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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF ALAMEDA

12 TSCHERA ECHEVERRIA, individually and on
13 behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 TRITON GLOBAL SERVICES, INC., a
17 California corporation; and DOES 1 through 50,
inclusive,

18 Defendants.

Case No. RG20068526

[Assigned for all purposes to the Hon. Evelio
Grillo, Dept. 21]

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

Date: July 27, 2023

Time: 9:00 a.m.

Dept.: 21

Reservation ID. 471048857557

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE THAT, on July 27, 2023 at 9:00 a.m. before the Honorable
3 Evelio Grillo, judge presiding in Department 21 of the above-referenced Court, Plaintiff Tschera
4 Echeverria ("Plaintiff") will and hereby does move the Court for an Order (1) preliminarily
5 approving the Stipulation of Class and Representative Action Settlement and Release ("Settlement
6 Agreement"); (2) provisionally certifying a settlement class and appointing William L. Marder of
7 Polaris Law Group and Dennis Hyun of Hyun Legal, APC as Class Counsel and Plaintiff as the
8 class representative; (3) approving Phoenix Settlement Administrators (the "Settlement
9 Administrator") as the third-party settlement administrator; (4) approving and directing distribution
10 to the Notice of Settlement; and (5) setting a final fairness and approval hearing.

11 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
12 provides for court approval of the settlement of a purported class action and allows the Court to
13 preliminarily certify a class for settlement purposes.

14 The basis for this Motion, filed without any opposition from Defendant Triton Global
15 Services, Inc. is that the proposed settlement is fair, adequate, and reasonable and the procedures
16 proposed by the Parties are adequate to ensure the opportunity of class members to participate in,
17 opt out of, or object to the settlement.

18 This Motion will be based on the Memorandum of Points and Authorities attached hereto,
19 the Settlement Agreement and the proposed Notice of Settlement, and the supporting Declarations
20 of William L. Marder, Dennis S. Hyun, Jodey Lawrence, and Plaintiff filed herewith and upon the
21 oral arguments of counsel (should there be any) and on the complete records and file herein.

22 DATED: May 12, 2023

POLARIS LAW GROUP

23 By: William L. Marder
24 William L. Marder
25 Attorneys for PLAINTIFF and the CLASS
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Tshera Echeverria (“Plaintiff”) seeks preliminary approval of this class and
4 representative action settlement under the Private Attorneys General Act (the “PAGA”).

5 On July 20, 2020, Plaintiff filed a putative class and representative action Complaint against
6 Defendant Triton Global Services, Inc. (“Defendant”) (Plaintiff and Defendant, collectively, the
7 “Parties”) alleging the following causes of action: (1) failure to provide accurate itemized wage
8 statements in violation of Labor Code § 226(a); (2) failure to provide meal periods in violation of Labor
9 Code §§ 226.7 and 512; (3) failure to provide rest periods in violation of Labor Code § 226.7; (4) failure
10 to reimburse business expenses in violation of Labor Code § 2802; (5) violation of the Unfair
11 Competition Law (the “UCL”), Business & Professions Code § 17200, *et seq.*; and (6) violation of Labor
12 Code § 2698, *et seq.*, the Private Attorneys General Act (the “PAGA”).

13 On July 9, 2021, the Parties engaged in a full-day mediation with neutral Steve Pearl, Esq., but
14 were unable to settle. Following continued arm’s length negotiations aided by Mr. Pearl over the span of
15 months, the Parties reached a settlement of this action in its entirety. In connection with claims
16 negotiated at mediation, the Parties agreed to file a First Amended Complaint (“FAC”) to include
17 allegations regarding Defendants’ alleged violations of Labor Code §§ 204, 233, 246, 432, 510, 558,
18 1174, 1194, 1197, 1197.1, and 1198.5, and Wage Order No. 4-2001(4) and (5).

19 On April 28, 2023, Plaintiff filed the FAC pursuant to this Court’s Order approving the Parties’
20 Stipulation granting Plaintiff leave to file the FAC.

21 As set forth in the accompanying Stipulation of Class and Representative Action Settlement and
22 Release (“Settlement Agreement”), the current settlement is being settled on behalf of the following
23 Settlement Class Members: “all current and former non-exempt hourly paid employees of Triton Global
24 Services, Inc. who were employed in California to perform security guard services at any time between
25 April 6, 2016 through the date that the Court grants preliminary approval of this settlement and certifies
26 the class. Defendant represents there were 1,128 putative class members as of February 2023.”
(Settlement Agreement at pp. 6:28-7:4).

27 Based on their own independent investigation and evaluation, the Parties and their respective
28 counsel are of the opinion that settlement for the consideration and on the terms set forth in the

1 Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Class and
2 Defendant in light of all known facts and circumstances and the expenses and risks inherent in litigation.
3 (Declaration of Dennis Hyun (“Hyun Decl.”) at ¶ 7).

4 **II. BACKGROUND OF THE SETTLEMENT**

5 **A. Investigative Background**

6 Plaintiff propounded formal discovery, including special interrogatories and requests for
7 production of documents. (Hyun Decl. at ¶ 8). Plaintiff obtained and reviewed Defendant’s policy
8 documents, including its meal and rest break policies. (*Id.*) During the Parties’ meet and confer on
9 discovery issues, the Parties agreed to complete private mediation. (*Id.*) In connection with the
10 mediation, Defendant produced payroll data, including dates of employment and pay rates for the entire
11 class. (*Id.*) Plaintiff’s counsel retained a damages expert, EconOne, to conduct a damage analysis. (*Id.*)
12 EconOne calculated maximum exposure at \$9.8 million in underlying damages, \$6.7 million in Labor
13 Code §§ 203 and 226 penalties, and PAGA penalties at \$23.6 million. (*Id.*) The Parties then mediated
14 with Steve Pearl on July 9, 2021. (*Id.*) At the mediation, Defendant raised its financial status to justify a
15 low settlement, but Defendant did not produce any financial documents. (*Id.*) The case did not settle at
16 mediation. (*Id.*) Plaintiff’s counsel requested that Defendant produce financial documents and Plaintiff
17 retained an accounting expert to analyze the documents. (*Id.*) Defendant subsequently produced bank
18 and financial/tax documents, PPP loan documents, and salaries of its officers. (*Id.*) Based on the
19 financial documents, Plaintiff’s accounting expert opined that based on Defendant’s finances, the most it
20 could pay while staying in business was \$189,000. (*Id.*) The Parties then continued to negotiate for over
21 a year and finally were able to reach this settlement resolving this matter for \$200,000 in 2023. (*Id.*)

22 **B. Summary of the Current Settlement**

23 The settlement provides for up to \$200,000.00 as the Gross Settlement Amount. (Settlement
24 Agreement at p. 5:1-5). Given Defendant’s financial condition, the Parties agreed that Defendant would
25 make installment payments over approximately 4 years as follows:

26 [A] first installment payment of Ten Thousand Nine Hundred and Thirty Seven Dollars
27 and Fifty Cents (\$10,937.50) within ten (10) calendar days after entry of the Order of
28 Preliminary Approval; followed by quarterly installments of Ten Thousand Nine
Hundred and Thirty Seven Dollars and Fifty Cents (\$10,937.50) for seven (7) quarters,
commencing on the ninetieth day after the payment of the first installment and payment

of Fourteen Thousand and Sixty Two Dollars and Fifty Cents (\$14,062.50) for eight (8) quarters, until paid in full.

(*Id.* at § 2.11).

The settlement payments to each Class Member will depend on the number of workweeks each Class Member worked during the Class Period. (*Id.* at § 2.4(f)(2)). The reason for such allocation is so that the Class Members who allegedly suffered higher damages will be allocated greater recovery.

Class Members need not submit claim forms to participate in the settlement and none of the settlement monies will revert to Defendant. (*Id.* at p. 5:1-5, §§ 2.4(e), (f)). Defendant will also be obligated to pay its share of employer-side payroll taxes. (*Id.* at p. 5:1-5).

As part of the Stipulation, Defendant does not object to Plaintiff's Counsel's request for attorney's fees up to 33 1/3% of the total settlement sum, equal to \$66,666.67, and Plaintiff counsel's actual costs up to \$30,000.00. (Settlement Agreement at § 2.4(b)). Also, as part of the Settlement Agreement, Defendant does not object to Named Plaintiff's request for an enhancement of \$7,500.00 including a waiver of Civil Code §1542. (Settlement Agreement at §§ 2.4(c), 2.6(b)). Additionally, the Settlement Agreement calls for \$20,000.00 to be paid for PAGA penalties, 75% of which, or \$15,000.00 will be paid to the California Labor and Workforce Development Agency ("LWDA"), as required by the PAGA, and 25%, or \$5,000.00 will be allocated to the net settlement amount for distribution to Aggrieved Employees based on workweeks worked during the PAGA Period (May 18, 2019, through the date that the Court grants preliminary approval of this settlement). (Settlement Agreement at § 2.4(e), pp. 6:12-13). Finally, the Settlement Agreement also provides for the payment of the Administrator in the amount of \$14,000.00. (Settlement Agreement at § 2.5(a)(1)). Plaintiff solicited bids from ILYM and Phoenix Settlement Administrators and Phoenix was the lowest. (Hyun Decl. at ¶ 11). Phoenix is a highly qualified and experienced class action administrator. (*See generally* Declaration of Jodey Lawrence).

C. The Settlement is Fair, Reasonable, and Adequate

Based on their own respective independent investigations and evaluations, the Parties and their respective counsel are of the opinion that settlement for the consideration and on the terms set forth in their Agreement are fair, reasonable, and adequate and is in the best interests of the Class and the

1 Defendant in light of all known facts and circumstances and the expenses and risks inherent in litigation.
2 (Hyun Decl. at ¶¶ 7-9; Declaration of William L. Marder (“Marder Decl.”) at ¶¶ 2-5).

3 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged by
4 Plaintiff, and further denies that, for any purpose other than that of settling this lawsuit, this action is
5 appropriate for class and/or representative treatment, denies that Plaintiff or any member of the Class
6 suffered any injury or damage, and contends that a trial court would not award the maximum amount of
7 exposure under any of Plaintiff’s theories of liability.

8 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116,
9 130, 133 (2008), a class action settlement should be approved when the plaintiff has conducted sufficient
10 discovery and the settlement is reasonable in light of the strengths of the plaintiff’s claims. As discussed
11 herein, Plaintiff’s counsel has conducted extensive discovery and investigation and, in light of the
12 strength and weaknesses of Plaintiff’s claims, Plaintiff’s attorneys submit that this settlement is fair
13 pursuant to *Kullar*.

14 The standard of review for class settlements is whether the Settlement is within a range of
15 reasonableness. As Professor Newberg comments:

16 “Recognizing that there may always be a difference of opinion as to the
17 appropriate value of settlement, the courts have refused to substitute their
18 judgment for that of the proponents. Instead the courts have reviewed settlements
19 with the intent of determining whether they are within a range of
20 reasonableness....”

21 4 Newberg on Class Actions, at §11.45.

22 In the present case, the \$200,000.00 is a fraction of the estimated exposure. However,
23 Defendant’s financial condition supports that the settlement is fair, adequate and reasonable as any higher
24 settlement may result in Defendant ceasing operations and filing bankruptcy. *Torrissi v. Tucson Elec.*
25 *Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993) (holding that lower court properly approved class action
26 settlement because of the defendant’s financial condition; “Here one factor predominates to make clear
27 that the district court acted within its discretion. That factor is Tucson’s financial condition.”).

28 Based on an approximate size of 1,300 Class Members and the currently estimated Net Settlement
Amount of \$66,883.33, each class member will receive a raw average of \$51.41. (Hyun Decl. ¶ 8). The
amount any particular class member will be entitled to recover will be greater or lower than this average

1 depending on the number of workweeks worked during the Class and/or PAGA Periods. This is fair, as it
2 directly allocates greater recovery to individual Class Members who have allegedly suffered greater
3 harm. Furthermore, Class Members may choose to exclude themselves from this settlement and not
4 participate in the settlement.

5 **III. LEGAL ANALYSIS**

6 **A. The Class at Issue**

7 The proposed settlement class is described above. The Parties have exchanged information
8 regarding the identity of the members of this proposed Class. Based on the review of such data, there are
9 approximately 1,300 individuals that comprise the Class. The Parties have further agreed and stipulated
10 that the Class be certified on a provisional, non-mandatory basis for the purposes of this settlement only.
11 (Settlement Agreement at § 2.3).

12 For purposes of this settlement, the Named Plaintiff is an adequate Class Representative, as
13 Plaintiff's claims are typical and common of the Class. Specifically, Named Plaintiff worked as a non-
14 exempt security guard employee for Defendant during the Class Period identified herein. (*See*
15 Declaration of Tschera Echeverria ("Echeverria Decl.") at ¶ 2.) Moreover, Plaintiff asserts that she was
16 subject to the same alleged wage and hour violations during the class period. (*Id.*)

17 **B. Two-Step Approval Process**

18 Any settlement of class litigation must be reviewed and approved by the Court. This is done in
19 two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been
20 distributed to the class members for their comment or objections. The Manual for Complex Litigation
21 (Third) § 30.41 states:

22 Approval of class action settlements involves a two-step process. First, counsel submits the
23 proposed terms of settlement and the court makes a preliminary fairness evaluation. If the
24 preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness
25 or other obvious deficiencies, such as unduly preferential treatment of class representatives or of
26 segments of the class, or excessive compensation for attorneys, and appears to fall within the
27 range of possible approval, the court should direct that notice ... be given to the class members of
28 a formal fairness hearing, at which arguments and evidence may be presented in support of and in
opposition to the settlement.

Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement
appears to be within the range of acceptable settlements. As Professor Newberg comments, "[t]he

1 strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative
2 settlement proposal may vary. The court may find that the settlement proposal contains some merit, is
3 within the range of reasonableness required for a settlement offer, or is presumptively valid subject only
4 to any objections that may be raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg*
5 *on Class Actions*, § 11.26 (4th ed. 2002).

6 The procedures for the parties’ submission of a proposed settlement for preliminary approval by
7 the court also are discussed in 4 *Newberg on Class Actions*:

8 When the parties to an action reach a monetary settlement, they will usually prepare and execute a
9 joint stipulation of settlement, which is submitted to the court for preliminary approval. The
10 stipulation should set forth the central terms of the agreement, including but not limited to, the
11 amount of settlement, form of payment, manner of determining the effective date of settlement
12 and any recapture clause.

13 *Id.* at § 11.24. Here, the Parties have reached such an agreement and have submitted to this Court in
14 connection with this Motion a copy of the Settlement Agreement fully setting forth the agreement
15 reached among the Parties. The Settlement Agreement sets forth all terms of the agreement reached by
16 the Parties, which include, among other things, the method for calculating Class Members' Individual
17 Settlement Payments.

18 **C. Procedures for Settlement Before Class Certification**

19 The parties also may, at the preliminary approval stage, request that the court provisionally
20 approve certification of the class – conditional upon final approval of the settlement. “[P]re-certification
21 settlements are routinely approved if found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*
22 (2001) 91 Cal. App. 4th 224, 240. Accord *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1803
23 (although the settlement was reached before any “adversary certification,” the court was satisfied that it
24 was “fair, adequate and reasonable”). See, also, *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478
25 (S.D.N.Y. 1984)¹ (“many courts have employed this practice in the name of judicial efficiency in order to
26 facilitate apparently beneficial settlement proposals”).

27 The strength of the findings made by a judge at a preliminary hearing or conference concerning a
28 tentative settlement proposal. . . . may be set out in conditional orders granting tentative approval
to the various items submitted to the court. Three basic rulings are often conditionally entered at

¹ In determining the fairness and reasonableness of a proposed settlement, California courts may look to federal cases for guidance. See *Wershba*, 91 Cal. App. 4th at 239-40.

1 this preliminary hearing. These conditional rulings may approve a temporary settlement class, the
2 proposed settlement, and the class counsel's application for fees and expenses.

3 4 *Newberg on Class Actions*, at §11.26.

4 In addition to such terms as class identification, settlement amount and payment procedures, the
5 Settlement Agreement reached among the Parties contains a provision pursuant to which the Parties
6 stipulate to the Court's provisional certification of the Class, but do so for the purposes of this settlement
7 only.

8 **D. The Settlement is Fair and Reasonable and Not the Result of Fraud or Collusion**

9 Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence
10 to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v.*
11 *Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust*
12 *Litig.*, 560 F.Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their judgment for that of the
13 proponents, particularly where, as here, settlement has been reached with the participation of experienced
14 counsel familiar with the litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523,
15 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F.Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470
16 F.Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F.Supp. 1357 (N.D. Ga. 1979);
17 *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

18 While the recommendations of counsel proposing the settlement are not conclusive, the Court can
19 properly take them into account, particularly where, as here, they have been involved in discovery and
20 negotiations for some period of time, appear to be competent, have experience with this type of litigation,
21 and have exchanged substantial evidence from the opposing party. *See Newberg on Class Actions, supra*,
22 §11.47; *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 528 (quoting *In re Paine Webber Ltd. P'ships*
23 *Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997) (“[s]o long as the integrity of the arm's length negotiation
24 process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement
25 . . . [citations] and ‘great weight’ is accorded to the recommendations of counsel, who are most closely
26 acquainted with the facts of the underlying litigation”).

27 Here, both Plaintiff's and Defendant's counsel have a great deal of experience in wage and hour
28 class action litigation. Plaintiff's counsel has been approved as class counsel in a number of wage and
hour class actions. (Marder Decl. at ¶ 13; Hyun Decl. ¶¶ 3-6). Moreover, Plaintiff's counsel conducted

1 an extensive investigation of the factual allegations involved in this case since the inception. (Hyun
2 Decl. at ¶¶ 7-9). Each side has apprised the other of their respective factual contentions, legal theories
3 and defenses, resulting in extensive arms-length negotiations taking place among the Parties. Defendant
4 produced payroll policies and data from which Plaintiff's expert performed a damage analysis, as well as
5 financial documents regarding its dire financial condition. (Hyun Decl. at ¶¶ 8-9).

6 The settlement for each participating Class Member is fair, reasonable and adequate, given the
7 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such litigation
8 through trial and appeal. The settlement is the result of extensive arms-length negotiations between
9 counsel for the Parties.

10 Plaintiff believes that a class can be certified; however, Plaintiff also believes in the fairness of
11 the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not prevailing
12 on one or more of the causes of action or theories alleged in his Complaint and in the possibility of non-
13 certification. Defendant adamantly disputes the ability of Plaintiff to certify a class and disputes liability
14 and corresponding damages as well.

15 The settlement is a compromise for the alleged damages of absent Class Members for the claims
16 asserted in the Complaint. The settlement also compensates Plaintiff for his claims and provides him an
17 additional incentive payment, thus taking into consideration the risks, time, effort and expenses incurred
18 by said Plaintiff in coming forward to provide invaluable information, negotiate and litigate this matter
19 on behalf of all Class Members.

20 Despite the asserted fairness of the settlement terms, any potential Class Member, upon reviewing
21 the Notice of Settlement may object to the terms of the settlement as set forth in the Settlement
22 Agreement or submit a request for exclusion (*i.e.*, opt out) from the settlement. Moreover, potential
23 Class Members, upon providing proper notice to the Parties and the Court, may attend the final fairness
24 and approval hearing for the purpose of objecting to one or more of the settlement terms set forth in the
25 Settlement Agreement.

26 **E. The Settlement Meets the *Kullar* Factors**

27 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
28 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has conducted

1 sufficient discovery and the settlement is reasonable in light of the strengths of the plaintiff's claims. As
2 discussed herein, Plaintiff's counsel has conducted meaningful discovery and investigation and, in light
3 of the strength and weaknesses of Plaintiff's claims, Plaintiff's attorneys submit that this settlement is
4 fair pursuant to *Kullar*.

5 **1. Strengths and Weaknesses of Plaintiff's Claims**

6 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the fairness of
7 the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
8 prevailing on one or more of the causes of action or theories alleged in the operative First Amended
9 Complaint, the possibility of non-certification and potential for appeals. (Hyun Decl. at ¶ 7).

10 As an initial matter, the main driving force behind this settlement is Defendant's financial
11 condition. Had this case been further litigated, Defendant may have ceased operations and filed
12 bankruptcy, leaving the class with zero recovery. Given Defendant's financial condition, Plaintiff and
13 her counsel respectfully submit that this settlement is fair.

14 Additionally, Defendant would have argued that its policies were lawful, such that a class could
15 not have been certified and/or it would have prevailed on the merits.

16 Moreover, Defendant required all of its security guard employees to sign arbitration agreements.
17 As this Court is aware, the Supreme Court issued its decision in *Viking River Cruises, Inc. v. Moriana*,
18 142 S. Ct. 1906 (2022), which reiterated that class action waivers are enforceable and that PAGA claims
19 may be arbitrable. While Plaintiff disagrees with the Supreme Court's holding, this further complicates
20 this case and could have resulted in class members not receiving any monies at all.

21 Thus, while Plaintiff's expert calculated maximum exposure on the meal and rest period claim at
22 \$4.59 million each, or \$9.18 million, and the business expense claim at \$617,570, Plaintiff's counsel
23 believes that these claims should be discounted in light of the arbitration agreements, Defendant's
24 financial condition, and the fact that the trier of fact may have found against Plaintiff's theories of
25 liability. (Hyun Decl. ¶ 8). Accordingly, Plaintiff believes that these claims should be discounted by
26 75%, for a total of \$2.45 million in liability. (*Id.*)

27 Likewise, Plaintiff would need to prove knowing and intentional conduct for Section 226
28 penalties and a willful failure to pay for Section 203 penalties, such that these items of penalties should

1 also be reduced by 75%. (*Id.*) Accordingly, Plaintiff submits that the realistic exposure for penalties
2 under Sections 203 and 226 should be \$981,828.43 and \$687,400.07, respectively. (*Id.*) And, again,
3 while the \$200,000 is a small percentage of the total exposure, this amount should be approved as fair in
4 light of Defendant’s financial condition.

5 **2. Strengths and Weaknesses for PAGA Penalties.**

6 The trial court has the discretion to reduce PAGA civil penalties “if, based on the facts and
7 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary
8 and oppressive, or confiscatory.” *See* Cal. Labor Code § 2699(e)(2); *Delgado v. New Albertson's, Inc.*,
9 2010 WL 11507599 at *7 (C.D. Cal. March 15, 2010) (explaining that court's discretion to reduce
10 penalties under PAGA protects defendants from unconstitutionally excessive penalties).²

11 Plaintiff is not blind to the fact that Defendant could be persuasive to the Court at trial and that
12 the penalties herein could be substantially reduced. Thus, for comparison purposes, the following are
13 some examples of PAGA awards, which were awarded after an actual trial. In *Fleming v. Covidien, Inc.*,
14 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011), while plaintiff ultimately prevailed in a
15 PAGA trial predicated on a violation of Labor Code section 226(a), *i.e.*, inaccurate wage statements, the
16 Court assessed only 17% of the maximum penalties— and this was after finding liability at trial.
17 Similarly, Judge Carville of the Alameda Superior Court in the matter of *Parr v. Golden State*
18 *Overnight*, Alameda Superior Court Case No. RG12618103, assessed PAGA penalties upon Defendant
19 of approximately 7% of the total maximum penalties—again, this was only after plaintiff had prevailed
20 at trial.

21 In fact, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, 30 Cal.
22 App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced
23 the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying

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26 ² As the California Supreme Court and Courts of Appeal have held, the purpose of PAGA is not to seek
27 wages or recovery for the individual employees. *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009)
28 (holding that an action to recover civil penalties “is fundamentally a law enforcement action designed to
protect the public and **not** to benefit private parties”) (emphasis added); *Brown v. Ralphs Grocery Co.*,
197 Cal. App. 4th 489, 1499 (2011).

1 with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at
2 539.

3 Accordingly, Plaintiff believes that a 90% reduction in PAGA penalties is realistic. Plaintiff's
4 expert calculated maximum exposure of the PAGA penalties at \$23.6 million, but at a 90% discount, the
5 actual exposure is \$2.36 million. (Hyun Decl. ¶ 8). The \$200,000 Gross Settlement Amount accounts
6 for 3% of the total realistic exposure of \$6,483,691.03 (adding up damages, Sections 203 and 226, and
7 PAGA penalties).

8 **F. The Notice Procedure is Adequate**

9 Class Members will not be required to submit a claim form to receive compensation. Instead,
10 this is a non-reversionary Settlement Agreement. The Settlement Administrator will send a Notice of
11 Settlement to each Settlement Class Member by First Class U.S. Mail within fifteen (15) calendar days
12 of receipt of the Settlement Class Data. (Settlement Agreement at § 2.9(b)). If a Class Notice is returned
13 as undeliverable without a forwarding address affixed thereto, the Settlement Administrator shall
14 attempt to locate a current mailing address for the Settlement Class Member by skip tracing and will
15 mail the Class Notice to the updated address identified. (*Id.* at § 2.9(c)).

16 Settlement Class Members will be provided 45 calendar days to opt out or object to the
17 settlement. (*Id.* at § 2.9(b)). Any Class Member who does not opt-out of the settlement will be
18 automatically issued his/her share of the settlement proceeds. Given that this is a non-reversionary
19 settlement, the parties believe that 45 calendar days is sufficient time for class members to object or opt-
20 out of the settlement. Further, Settlement Class Members will be notified of the Fairness/Final Approval
21 hearing and will have an opportunity to appear at the Fairness hearing.

22 **IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR** 23 **PRELIMINARY APPROVAL**

24 Here, the proposed Settlement is fair, adequate, and reasonable. It will result in both substantial
25 monetary benefits to class members; it is non-collusive; and it was achieved as the result of informed,
26 extensive, and arms' length negotiations and an informal exchange of data which allowed Plaintiff's
27 experts to calculate a damage analysis and determine how much Defendant could pay in settlement while
28 remaining a viable business. For the foregoing reasons, Plaintiff respectfully requests that the Court

1 grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize
2 mailing of the proposed Class Notice, and set a date for a final approval hearing.

3 In sum, Plaintiff respectfully requests this Court, as part of the preliminary approval process, do
4 the following:

- 5 1. Review and approve the Settlement Agreement;
- 6 2. Consider whether the proposed settlement preliminarily appears to be fair and adequate,
7 and whether the proposed class appears to meet the applicable certification criteria;
- 8 3. Review and approve the mailing of the proposed Notice of Settlement;
- 9 4. Confirm Named Plaintiff as the Class Representative and confirm Dennis S. Hyun of
10 Hyun Legal, APC, and William L. Marder of Polaris Law Group, P.C. as Class Counsel;
- 11 5. Approve Phoenix Settlement Administrators to serve as the Administrator to handle the
12 notice procedure; and
- 13 6. Set a final approval hearing date on a date after September 2023.

14
15 DATED: May 12, 2023

POLARIS LAW GROUP, LLP

17 By: William L. Marder
18 William L. Marder
19 Attorneys for PLAINTIFF and the CLASS
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