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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES**

12 ZACHARY KAHN, as an individual and on
behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 LOS ANGELES MAISON, LLC, a California
limited liability company; ACCOR
16 MANAGEMENT US INC.; and DOES 1
through 10, inclusive,

17 Defendants.
18

Case No.: 20STCV18592

[Assigned for all purposes to the Hon. David
S. Cunningham, Dept. SS-11]

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

Date: June 8, 2022

Time: 10:00 a.m.

Dept.: SS-11

Complaint Filed: May 11, 2020

Fourth Amended Complaint Filed: October 10,
2021

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

2 **PLEASE TAKE NOTICE** that, on June 8, 2022, at 10:00 a.m., or as soon thereafter as
3 the matter may be heard before the Hon. David S. Cunningham, Judge presiding in Department
4 SS-11 of the above-referenced Court located at 312 North Spring Street, Los Angeles, CA 90012,
5 Plaintiff Zachary Kahn (“Plaintiff”) will and hereby does move the Court for an Order:

- 6 1. Preliminarily approving the class action settlement;
- 7 2. Provisionally certifying the Settlement Class, comprised of Settlement Class
8 Members, which are defined as all persons employed by Defendant Los Angeles Maison, LLC in
9 California as hourly-paid, non-exempt employees from April 2017 through the date of this Court’s
10 order granting preliminary approval;
- 11 3. Appointing Majed Dakak of Kesselman Brantly Stockinger LLP, and Dennis S.
12 Hyun of Hyun Legal, APC as Class Counsel;
- 13 4. Approving the proposed Notice of Class and Representative Action Settlement
14 attached to the Stipulation of Class and Representative Action Settlement as Exhibit “A”;
- 15 5. Approving Simpluris, Inc. o as the Settlement Administrator for the purposes of
16 administering this settlement, and approving and directing distribution to the Notice of Class and
17 Representative Action Settlement; and
- 18 6. Setting a final fairness and approval hearing.

19 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
20 provides for court approval of the settlement of a purported class action.

21 The basis for this Motion, filed without any opposition from Defendants, is that the
22 proposed settlement is fair, adequate, and reasonable and the procedures proposed by the Parties
23 are adequate to ensure the opportunity of class members to participate in, opt out of, or object to
24 the settlement.

25 This Motion will be based on the Memorandum of Points and Authorities included herein,
26 the Stipulation of Class and Representative Action Settlement and Addendum thereto (hereinafter
27 collectively referred to as “Stipulation” or “Settlement Agreement”), the proposed Notice of Class
28 and Representative Action Settlement (“Class Notice”) attached thereto, the proposed form setting
forth the number of compensable workweeks and the estimated individual settlement payments

1 (“Information Sheet”) attached thereto, and the supporting Declarations of Majed Dakak, Dennis
2 S. Hyun, and Plaintiff, and upon the oral arguments of counsel (should there be any) and on the
3 complete records and file herein.

4 DATED: April 19, 2022

KESSELMAN BRANTLY STOCKINGER LLP
HYUN LEGAL, APC

6 By: _____
7 Majed Dakak
8 Dennis Hyun
9 Attorneys for Plaintiff and the Putative Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Zachary Kahn (“Plaintiff”) seeks preliminary approval of this class action
4 settlement. As set forth in the Stipulation of Class and Representative Action Settlement
5 (“Stipulation,” “Settlement Agreement,” or “Settlement”), the Settlement provides for a Gross
6 Settlement Amount (“GSA”) of \$350,000.00 and, more importantly, is **non-reversionary**, such
7 that no funds will revert back to Defendants Los Angeles Maison, LLC and Accor Management
8 US Inc. (collectively, the “Defendants”) (Plaintiff and Defendants collectively, the “Parties”). The
9 Parties subsequently executed the Addendum to amend the Stipulation to limit the class definition
10 and Settlement Period to the date of Court’s order granting preliminary approval, which is also
11 being submitted herewith. The Settlement does not require class members to complete claim
12 forms to participate. Rather, the class members will simply receive checks so long as they do not
13 opt-out.

