 ¶ 46.) Further, such individual notice by first class mail is routinely  
11 approved as consistent with due process. (See, e.g., MANUAL FOR COMPLEX LITIGATION  
12 (THIRD) (1995) (hereinafter “the MANUAL”) §30.41; Wright & Miller, Fed. Practice &  
13 Procedure §1797.6 [“Of course, notice by mail to all of the identified class members . . . will  
14 suffice”] (citing cases).) Notice by mail is consistent with the class certification notices approved  
15 by numerous state and federal courts and is the best notice practicable under circumstances of  
16 this case. Other potential alternatives, such as publication of notice in a newspaper, or electronic  
17 dissemination of notice through email, is unlikely to be as effective as mail notice. Given the  
18 geographic range of Class Members, and the lack of email data on Class Members, neither  
19 publication nor email notice is feasible or reasonably likely to satisfy due process.

20 **B. The Proposed Class Notice Is Accurate and Informative**

21 Not only is the manner of the proposed Class Notice proper, so too is the content of the  
22 said notice. The proposed Class Notice provides information on the meaning and the nature of  
23 the proposed Settlement, the terms and provisions of the Settlement (and where it may be found),  
24 the relief the Settlement will provide the Class Members, the application of Plaintiff’s counsel  
25 for reimbursement of costs and attorneys’ fees from the Settlement amount, the date, time and  
26 place of the final fairness and approval hearing, and the procedure and deadlines for opting out  
27 of the Settlement and for submitting objections. Counsel for Plaintiff and Defendants have spent  
28 considerable time attempting to draft a Class Notice that is likely to be readily understood by

1 members of the Class. The Class Notice does not need to be translated to any other language.

2 The Class Notice also fulfills the requirement of neutrality in class notices. (2  
3 NEWBERG §8.39.) It summarizes the proceedings to date and the terms and conditions of the  
4 Settlement in an informative and coherent manner, in compliance with the MANUAL’S  
5 statement, “the notice should be accurate, objective, and understandable to class members...”  
6 (MANUAL at §30.21.) The Class Notice clearly states the settlement does not constitute an  
7 admission of liability by Defendants and recognizes the Court has not ruled on the merits. It also  
8 states the final settlement approval decision has yet to be made, and that any final determination  
9 of that issue will be made at the final approval hearing. Accordingly, the Class Notice complies  
10 with the standards of fairness, completeness and neutrality required of a class notice  
11 disseminated under the authority of the Court.

12 Moreover, the class notice comports with CA Rules of Court, Rule 3.766 (d). As per  
13 Rule 3.766, the contents of the class notice that provides for an opt out procedure for the class  
14 members must include the following:

15 (1) A brief explanation of the case, including the basic contentions or denials of the  
16 parties;

17 (2) A statement that the court will exclude the member from the class if the member so  
18 requests by a specified date;

19 (3) A procedure for the member to follow in requesting exclusion from the class;

20 (4) A statement that the judgment, whether favorable or not, will bind all members who  
21 do not request exclusion; and

22 (5) A statement that any member who does not request exclusion may, if the member so  
23 desires, enter an appearance through counsel.

24 The Class Notice contains the information required under Rule 3.766 (d). (See Exhibit A  
25 attached to Settlement Agreement.)

## 26 **VIII. CONCLUSION**

27 Based on the foregoing, Plaintiff respectfully requests that the Court enter the Proposed  
28 Order Granting Preliminary Approval submitted concurrently herewith, and thus:

