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Attorneys for PLAINTIFFS ELSY QUEZADA and ROSA RODRIGUEZ,
on behalf of themselves and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE**

ELSY QUEZADA, ROSA RODRIGUEZ on
behalf of themselves and others similarly
situated,

Plaintiff,

v.

ARAMARK CLEANROOM
SERVICES, LLC; ARAMARK UNIFORM
AND CAREER APPAREL, LLC; and DOES 1
to 100, inclusive,

Defendants.

Case No.: 20STCV02962

CLASS ACTION

*[Assigned For All Purposes to the Hon.
Lawrence P. Riff, Dept. 7]*

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

*[Filed concurrently with the Declaration of
Melissa A. Huether in Support; Declaration of
Elsy Quezada; Declaration of Rosa Rodriguez;
and [Proposed] Order]*

Hearing Information:

Date: March 14, 2023

Time: 10:00 a.m.

Dept.: SSC7

1 **TO THE HONORABLE COURT, ALL PARTIES, AND TO THEIR RESPECTIVE**
2 **ATTORNEYS OF RECORD:**

3 **NOTICE IS HEREBY GIVEN** that on March 14, 2023, at 10:00 a.m., or as soon thereafter
4 as the matter can be heard in Department SSC7 of the Los Angeles County Superior Court located
5 at 312 N. Spring St., Los Angeles, California 90012, Plaintiffs Elsy Quezada and Rosa Rodriguez
6 (“Plaintiffs”) will move for an order granting preliminary approval of the proposed class action
7 settlement on the terms and conditions set forth in the Stipulation of Class Action and PAGA
8 Representative Action Settlement (“Settlement” or “Settlement Agreement”)) between Plaintiffs
9 and Defendants Aramark Cleanroom Services, LLC and Aramark Uniform & Career Apparel, LLC
10 (collectively, “Defendants”), a copy of which is attached to the Declaration of Melissa A. Huether
11 (“Huether Decl.”) as **Exhibit “1.”** Plaintiffs will further move that the Order specifically encompass
12 the following:

- 13 1. Certify a class for settlement purposes only;
- 14 2. Appoint the Plaintiffs as Class Representatives for settlement purposes only;
- 15 3. Appoint Joseph Lavi, Esq., Vincent C. Granberry, Esq., Melissa A. Huether, Esq.,
16 and Courtney Miller, Esq. of Lavi & Ebrahimian, LLP as Class Counsel;
- 17 4. Approve the Notice of Class Action Settlement in the form attached as **Exhibit “1”**
18 to the Settlement;
- 19 5. Set a Final Approval and Settlement Fairness Hearing on a date that is approximately
20 120 days after the Court grants preliminary approval of the Settlement.

21
22 Dated: December 14, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

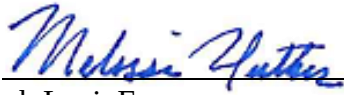
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24 By: 
25 Joseph Lavi, Esq.
26 Vincent C. Granberry, Esq.
27 Melissa A. Huether, Esq.
28 Attorneys for Plaintiffs Elsy Quezada and Rosa Rodriguez and Other Class Members

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Elsy Quezada and Rosa Rodriguez (“Plaintiffs”) respectfully submit this
4 memorandum of points and authorities in support of their motion for preliminary approval of the
5 proposed class action settlement with Defendants Aramark Cleanroom Services, LLC and Aramark
6 Uniform & Career Apparel, LLC (collectively, “Defendants”) (Plaintiffs and Defendants are
7 collectively hereinafter referred to as “the Parties”). Plaintiffs seek entry of a proposed order
8 granting preliminary approval of the class settlement which: (1) preliminarily approves the
9 proposed settlement of the class action; (2) approves the form and method for providing notice and
10 directs that notice be given to members of the settlement class; (3) preliminarily certifies the
11 settlement class for settlement purpose; and (4) schedules a final approval hearing date.

12 As consideration for this Settlement, Defendants shall pay a sum equal to Five Hundred
13 Thousand Dollars (\$500,000.00) (the “Maximum Settlement Amount”) to fund the non-
14 reversionary, no claims made settlement of this class action. (Stipulation of Class Action and PAGA
15 Representative Action Settlement (“Settlement,” “Settlement Agreement,” or “Stipulation”)), § 2.21
16 attached as **Exhibit “1”** to Declaration of Melissa A. Huether (“Huether Decl.”). The Maximum
17 Settlement Amount is inclusive of settlement payments to Class Members, all Attorneys’ Fees and
18 Costs, the Service Payments to Plaintiffs for their services as class representatives, PAGA Payment
19 to the LWDA and PAGA Members, and Settlement Administration Costs as provided by this
20 Settlement. (*Id.*)

21 **II. SUMMARY OF LITIGATION**

22 **A. The Parties**

23 The named Plaintiffs worked as non-exempt employees of Defendants at Defendants’ Los
24 Angeles Cleanroom and seek to represent all current and former non-exempt employees of
25 Defendants who worked at Defendants’ Los Angeles Cleanroom, located in Los Angeles, California
26 at any time during the Class Period. In advance of the mediation in April 2022, Defendants
27 estimated there were 253 class members. (hereinafter “Class” or “Class Members”). (Huether Dec.

¶3.)

B. The Complaint and Allegations

This is a proposed employee wage and hour class and PAGA action case.

On January 24, 2020, Plaintiff Quezada filed a class action pursuant to her complaint against Defendants for alleged violations of the California Labor Code in the Los Angeles County Superior Court against Defendants (the “Action”). Defendants have denied all claims in the Class Action. (Huether Dec. ¶4.)

On August 20, 2020, Plaintiff Rodriguez separately filed a representative action for civil penalties pursuant to the California Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA Action”). Plaintiff Rodriguez provided notice to the LWDA of her intent to bring a claim for civil penalties on June 15, 2020. The LWDA did not respond. (Huether Dec. ¶5.)

On April 20, 2022, after extensive informal discovery and data exchange, the Parties attended a mediation session with Hon. Lisa Hart Cole (Ret.), a well-respected mediator experienced in mediating wage and hour class and representative actions. As a result of the mediation, the Parties reached the Settlement described herein. (Huether Dec. ¶6.)

On July 21, 2022, pursuant to the terms of the Settlement, Plaintiff Rodriguez submitted an amended LWDA notice. The LWDA did not respond. (Huether Dec. ¶7.)

On December 14, 2022, pursuant to the terms of the Settlement, Plaintiff filed a First Amended Complaint adding Plaintiff Rodriguez’s PAGA claim to the Action. (Huether Dec. ¶8.)

C. The Exchange of Detailed Informal Discovery and Legal Analysis by the Parties’ Counsel

On April 20, 2022, the Parties participated in a full-day mediation session with Hon. Lisa Hart Cole (Ret.), a highly experienced and well-regarded class action mediator. As a critical part of settlement negotiations, the Parties engaged in extensive informal discovery which included production of nearly 100% of the time and pay data, calculation of the total number of workweeks worked by class members, as well as information regarding number of current and former

employees; number of pay periods; average rate of pay; number of pay periods, number of meal period premium wages paid and a map of the cleanroom facility and Plaintiffs' counsel's analysis of both the aforementioned data as and Defendants' relevant policies and procedures, employee handbooks, and first and second meal period waivers. (Huether Dec. ¶10.)

Counsel for the Parties have investigated the law as applied to the facts discovered regarding the alleged claims of Plaintiffs and potential defenses thereto, and the potential damages claimed by Plaintiffs, and multiple conference calls and email exchanges between Plaintiffs' counsel and Defendants' counsel. (Huether Decl. ¶¶8-10.)

Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. (*Id.*) Plaintiffs have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. (*Id.*) Plaintiffs and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to the compelling defenses Plaintiffs anticipated Defendants to bring, and the difficulties in establishing damages for the Class Members. (*Id.*) Based on the foregoing, Plaintiffs and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate and reasonable settlement, and is in the best interests of the Class Members. (*Id.*)

Defendants deny all claims as to liability, damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief, as well as deny the class and representative action allegations asserted in the Action. (Settlement, §§ 1.2). Despite their contention that they are not liable for any of the claims set forth by Plaintiffs, Defendants have agreed to settle in the manner and upon the terms set forth in the Settlement Agreement to put to rest the claims as set forth in the Action. (*Id.*) Defendants assert and continue to assert that Plaintiffs' claims have no merit and do not give rise to liability. (*Id.*) This Settlement Agreement constituted a compromise of disputed claims and the monies being paid as part of the Settlement are genuinely disputed. (*Id.*)

III. THE SETTLEMENT

The settlement contemplates (i) entry of an Order preliminarily approving the settlement and approving certification of a provisional settlement class, contingent upon final approval of the

1 settlement; and (ii) entry of an Order granting final approval of the settlement and judgment.

2 Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure
3 and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the Lawsuit
4 by agreement upon the terms and conditions and for the consideration set forth in the Stipulation, a
5 copy of which is attached to the Declaration of Melissa A. Huether as **Exhibit “1.”** A summary of
6 the key terms of the Settlement is as follows:

- 7 1. “Class” or “Class Members” means all current and former non-exempt employees of
8 Defendants who worked at Defendants’ Los Angeles Cleanroom, located in Los
9 Angeles, California at any time during the Class Period. (Stipulation, §§ 2.3.)
- 10 2. “Class Period” means the time period from January 24, 2016, through July 20, 2022.
11 (Stipulation, § 2.5.)
- 12 3. “Maximum Settlement Amount” means the total maximum amount payable under
13 the terms of this Agreement by Defendants, which is the gross sum of Five Hundred
14 Thousand Dollars and Zero Cents (\$500,000.00), except that the Maximum
15 Settlement Amount shall not include the employer’s share of payroll taxes, which
16 Defendants shall pay for any amounts paid to Settlement Class Members that are
17 attributable to wages as described herein. The Maximum Settlement Amount shall
18 be used to pay, as approved by the Court, Class Counsel’s attorneys’ fees and costs,
19 Service Payments to Class Representatives, Settlement Administration Costs; and the
20 PAGA Payment to the LWDA and the PAGA Members, and the Individual
21 Settlement Payments to the Settlement Class Members. (Stipulation, § 2.21.)
- 22 4. “Settlement Pool” is the portion of the Maximum Settlement Amount available for
23 distribution to the Settlement Class, which shall equal the Maximum Settlement
24 Amount less PAGA Payment, Court-approved attorneys’ fees and costs, Settlement
25 Administration Costs, and the Court-approved Class Representative Service
26 Payments. (Stipulation, § 2.36.)
- 27 5. Each Settlement Class Member will be entitled to receive an Individual Settlement
28 Payment, which will be paid out of the Settlement Pool. The amount of each
Individual Settlement Payment will be calculated on a pro rata basis, based on the
Eligible Workweeks each Settlement Class Member worked during the Class Period.
To determine each Class Member’s estimated “Individual Settlement Payment,” the
Settlement Administrator will use the following formula: estimated Individual
Settlement Payment = individual Eligible Workweeks ÷ all Class Member Eligible
Workweeks × Settlement Pool. (Stipulation, §§ 6.6.)

///

6. A total amount of \$25,000 from the Maximum Settlement Amount will be allocated as the PAGA Payment to be paid as penalties under PAGA, seventy-five percent (75%) of this amount will be the LWDA Payment to paid to the LWDA and the remaining twenty-five (25%) shall be distributed to the PAGA Members as Individual PAGA Payments. The 25% of the PAGA Payment to be distributed to the PAGA Members as Individual PAGA Payments and shall be distributed based on a pro rata share based on the number of Eligible Pay Periods each PAGA Member worked during the PAGA Period. (Settlement, § 6.7)
7. All Individual Settlement Payments to Settlement Class Members shall be allocated as follows for tax purposes: 33% of each Individual Settlement Payment reflects compromise of a claim for alleged unpaid wages; 67% of each Individual Settlement Payment reflects compromise of a claim for alleged interest and penalties. All Individual PAGA Payments shall be allocated as 100% penalties, for which a 1099 will be issued if required. (Settlement, § 6.6.4. & 6.7.2.)
8. After one hundred eighty (180) calendar days of issuance, funds from undeposited Individual Settlement Payment and Individual PAGA Payment checks will be held by the Settlement Administrator; if the Class Member or PAGA Member to whom the undeposited check is issued does not contact Class Counsel or the Settlement Administrator concerning his or her settlement payment check(s) within one-hundred eighty (180) calendar days of issuance, the Stipulation of Settlement, including its release, will be binding on that Settlement Class Member or PAGA Member, and the amount of that uncashed settlement payment shall be transmitted to the State of California, to be held and disposed of by the Controller in accordance with California's Unclaimed Property Law for the benefit of those Settlement Class Members and PAGA Employees who did not cash their checks until such time that they claim their property. (Settlement, § 7.4.3.)
9. "Released Class Claims" shall mean all claims, rights, demands, liabilities, and causes of action asserted in the Operative Complaint, all claims that could have been reasonably asserted in the Action based on the facts alleged in the Operative Complaint and ascertained in the course of the Action, including causes of action for (a) unpaid meal period premiums under Labor Code sections §§ 226.7 and 512 and the applicable California Industrial Welfare Commission Wage Order; (b) failure to timely pay wages under Labor Code sections §§ 201, 202, and 203; (c) failure to maintain and provide accurate itemized wage statements under Labor Code sections §§ 226, 226.2, and 226.3; (d) all claims for the alleged violation of California Business & Professions Code sections 17200, *et seq.*, based upon the alleged failure to provide complaint meal breaks, failure to provide accurate and itemized wage statements, failure to timely pay wages, and/or failure to provide suitable seating; (e) all claims for penalties or monetary relief based upon the claims described above pursuant to Labor Code §558; and (f) all claims for interest, penalties, attorneys' fees, costs and any other monetary relief based upon the claims described above and including, but not limited to, pursuant to Labor Code §§210, 218.5, 218.6, Code of Civil Procedure §1021.5, and/or Civil Code §§ 3287(b) and 3289, costs, attorneys'

1 fees, injunctive relief, declaratory relief, or accounting that are based on or related to
2 the alleged Labor Code and Business & Professions Code violations referenced in
3 sub-sections (a) through (d) above, that accrued or accrue through the Class Period.
(Settlement, § 2.30)

4 10. The Parties have agreed to retain to Simpluris, Inc. perform the customary duties of
Settlement Administrator (the “Settlement Administrator”). (Settlement, § 2.34.)

5
6 11. Class Counsel shall apply to the Court for an award of reasonable attorneys’ fees not
7 to exceed one third of the Maximum Settlement Amount, \$166,666.67, and will seek
8 an award of costs for reimbursement of Class Counsel’s out-of-pocket costs incurred
9 up to an additional \$25,000.00, to be paid out of the Maximum Settlement Amount.
Defendants will not oppose an application by Class Counsel in accordance with the
terms of the Settlement. (Settlement, §6.4.1.)

10 12. The Class Representatives’ Service Payments, which are in addition to their
11 Individual Settlement Payments from the Settlement Pool and Individual PAGA
12 Payments as PAGA Members will, subject to Court approval, be paid out of the
13 Maximum Settlement Amount and will not exceed \$7,500 for Plaintiff Quezada and
\$5,000 for Plaintiff Rodriguez for their services and assistance to the Class.
(Settlement, § 6.3.1.)

14 12. Settlement Class Members have forty-five (45) calendar days after the Settlement
15 Administrator has postmarked the Class Notice for mailing to Class Members to
16 postmark a dispute to their Eligible Workweeks, to opt out of the Settlement, or to
17 submit an objection to the Settlement to the Settlement Administrator (“Response
Deadline”). (Settlement, § 7.2.4.-7.2.5.)

18 13. Class Members who want to opt-out must timely submit a signed and dated written
19 request to be excluded from the class portion of the Settlement to the Settlement
20 Administrator (“Opt-Out Request”). The Opt-Out Request must be postmarked on
21 or before the Response Deadline, include the case name, case number, the Class
22 Member’s name, address, and last four of their social security number, must be
signed by the Class Member, and must state in substance that the Class Member
wishes to exclude themselves or opt out of the settlement. (Settlement, § 7.2.4.)

23 14. Class Members, except for the Class Representative, may object to the Settlement in
24 person at the Final Approval Hearing and/or in writing. Class Members, except for
25 the Class Representative, will have until the Response Deadline within which to mail
26 a written objection to the Settlement and a notice of intention to appear at the Final
27 Approval Hearing, to the Settlement Administrator. Only Class Members who have
28 not filed an Opt-Out Request may object to the Settlement. The written objection
should state the Class Member’s name and address and describe the reason(s) why
the Class Member objects to the Settlement and include or attach any documents
upon which the objection is based. (Settlement, § 7.2.5.)

IV. ANALYSIS

A. Class Action Settlements Are Subject To Review And Approval Under The California Rules of Court

Rule 3.769 of the California Rules of Court requires court approval for class action settlements. “Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” (Cal. Rules of Court, rule 3.769(g).) Courts act within their discretion in approving settlements which are fair, not collusive, and take into account “all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

B. This Settlement Is Fair, Reasonable, And Adequate

The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the *range of reasonableness* and, therefore, whether notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4th Ed.) §11:25.) Courts have broad powers to determine whether a proposed settlement is fair under the circumstances of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-35; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) In evaluating preliminary approval, courts must consider several relevant factors, including “the strength of the Plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel...” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” (*Wershba, supra*, 91 Cal.App.4th at 245.) Furthermore, courts must give “proper deference to the private consensual decision of the parties” because “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to

1 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
2 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
3 reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d
4 1011, 1027.)

5 A proposed class action settlement is presumed fair under the following circumstances: (1)
6 the parties reached settlement after arms-length negotiations; (2) investigation and discovery were
7 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
8 litigation, and (4) the percentage of objections is small. (*Dunk v. Ford Motor Co., supra*, 48
9 Cal.App.4th at 1802.) The Declaration of Class Counsel Melissa A. Huether demonstrates that the
10 proposed settlement was the product of serious, informed, and non-collusive negotiations and
11 demonstrates counsel’s extensive experience in both employment law as well as class action
12 litigation.

13 **1. The Settlement is the result of serious, informed, and non-collusive**
14 **negotiations.**

15 The Settlement was reached as a result of arm’s-length negotiations facilitated by a highly
16 regarded and experienced wage and hour mediator, Hon. Lisa Hart Cole (Ret.) and analysis by
17 Plaintiffs’ counsel. (Huether Dec. ¶¶8-26.) While Plaintiffs believe in the merits of their case, they
18 also recognize the inherent risks of litigation and understands the benefit of the Class receiving
19 settlement funds immediately as opposed to risking an unfavorable decision on class certification,
20 summary judgment, at trial and/or the damages awarded, and/or on an appeal that can take several
21 more years to litigate. (*Id.*)

22 **2. The extent of the information provided through formal and informal**
23 **discovery and the stage of the proceedings support the Settlement.**

24 As described herein, the Parties investigated and evaluated the factual strengths and
25 weaknesses of this case before reaching the proposed Settlement and engaged in sufficient
26 investigation and discovery, as referenced above, to support the Settlement. (*Id.*) Accordingly, the
27 proposed Settlement was reached following probative factual evaluation of Defendants’ relevant
28 policies and procedures; review, compilation, and analysis of a nearly 100% of the time and pay data,

1 calculation of the total number of workweeks worked by class members, as well as information
2 regarding number of current and former employees; number of pay periods; average rate of pay;
3 number of pay periods, number of meal period premium wages paid and a map of the cleanroom
4 facility and Plaintiffs' counsel's analysis of both the aforementioned data as and Defendants' relevant
5 policies and procedures, employee handbooks, and first and second meal period waivers, multiple
6 discussions, calls, and emails with the Defendants' counsel, the disputed factual and legal issues
7 involved in this case, the risks attending further prosecution, including risks related to a contested
8 motion for class certification, and the substantial benefits to be received pursuant to a compromise and
9 settlement of the case as set forth in the Agreement, settlement on the terms agreed to are in the best
10 interest of Plaintiffs and the settlement class. (*Id.*)

11 Thus, the Settlement came only after the case was fully investigated by counsel, as set forth
12 above. This litigation, therefore, has reached the stage where "the Parties certainly have a clear view
13 of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel*
14 *Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

15 **3. Plaintiffs' counsel are experienced in similar litigation.**

16 Experienced counsel, operating at arms-length, have weighed the strengths of the case and
17 examined all of the issues and risks of litigation and endorse the proposed settlement. The view of
18 the attorneys actively conducting the litigation "is entitled to significant weight" in deciding
19 whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985)
20 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.*
21 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, *supra*, 485 F.Supp. at 617.)

22 Both Plaintiff's and Defendants' counsel are experienced in employment, wage and hour
23 and class action matters. Lavi & Ebrahimian LLP are well-regarded firm that handle almost
24 exclusively employment matters. (Huether Dec. ¶27.) Joseph Lavi, of Lavi & Ebrahimian, LLP, has
25 been approved in class counsel in numerous actions and has been named a Southern California
26 Super Lawyer the area of Plaintiff's employment litigation - class action from 2011-2022. (*Id.*)
27 Defendants' counsel, Morgan, Lewis & Bockius LLP are also extremely well-regarded and
28

1 respected as employment defense counsel. Counsel on both sides share the view – endorsed by an
2 experienced wage and hour class action mediator – that this is a fair and reasonable settlement in
3 light of the complexities of the case, the state of the law and uncertainties of class certification and
4 litigation, and the benefit the settlement confers on the class. (Huether Dec. ¶¶8-26.) Given the risks
5 inherent in litigation, in class certification proceedings, and in the defenses asserted, this settlement
6 is fair, adequate, and reasonable and in the best interests of the class. (*Id.*)

7 **4. The Settlement is fair and reasonable based on the strengths of Plaintiffs’**
8 **case and the risks and costs of further litigation**

9 Plaintiffs and their counsel have concluded it was reasonable to enter into the proposed
10 Settlement. Defendants have vigorously contested and continue to contest liability for the claims
11 asserted in the action. Although Defendants believe that class certification would be unlikely on
12 such claims, it nevertheless agreed to attempt resolution of the case through extensive informal
13 discovery and mediation to avoid the expense, distraction and uncertainty of protracted litigation.