14 On May 11, 2020, Plaintiff filed the instant action against Defendants in Los Angeles
15 County Superior Court, Case Number 20STCV18592 (the “Action”). Plaintiff, in the operative
16 Fourth Amended Complaint (“Operative Complaint”) alleges that Defendants: (1) violated
17 California Labor Code § 226(a) (Inaccurate Wage Statements); (2) violated California Labor Code
18 §§ 510 and 1194 (Unpaid Overtime, including claims related to the calculation of the regular rate
19 of pay); (3) violated California Labor Code §§ 1194, 1197 and 1197.1 (Failure to Pay Minimum
20 Wages); (4) violated California Labor Code § 226.7 (Failure to Provide Rest Breaks); (5) violated
21 California Labor Code §§ 226.7 and 512 (Failure to Provide Meal Periods); (6) violated California
22 Business and Professions Code § 17200, *et seq.* (Unfair Competition and Business Practices); and
23 (7) claims pursuant to the California Private Attorneys General Act (the “PAGA”).

24 In connection with the Settlement, the Parties have agreed to class certification (for
25 purposes of settlement only) of the following class: all persons employed by Defendant Los
26 Angeles Maison, LLC in California as hourly-paid, non-exempt employees from April 2017
27 through the date of this Court’s order granting preliminary approval. (Fourth Amend. Compl. ¶ 10;
28 Settlement Agreement at ¶ 36; Addendum at ¶ 36.) The Lawsuit is framed as both a putative class
action and a non-class representative action pursuant to PAGA and seeks compensatory damages

1 (unpaid wages and premium wages), statutory and/or civil penalties, liquidated damages,
2 restitution, interest, reasonable attorneys' fees and costs, and such other relief as the Court may
3 award.

4 On December 22, 2021, Plaintiff and the Defendants (collectively the "Parties")
5 participated in a private mediation session with mediator Todd Smith. At the conclusion of the
6 mediation, the Parties came to an agreement that would resolve the Action in its entirety. The
7 mediator memorialized the settlement in a Memorandum of Understanding to the Parties.

8 Based on their own independent investigation and evaluation, the Parties and their
9 respective counsel are of the opinion that settlement for the consideration and on the terms set
10 forth in the Stipulation is fair, reasonable, and adequate and is in the best interests of the
11 Settlement Class and Defendants in light of all known facts and circumstances and the expenses
12 and risks inherent in litigation. (Declaration of Dennis Hyun ("Hyun Decl.") ¶¶ 8-9). Therefore,
13 the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class
14 Action Settlement.

15 **II. BACKGROUND OF THE SETTLEMENT**

16 **A. Investigative Background**

17 Over the course of the Lawsuit, Plaintiff conducted formal and informal discovery and
18 investigation, including propounding formal discovery and obtaining responses thereto. In
19 connection with the mediation, Plaintiff also obtained time records for approximately 10% of the
20 class and pay data for the entire class. (Hyun Decl. ¶ 7). In addition, Parties have engaged in
21 significant discussion of the validity of the legal claims at issue and have exchanged extensive
22 documents and information, which have allowed the Parties to fully assess the value of the claims
involved. (*Id.*)

23 The Parties have agreed to avoid further litigation and to settle and resolve the Action, as
24 well as all existing and potential disputes, actions, lawsuits, charges, and claims that are or could
25 have been raised in the Action, that the Settlement Class has or may have against Defendants, to
26 the fullest extent permitted by law and without any admission of liability or wrongdoing by either
27 party. Plaintiff's counsel calculated the soaking wet exposure at approximately \$176,000 in actual
28 damages, \$1.634 million in Labor Code penalties and \$3.81 million in PAGA penalties. (*Id.*)

1 However, these numbers are actually lower, as a significant portion of the class are subject to a
2 collective bargaining agreement containing a grievance and arbitration procedure. (*Id.*) Had this
3 Court enforced the arbitration procedures, Plaintiff may not have been able to assert a class action.
4 Moreover, as this Court knows, the viability of PAGA actions to proceed notwithstanding an
5 arbitration agreement is under consideration by the U.S. Supreme Court in *Viking River v.*
6 *Moriana*, Case No. 20-1573, 211 L. Ed. 2d 421, 2021 U.S. LEXIS 6280, at *1 (Dec. 15, 2021)
7 (“*Viking River*”). Thus, Plaintiff believes that the realistic exposure is 50% of the soaking wet
8 exposure, or \$2.18 million, meaning that the \$350,000 comprises 12% of the total realistic
9 exposure, which is consistent with other actions. (Hyun Decl. ¶ 7).

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

11 The Stipulation provides for an aggregate total of Three Hundred Fifty Thousand United
12 States Dollars and Zero Cents (\$350,000.00) as the “Gross Settlement Amount” or “GSA.” This
13 amount is completely non-reversionary (*i.e.*, every single dollar will be paid out without any
14 money reverting back to Defendants). (Settlement Agreement at ¶ 13).

15 Defendants shall provide to the Settlement Administrator, in electronic form, a spreadsheet
16 that contains: (1) the full name; (2) social security number; (3) the total number of workweeks a
17 Settlement Class Member performed work for Defendants in California as an hourly-paid, non-
18 exempt employee during the Settlement Period (the “Compensable Workweeks”), or
19 alternatively, the start and termination dates for each Settlement Class Member; and (4) the last
20 known mailing address of every Settlement Class Member (“Class Information”). (*Id.* at ¶¶ 4, 46).
21 The Settlement Administrator shall be responsible for allocating and distributing the GSA, and
22 otherwise administering this Agreement. (*Id.* at ¶ 46). As set forth in the Agreement, 80% of each
23 Individual Settlement Payment shall be classified as penalties, 10% as interest, and 10% shall be
24 classified as wages. The penalty and interest portion shall not be subject to withholdings and be
25 reported on an IRS Form 1099. The wages portion shall subject to all applicable tax withholdings
26 and the Settlement Administrator shall issue an IRS Form W-2 to each Settlement Class Member
27 for the wage portion. (Settlement Agreement at ¶ 47(a)(iii)).

28 Additionally, the Settlement Agreement provides for an appropriately tailored release. The
Settlement Agreement provides a release only for claims arising out of or related to the factual

allegations set forth in the Action, which include as follows:

45. Release of Claims. (the “Released Claims”).

- a. Participating Class Members’ Released Claims. Upon full payment of the GSA by Defendants to the Settlement Administrator, all Participating Class Members will release the Released Parties from any and all claims under the California Labor Code and PAGA arising from, or relating to, the factual allegations pled in the operative complaint for any acts occurring during the Settlement Period.
- b. Plaintiff’s Released Claims. Upon full payment of the GSA by Defendants to the Settlement Administrator, Plaintiff shall be deemed to have released the Released Parties from any and all claims, demands, rights, liabilities, and/or causes, of any form whatsoever, arising under federal, state, local, or common laws, rules, or regulations, whether known or unknown, unforeseen, unanticipated, unsuspected or latent, that have been or could have been asserted by Plaintiff, or Plaintiff’s heirs, successors and/or assigns, whether directly, indirectly, representatively, derivatively or in any other capacity, against Defendants or any of the other Released Parties, arising at any time prior to entry of the Judgment, including but not limited to those claims raised in the Action, and those arising from or related to Plaintiff’s employment with Los Angeles Maison, LLC. This release excludes only the release of claims not permitted by law.

As to the Released Claims only, Plaintiff expressly waive all rights and benefits under the terms of section 1542 of the California Civil Code. Section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY

Notwithstanding the provisions of section 1542, and for the purpose of implementing a full and complete release and discharge of all of their Released Claims, Plaintiff expressly acknowledge that this Settlement is intended to include in its effect, without limitation, all Released Claims which Plaintiff do not know or suspect to exist in their favor at the time of execution hereof, and that the Settlement contemplates the extinguishment of all such Released Claims.

(Settlement Agreement at ¶ 45(a), (b)).

1 Settlement Class and divide the Net Settlement Amount by the total number of Compensable
2 Workweeks of all Participating Class Members resulting in a value for each week worked by the
3 Participating Class Members during the Settlement Period (“Workweek Value”). The Settlement
4 Administrator shall then multiply the number of Compensable Workweeks for each Participating
5 Class Member by the Workweek Value to calculate the “Individual Settlement Payment.” In
6 addition, all Settlement Class Members shall receive a pro rata share of the portion of the PAGA
7 Payment allocated to Settlement Class Members based on their Compensable Workweeks during
8 the Settlement Period. (*Id.* at ¶ 47(a)). The Settlement Administrator shall also prepare the
9 “Information Sheet” that will be sent to each Settlement Class Member and shall set forth the total
10 number of Compensable Workweeks and the estimated Individual Settlement Payment.

11 As set forth in the Agreement, the Parties have agreed that Settlement Class Members shall
12 have 180 calendar days to cash their checks. (*Id.* at 47(a)(iv)). After 180 calendar days from the
13 date of mailing, the checks shall become null and void, and any monies remaining in the
14 distribution account shall be distributed to Legal Aid at Work, a nonprofit organization that
15 promotes the law consistent with the objectives and purposes of the underlying cause of action and
16 provides legal services to the indigent. (*Id.*) Based upon Defendants’ records, the estimated
17 number of Settlement Class Members is approximately 294 individuals. (Hyun Decl. at ¶ 7).
18 Settlement Class Members may opt-out of the Settlement if they so choose.

19 As part of the Stipulation, Defendants do not object to Class Counsel’s request for
20 attorney’s fees up to, but not more than, one-third (1/3) of the GSA [or \$116,666.66] plus up to,
21 but not more than, \$35,000 for reimbursement of reasonable and necessary costs and expenses.
22 (Settlement Agreement ¶ 47(c)). Also, as part of the Settlement Agreement, Defendants do not
23 object to Plaintiff’s request for a Class Representative Service Award of \$7,500.00. (*Id.* at ¶
24 47(b)).

25 The Settlement provides for Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00)
26 from the GSA that will resolve the PAGA claim alleged in the Action, of which seventy-five
27 percent (75%), or twenty-six thousand Two Hundred Fifty Dollars and Zero Cents (\$26,250.00),
28 shall be paid directly to the LWDA and twenty-five percent (25%), or eight thousand Seven
Hundred Fifty Dollars and Zero Cents (\$8,750.00) shall be distributed to Settlement Class

1 Members as part of their Individual Settlement Payments. (*Id.* at ¶¶ 23, 47(d)).

2 Finally, the Stipulation also provides that Simpluris, Inc. shall serve as the Settlement
3 Administrator, as Simpluris' quote was lower than competitors (specifically, the parties obtained
4 three competitive bids). The Settlement administrative costs are estimated not to exceed \$10,000
5 and shall be paid in accordance with the Settlement Agreement and deducted from the Gross
6 Settlement Value. To the extent the actual costs of administration of the Settlement are less than
7 the amount anticipated by the Settlement Agreement, the remainder shall become part of the Net
8 Settlement Amount. The cost of administration includes all tasks required of the Settlement
9 Administrator by the Settlement Agreement, including the issuance of the Notice Packets. (*Id.* at
10 ¶¶ 33, 47(e)).

11 **C. The Settlement is Fair, Reasonable, and Adequate**

12 Based on their own respective independent investigations and evaluations, the Parties and
13 their respective counsel are of the opinion that settlement for the consideration and on the terms
14 set forth in their Settlement Agreement is fair, reasonable, and adequate and is in the best interests
15 of the Settlement Class and the Defendants in light of all known facts and circumstances and the
16 expenses and risks inherent in litigation. (Hyun Decl. at ¶¶ 8-9). Defendants deny any liability or
17 wrongdoing of any kind associated with the claims alleged by Plaintiff.

18 Based on a class size of approximately 294 Class Members and the \$350,000.00 recovery,
19 Settlement Class Members will each get a raw average of approximately \$529.01, after deducting
20 Plaintiff's enhancement, settlement administration costs, attorneys' fees and costs, and the
21 LWDA's penalties. (Hyun Decl. ¶ 7). This amount will be greater or lower based on the number
22 of exclusions, *i.e.*, the amounts allocated to the Settlement Class Members who exclude
23 themselves will be reallocated to the net settlement fund available to Participating Class Members.
24 Further, Settlement Class Members may choose to exclude themselves from this settlement and
25 not participate in the settlement.

26 **III. LEGAL ANALYSIS**

27 **A. The Class At Issue Can Be Certified by the Court for Settlement Purposes
Pursuant to the Parties' Stipulation**

28 The Parties may also, at the preliminary approval stage, request that the court provisionally

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

8 In addition to such terms as class identification, settlement amount and payment
9 procedures, the Settlement Agreement reached among the Parties contains a provision pursuant to
10 which the Parties stipulate to the Court’s provisional certification of the Settlement Class but do so
11 for the purposes of this settlement only. Moreover, Plaintiff believes that the claims can be
12 certified by the Court, as they involve undisputed policies and practices. Defendants dispute this
13 but agree to provisional certification of the class for settlement purposes.

14 Courts have repeatedly held that regular rate and wage statement cases are aptly suited for
15 class treatment. *Faulkinbury v. Boyd & Associates, Inc.*, 216 Cal. App. 4th 220, 238 (2013)
16 (“whether the work uniform maintenance allowance and gasoline reimbursement must be included
17 in calculating the overtime rate of pay can be decided on a class-wide basis as a legal matter based
18 on common proof”); *Jaimez v. DAIOHS USA, Inc.*, 181 Cal. App. 4th 1286, 1305-1307 (2010);
19 Similarly, courts have held that break claims where employees are required to respond to calls
20 during breaks are also amenable to class treatment. *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th
21 257, 262 (2016). Further, in *Mendiola v. CPS Security Services*, 60 Cal. 4th 833 (2015), the
22 California Supreme Court held that employers must pay all applicable minimum and overtime
23 wages for time spent by employees on-call.

24 Here, Plaintiff was paid shift differentials covering pay periods in which he also was paid
25 overtime. (Declaration of Zachary Kahn (“Kahn Decl.”) ¶ 2). Plaintiff also received wage
26 statements which he believes did not list the accurate name of his employer, as well as inaccurate
27 total hours worked when he was paid shift differentials. (*Id.*) Plaintiff also asserts that he worked
28 through meal and rest periods and was not paid for all hours worked. (*Id.*) Thus, Plaintiff’s

1 claims are typical of other class members. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.
2 App. 3d 1341, 1347 (1987).

3 Further, Plaintiff and his counsel are adequate representatives in that they have no conflicts
4 with the Settlement Class and will adequately represent the Settlement Class. (Kahn Decl. ¶¶ 4-6;
5 Dakak Decl. ¶ 9; Hyun Decl. ¶ 10). Plaintiff's counsel has also been certified in a number of class
6 actions, including for purposes of class certification and settlement. (Dakak Decl. ¶¶ 5-6; Hyun
7 Decl. ¶ 6). Lastly, the Settlement Class is numerous, as indicated by the approximately 294
8 Settlement Class Members. *See, e.g., Patrick v. Marshall*, 460 F. Supp. 23, 26 (N.D. Cal. 1978);
9 *Jordan v. L.A. County*, 669 F.2d 1311, 1320 (9th Cir.) (noting, in dicta, that the court "would be
10 inclined to find the numerosity requirement ... satisfied solely on the basis of [39] ascertained class
11 members"), *vacated on other grounds*, 459 U.S. 810 (1982).

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

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

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

26 Thus, the preliminary approval by the trial court is simply a conditional finding that the
27 settlement appears to be within the range of acceptable settlements. As Professor Newberg
28 comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference
concerning a tentative settlement proposal may vary. The court may find that the settlement
proposal contains some merit, is within the range of reasonableness required for a settlement offer,
or is presumptively valid subject only to any objections that may be raised at a final hearing." 4
Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

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

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

6 *Id.* at § 11.24. Here, the Parties have reached such an agreement and have submitted to this Court
7 in connection with this Motion a copy of the Stipulation thereto fully setting forth the agreement
8 reached among the Parties. The Stipulation sets forth all terms of the agreement reached by the
9 Parties, which include, among other things, the method for calculating the Settlement Class
10 Members' Individual Settlement Payments.

11 **C. The Settlement Is Fair and Reasonable and Not the Result of Fraud or**
12 **Collusion**

13 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
14 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*
15 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In*
16 *re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their
17 judgment for that of the proponents, particularly where, as here, settlement has been reached with
18 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
19 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp.
20 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979).

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

1 facts of the underlying litigation’’)).

2 Here, Plaintiff’s attorneys have a great deal of experience in wage and hour class action
3 litigation. (Hyun Decl. at ¶¶ 3-6; Dakak Decl. ¶¶ 5-6). Plaintiffs’ counsel has been approved as
4 class counsel in a number of wage and hour class actions. (Hyun Decl. at ¶ 6; Dakak Decl. ¶ 5).
5 Moreover, Plaintiff’s counsel conducted an extensive investigation of the factual allegations
6 involved in this case since the inception, including obtaining class data from which a damage
7 analysis was performed. (Hyun Decl. at ¶ 7). Each side has apprised the other of their respective
8 factual contentions, legal theories and defenses, resulting in extensive arms-length negotiations
9 taking place among the Parties.

10 The settlement for each participating Settlement Class Member is fair, reasonable and
11 adequate, given the inherent risk of litigation, the risk relative to class certification and the costs of
12 pursuing such litigation. It is the result of extensive arms’ length negotiations between counsel for
13 the Parties.

14 Plaintiff also believes in the fairness of the Settlement that is based on factoring in the
15 uncertainty and risks to Plaintiff involved in not prevailing on class certification and/or one or
16 more of the causes of action or theories alleged in the Operative Complaint and in the possibility
17 of losing at trial or on summary judgment. (Hyun Decl. at ¶¶ 7-9). Defendants adamantly dispute
18 liability as well.

19 The Settlement is a compromise for the alleged damages of Settlement Class Members for
20 the claims asserted in the Operative Complaint. The Settlement also compensates and provides
21 Plaintiff with an additional incentive payment for his involvement in this Action, which included
22 meeting with counsel, providing documents and reviewing the pleadings in this lawsuit. This
23 incentive payment also takes into consideration the risks, time, effort and expenses incurred by
24 Plaintiff in coming forward to provide invaluable information, negotiate and litigate this matter on
25 behalf of all Settlement Class Members.

26 Despite the asserted fairness of the settlement terms, should any potential Settlement Class
27 Member, upon reviewing the Notice Packet, object to the terms of the settlement as set forth in the
28 Stipulation, each has the right to submit a request for exclusion (*i.e.*, opt out) from the settlement,
pursuant to which the Settlement Class Member would retain any claim he or she may have

1 against Defendants. Moreover, potential Settlement Class Members, upon providing proper notice
2 to the Parties and the Court, may attend the final fairness and approval hearing for the purpose of
3 objecting to one or more of the settlement terms set forth in the Stipulation.

4 Further, the settlement provides a fair amount. Plaintiff's counsel calculated the soaking
5 wet exposure at approximately \$176,000 in actual damages, \$1.634 million in Labor Code
6 penalties and \$3.81million in PAGA penalties. (Hyun Decl. at ¶ 7). However, these numbers are
7 actually lower, as a significant portion of the class are subject to a collective bargaining agreement
8 containing a grievance and arbitration procedure. (*Id.*) Had this Court enforced the arbitration
9 procedures set forth in the collective bargaining agreement, Plaintiff may not have been able to
10 assert a class action. Moreover, as this Court knows, the viability of PAGA actions to proceed
11 notwithstanding an arbitration agreement is under consideration by the U.S. Supreme Court in
12 *Viking River v. Moriana*, Case No. 20-1573, 211 L. Ed. 2d 421, 2021 U.S. LEXIS 6280, at *1
13 (Dec. 15, 2021) ("*Viking River*"). Thus, Plaintiff believes that the realistic exposure is 50% of the
14 soaking wet exposure, or \$2.18 million, meaning that the \$350,000 comprises 12% of the total
15 realistic exposure, which is consistent with other actions. (Hyun Decl. ¶ 7). *In re Mego Fin.*
16 *Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000); *Bellinghausen v. Tractor Supply Co.*, No. 13-
17 CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015).

18 **D. The Proposed Class Settlement Meets the *Kullar* Factors**

19 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
20 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has
21 conducted sufficient discovery and the settlement is reasonable in light of the strengths of the
22 plaintiff's claims. As discussed herein, Plaintiff's counsel has conducted extensive discovery and
23 investigation and, in light of the strength and weaknesses of Plaintiff's claims, Plaintiff's attorneys
24 submit that this settlement is fair pursuant to *Kullar*.

25 **1. Plaintiff's Counsel Conducted Extensive Discovery and Investigation**

26 As discussed herein, Plaintiff's counsel conducted both formal and informal investigation
27 and discovery, including obtaining the class data from Defendants in advance of mediation from
28 which Plaintiff's expert performed a damage analysis. (Hyun Decl. ¶ 7). The Parties then
attended mediation with a well-respected wage and hour mediator and settled this case after arm's

length negotiations. (*Id.*)

2. Strengths and Weaknesses of Plaintiff's Claims

While Plaintiff may have prevailed on class certification, Defendants would argue that it did not act willfully to support waiting-time penalties under Labor Code § 203, and that Defendant did not act knowingly and intentionally for wage statement penalties under Labor Code § 226(e). Further, this Court may have enforced the grievance procedure in the collective bargaining agreement, which would have resulted in dismissal of the class claims. Moreover, as this Court knows, the viability of PAGA actions to proceed notwithstanding an arbitration agreement is under consideration by the U.S. Supreme Court in *Viking River v. Moriana*, Case No. 20-1573, 211 L. Ed. 2d 421, 2021 U.S. LEXIS 6280, at *1 (Dec. 15, 2021) (“*Viking River*”). In light of this uncertainty, Plaintiffs and their counsel have obtained a concrete monetary remedy to Settling Class Members.