14 There are significant legal uncertainties associated with cases such as this as they can be
15 factually complex and require protracted litigation to resolve. A settlement is not judged solely
16 against what might have been recovered had plaintiff prevailed at trial, nor does the settlement have
17 to provide 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska*
18 *Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney*
19 *v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, “[c]ompromise is inherent and
20 necessary in the settlement process...even if the relief afforded by the proposed settlement is
21 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to
22 a class settlement because the public interest may indeed be served by a voluntary settlement in
23 which each side gives ground in the interest of avoiding litigation” (*Wershba*, 91 Cal.App.4th at
24 250.)

25 **5. The Proposed Settlement is a Reasonable Compromise of Claims**

26 To evaluate a settlement, the trial court must receive “basic information about the nature
27 and magnitude of the claims in question and the basis for concluding that the consideration being
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1 paid for the release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker*
2 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) However, the record need not contain an explicit
3 statement of the maximum theoretical recovery:

4 “Greenwell misunderstands *Kullar*, apparently interpreting it to require the record
5 in all cases to contain evidence in the form of an explicit statement of the
6 maximum amount the plaintiff class could recover if it prevailed on all its
7 claims—a number which appears nowhere in the record of this case. But *Kullar*
8 does not, as Greenwell claims, require any such explicit statement of value; it
requires a record which allows “an understanding of the amount that is in
controversy and the realistic ranges of outcomes of the litigation.”

9 (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

10 Based on the information informally produced by Defendants in advance of the mediation,
11 during the class period, Defendants employed approximately 253 current and former non-exempt
12 employees over the course of approximately 27,000 workweeks who received an average rate of
13 pay for \$18.00/hour. (Huether Dec. ¶12.) Based on Class Counsel’s and Plaintiff’s expert
14 witness’s analysis of the data, the maximum exposure for Plaintiff’s claims were as follows:

15 With regard to Plaintiffs’ Meal Break Claim, based on the data provided by Defendants
16 and Plaintiff’s expert and own analysis thereon, Plaintiffs estimate that Class Members suffered
17 from a meal period violation in 33% of shifts reviewed. Plaintiffs’ expert determined that during
18 the time in advance of mediation, there were 37,030 unique meal period violations. Plaintiffs
19 contend that themselves and other class members regularly took late or had interrupted meal
20 periods because they were at the mercy of the delivery drivers and Defendants’ clients’ schedules.
21 When a delivery driver arrived at the worksite, Plaintiffs and other class members would have to
22 urgently attend to them and either receive their drop off of uniforms to clean or provide an order
23 for pick up to them, regardless of the time. Therefore, Plaintiffs estimated there was a maximum
24 of approximately \$666,540 in damages for meal break violations. [Calculated as follows: 37,030
25 violations x \$18.00/avg. hourly rate = \$666,540]. (Huether Dec. ¶13.)

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1 With regard to Plaintiffs' Wage Statement claim, the maximum that Plaintiffs could
2 recover amounted to approximately \$1,012,000. [253 employees X \$4,000 maximum penalty =
3 \$1,012,000.] (Huether Dec. ¶14.)

4 With regard to Plaintiffs' Waiting Time penalties claim, the maximum that Plaintiffs could
5 recover amounted to approximately \$656,640. [152 former employees X 8 hours per workday X
6 \$18.00/hour average rate of pay X 30 days = \$656,640.] (Huether Dec. ¶15.)

7 As such, Plaintiffs' maximum potential recovery in this matter, excluding PAGA
8 penalties, would amount to approximately \$2,335,180. The settlement reached in this matter was
9 \$500,000 or approximately 22% of exposure. (Huether Dec. ¶16.)

10 As for Plaintiffs' PAGA claim, according to the data informally produced by Defendants in
11 this case, during the relevant PAGA period (from June 15, 2019 to the time of mediation) there are
12 approximately 12,093 pay periods for approximately 160 aggrieved employees. The maximum
13 penalties were calculated based on the PAGA penalty calculation formula - (Initial violation penalty
14 x total number of employees in the one-year PAGA period) + (subsequent violation penalty x [total
15 number of pay periods in the one-year period – total number of employees in the one-year PAGA
16 period]) as follows: (Huether Dec. ¶17.)

17 a. Meal Periods: (160 employees X \$100 initial violations = \$16,000) + ([12,093 pay
18 periods – 160 employees = 11,933 X \$200/subsequent violations = \$2,386,600) =
19 \$2,402,600. [Penalty Amounts set by Lab. Code, § 2699, subd. (f)(2).]

20 b. Wage Statements: 12,093 pay periods X \$250 = \$3,023,250. [Penalty Amounts set
21 by Lab. Code, § 226.3.]

22 c. Waiting Time Penalties: 60 former employees X \$100 initial violations = \$6,000
23 [Penalty Amounts set by Lab. Code, § 2699, subd. (f)(2).]

24 d. Suitable Seating: (160 employees X \$100 initial violations = \$16,000) + ([12,093
25 pay periods – 160 employees = 11,933 X \$200/subsequent violations = \$2,386,600)
26 = \$2,402,600. [Penalty Amounts set by Lab. Code, § 2699, subd. (f)(2).]

1 Regarding the PAGA penalty exposure analysis, as an initial matter, in wage and hour
2 class action cases that settle, which are the overwhelming majority of such cases, very little of the
3 total settlement is paid to PAGA penalties in order to maximize payments to class members. *See,*
4 *e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (no abuse of discretion to approve
5 class action settlement allocating \$0 to PAGA claims); *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S.
6 Dist. LEXIS 5118, 2015 WL 222500, at *2-3 (E.D. Cal. Jan. 14, 2015) (preliminarily approving
7 \$10,000 in PAGA penalties out of a total settlement amount of \$900,000), report and
8 recommendation adopted, 2015 U.S. Dist. LEXIS 25730, 2015 WL 925598 (E.D. Cal. Mar. 3,
9 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (preliminarily
10 approving \$10,000 in PAGA penalties out of a total settlement amount of \$1,250,000); *Franco v.*
11 *Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 (E.D. Cal. Nov. 27,
12 2012) (granting final approval of \$10,000 in PAGA penalties out of a total settlement amount of
13 \$2,500,000); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575,
14 at *3 (E.D. Cal. Oct. 31, 2012) (granting final approval of \$10,000 in PAGA penalties out of a total
15 settlement amount of \$3,700,000); *Chu v. Wells Fargo Invs., LLC*, 2011 U.S. Dist. LEXIS 15821,
16 2011 WL 672645, at *1 al. Feb. 16, 2011) (granting final approval of \$10,000 in PAGA penalties
17 out of a total settlement amount of \$6,900,000). In these settlements, the parties generally maximize
18 statutory penalties and minimize PAGA penalties. *See, e.g., Franco*, 2012 U.S. Dist. LEXIS
19 169057, 2012 WL 5941801, at *2, *14 (approving a \$10,000 PAGA award out of a total settlement
20 amount of \$2,500,000). (Huether Dec. ¶18.)

21 Plaintiffs recognize that PAGA claims generally settle for a mere fraction of multiple
22 “stacked” PAGA penalties as is described above, but more typically resolve for a reasonable
23 fraction of the unstacked PAGA exposure. Here, since the claims for meal periods, wage
24 statements, and waiting time penalties are all premised at least partially on the same factual basis
25 (i.e., that class members were not provided first or second meal periods) stacking these penalties
26 could arguably be overly punitive. Instead, seeking only penalties for the meal period claims
27 accounts for the meal violations, results in far more reasonable and less punitive penalties that

1 eliminate the “stacked” penalties for each Labor Code section violated as a result of the same
2 conduct. As a result, Defendants could argue Plaintiffs and the aggrieved employees may only be
3 able to recover penalties under meal period violations. Thus, if that interpretation of the “stacking”
4 issue is correct and accepted, the maximum theoretical penalties would be substantially less under
5 what Plaintiffs anticipate could be Defendants’ view of the law. And if the Court decided that this
6 theory is correct about the initial/subsequent violation rate issue, the maximum theoretical exposure
7 would be further reduced by about half. (Huether Dec. ¶19.)

8 Second, Plaintiffs’ calculation also assumes that Plaintiffs’ PAGA claims could be tried in a
9 manageable manner that comports with due process, which Plaintiffs anticipate Defendants could
10 vigorously dispute. (Huether Dec. ¶20.)