E. The Proposed Class Representative Service Awards and Attorneys' Fees and Costs Should be Preliminarily Approved

With respect to the Class Representative Service Award, Plaintiff asserts that this amount is particularly justified in this case given the amount of time the Plaintiff has expended. Specifically, Plaintiff has invested approximately 30 hours into the prosecution of this matter. In particular, Plaintiff met and/or conferred with counsel in connection with the assistance of the class claims, such as providing information and various documents, as well as reviewed pleadings in this case. (Kahn Decl. ¶ 3).

In addition to the above, the risks and consequences involved in the filing of this Action further justify the requested enhancement amount. Indeed, the filing of a class action lawsuit against a former employer can result in unintended consequences of retaliation by future potential employers.

Moreover, while other class members will be reaping the benefits of the current settlement, such individuals did not have to put up their personal stakes in the prosecution of this case. Indeed, had Plaintiff failed to prevail on the wage/hour class claims, Plaintiff may have been solely responsible for the costs incurred by his counsel, as well as those of Defendants. Nevertheless, Plaintiff agreed to take upon such burdens and risks for the benefit of the various

1 class members.

2 Notably, courts have routinely granted approval of representative enhancements for far
3 greater amounts. *See, e.g., Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300
4 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer*
5 *Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three
6 incentive awards of \$ 35,000); Here, Plaintiff simply requests a modest enhancement of \$7,500.00
7 for Plaintiff's extensive services and investment of time and efforts into this case.

8 With respect to the provision for attorneys' fees, California state and federal courts have
9 recognized that an appropriate method for determining award of attorneys' fees is based on a
10 percentage of the total value of benefits to Settlement Class Members by the settlement. *Wershba*
11 *v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34
12 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes*
13 *Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to
14 avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the
15 beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.
16 2d at 769.

17 Under California law, the award of attorneys' fees in common fund wage and hour class
18 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal.
19 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding
20 that when class action litigation establishes a monetary fund for the benefit of the class members,
21 and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may
22 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
23 created."). Under the percentage of the fund method, the Court's objective remains to "mimic the
24 market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J.
25 Posner) ("When a fee is set by a court rather than by contract, the object is to set it at a level that
26 will approximate what the market will set... The judge, in other words, is trying to mimic the
27 market in legal services.").

28 An award of 33% of the fund in attorneys' fees mimics the marketplace as it "is supported
by the fact that typical contingency fee agreements provide that class counsel will recover 33% if

1 the case is resolved before trial and 40% if the case is tried.” *Fernandez v. Victoria Secret Stores*
2 *LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) (citing Brickman, *Effective Hourly*
3 *Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees* (Fall 2003) 81
4 Wash U. L. Q. 653, 659 n. 11). Indeed, “empirical studies [that] show that . . . fee awards in class
5 actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66
6 n.11 (2008).

7 Here, Plaintiff’s counsel respectfully requests a modest 33 1/3% of the Gross Settlement
8 Value, or \$116,666.66 for attorneys’ fees, and reimbursement for actual litigation costs up to
9 \$35,000.00. Plaintiff’s counsel will submit their time records in support of their motion for final
10 approval. Thus, based on the foregoing, Plaintiff respectfully requests that this Court
11 preliminarily approve the request for Class Representative Service Award and attorneys’ fees and
12 costs.

13 **VI. THE PROPOSED NOTICE PACKET IS APPROPRIATE**

14 **A. The Proposed Notice Packet Satisfies Due Process**

15 California statutory and case law vests the Court with broad discretion in fashioning an
16 appropriate notice program. *See* Cal. Civil Code § 1781; *Cartt v. Superior Court*, 50 Cal. App. 3d
17 960, 973-74 (1975). The notice plan here entails mailing the Notice Packet to all known and
18 reasonably ascertainable Settlement Class Members based on records maintained by Defendant
19 Los Angeles Maison, LLC. Defendant Los Angeles Maison, LLC has agreed to provide the
20 addresses it has on record for all Settlement Class Members to the Settlement Administrator.
21 Moreover, the Notice will be sent in Spanish as well. To the extent any of the addresses are no
22 longer current, a “skip trace” will be conducted by the Administrator to locate the particular
23 Settlement Class Member. Such notice is more than sufficient to satisfy due process. *Id.* at 962.

24 **B. The Proposed Notice Packet is Accurate and Informative**

25 The proposed Notice Packet provides information on the meaning and nature of the
26 proposed Settlement Class; the terms and provisions of the Settlement; the relief the Settlement
27 will provide Settlement Class Members; how Settlement Class Members will receive their portion
28 of the settlement proceeds; the application by Plaintiff’s counsel for reimbursement of costs and

1 attorneys' fees; the date, time and place of the final Settlement approval hearing; and the
2 procedure and deadlines for opting out of the Settlement or for submitting comments and
3 objections. (*See* Cal. R. Ct. Rule 3.769(f).)

4 The Notice Packet also fulfills the requirement of neutrality in class notices. It summarizes
5 the proceedings to date, and the terms and conditions of the settlement in an informative and
6 coherent manner in compliance with the Complex Manual's statement that "the notice should be
7 accurate, objective, and understandable to class members." (Complex Manual § 30.211.) The
8 Notice Packet clearly states that the Settlement does not constitute an admission of liability by
9 Defendants and recognizes that the Court has not ruled on the merits of the action. It also states
10 that the final settlement approval decision has yet to be made. Accordingly, the Notice Packet
11 complies with the standards of fairness, completeness, and neutrality required of a settlement class
12 notice disseminated under authority of the Court. (Complex Manual §§ 30.211, 30.212).

13 **VII. AFTER 180 CALENDAR DAYS UNCASHED CHECKS ARE TO BE**
14 **DISTRIBUTED TO LEGAL AID AT WORK**

15 Settlement Class Members shall have one hundred and eighty (180) calendar days to cash
16 the check that was mailed to them. After one hundred and eighty (180) calendar days from the date
17 of mailing, the checks shall become null and void, and any monies remaining in the distribution
18 account shall be distributed to Legal Aid at Work. (Settlement Agreement at ¶ 47(a)(iv)).
19 Neither Plaintiff, nor his counsel, have any relationship with Legal Aid at Work. (Dakak Decl. ¶
20 11; Hyun Decl. ¶ 11; Kahn Decl. ¶ 7).

21 **VIII. TIMELINE FOR ADMINISTRATION**

22 1. Within fourteen (14) days of entry of the Preliminary Approval Order, Defendant
23 Los Angeles Maison, LLC shall provide the Settlement Administrator with the Class Information
24 for purposes of mailing the Notice Packets to Settlement Class Members.

25 Within fourteen (14) days after receiving the Class Information from Defendant Los
26 Angeles Maison, LLC as provided herein, the Settlement Administrator shall mail copies of the
27 Notice Packet to all Settlement Class Members via regular First-Class U.S. Mail. The Settlement
28 Administrator shall exercise its best judgment to determine the current mailing address for each
Settlement Class Member.

1 The Settlement Administrator shall make such further efforts as are possible and
2 reasonable (if any), to provide the Notice Packet to Settlement Class Members whose original
3 Notice Packet is returned as undeliverable, provided that all such efforts shall be completed by the
4 forty-fifth (45th) calendar day after the Notice Packet is mailed.

5 2. Deadline for Objection: within 45 calendar days after first mailing of the Notice
6 Packet to Settlement Class Members.

7 3. Deadline for Exclusion: within 45 calendar days after first mailing of the Notice
8 Packet to Settlement Class Members.

9 4. Filing date for Motion for Final Approval of Class Action Settlement, Attorneys'
10 Fees and Costs, Representative Enhancement and Administration Costs: 16 court days before
11 final approval hearing.

12 5. Fairness Hearing and Final Approval Hearing: Date to be determined by the Court.

13 **IX. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**
14 **PRELIMINARY APPROVAL**

15 Here, the proposed Settlement is fair, adequate, and reasonable. It will result in both
16 substantial monetary benefits to class members; it is **non-reversionary**; it is non-collusive; and it
17 was achieved as the result of informed, extensive, and arms' length negotiations and discovery
18 conducted by counsel for respective parties who are experienced in wage and hour class action
19 litigation. In sum, Plaintiff respectfully requests this Court grant Plaintiff's Motion for
20 Preliminary Approval of Class Action Settlement.

21 Dated: April 19, 2022

KESSELMAN BRANTLY STOCKINGER LLP
HYUN LEGAL, APC

23 By: _____
24 Majed Dakak
25 Attorneys for Plaintiffs and the Putative Class
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