11 Third, the Court has discretion under PAGA to reduce the amount of any penalties awarded
12 for equitable reasons. (Huether Dec. ¶21.)

13 Fourth, Defendants could argue that PAGA penalties would be limited in any event. As
14 discussed in detail above, Defendants deny any liability. Moreover, Defendants could likely
15 argue that even if Plaintiffs prevailed, the recoverable penalties under PAGA are minimal. Indeed,
16 courts to consider the issue have refused to “stack” PAGA penalties. *See Carrington v. Starbucks*
17 *Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving
18 PAGA penalty reduction to \$5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27
19 Cal.App.5th 809. Moreover, Defendants could argue that Plaintiffs are not entitled to recover
20 PAGA penalties at the subsequent violation rate of \$200 per pay period. California’s appellate
21 courts have held that “[u]ntil the employer has been notified that it is violating a Labor Code
22 provision (whether or not the commissioner or court chooses to impose penalties), the employer
23 cannot be presumed to be aware [of the violation]” and therefore, until a Court or the
24 Commissioner issues a finding of a violation, the initial \$100 violation rate applies for each pay
25 period in which the alleged violation occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163
26 Cal.App.4th 1157, 1209; *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit*
27 *Service, Inc.* (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at *9 (“[u]nder California law, courts

1 have held that employers are not subject to heightened penalties for subsequent violations unless
2 and until a court or commissioner notifies the employer that it is in violation of the Labor Code”).
3 Thus, Plaintiffs anticipate Defendants could argue that even if the Plaintiffs were able to establish
4 any violation of the Labor Code, the PAGA penalties assessed for these violations will be
5 computed at the \$100 rate, as opposed to the \$100 per pay period rate at maximum, and there is a
6 likelihood that a further reduction of the penalty to \$5 per pay period as approved in *Carrington*
7 would apply given Defendants’ compliance with the Labor Code as discussed above. (Huether
8 Decl., ¶ 22.)

9 Finally, Plaintiffs anticipate that Defendants could argue that, using the most recent court
10 of appeal decision on the topic of evaluating the value of a PAGA claim (*Carrington v. Starbucks*,
11 *supra*) (i.e., at \$5.00 per pay period X 12,093 pay periods at issue), it is likely Defendants’
12 maximum exposure is actually only **\$60,456.00**. Defendant likely could have argued that this
13 Court would use the *Carrington* valuation as a ceiling for assessing PAGA penalties and that this
14 amount (i.e., \$60,456. was its true “worst case scenario” exposure). (Huether Decl., ¶ 23.)

15 In sum, the settlement in the instant case provides for a gross fund value of \$500,000 with a
16 PAGA allocation of \$25,000 with 75% (\$18,750) payable to the LWDA and 25% (\$6,250)
17 distributed the Aggrieved Employees and falls squarely within the range of reasonableness for
18 PAGA allocations outlined in the case law above. (Huether Decl., ¶ 24.)

19 Defendants however maintained significant defenses to the above claims as follows: With
20 respect to meal periods, Defendants argued that is provided first and second meal periods as
21 required. Defendants further would argue that the class members were subject to a collective
22 bargaining agreement that provided when meal periods are to be taken and such agreement was
23 legally compliant. Finally, and most importantly, Defendants provided evidence that they paid
24 meal period premiums to class members throughout the Class Period. With respect to Defendants
25 suitable seating claim, Defendants argued that it was not practical to provide employees with seats
26 and that it would impact their ability to complete their job duties. Additionally, Defendants could
27 contend any alleged wage statement violations could not be shown to be “knowing and
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1 intentional” given its good-faith defenses, and that Plaintiffs cannot show they or other employees
2 “suffer[ed] injury,” as required by Labor Code § 226(e). Defendants would likely argue that wage
3 statements always accurately reflected hours worked and amounts paid to employees. Defendants
4 also could argue that wage statement penalties are not recoverable at all for alleged meal period
5 violations. Given Defendants’ anticipated arguments that no violations occurred, that Class
6 Members suffered no “injury,” that any alleged violations were not “knowing and intentional,”
7 and that meal period claims cannot support wage statement penalties. Based on the foregoing,
8 Defendants concluded, Plaintiffs and Class Members were paid out upon separation of employment
9 for all wages owed, and that Defendants believed, in good faith, that it was properly paying all
10 wages to separating employees. In other words, Defendants concluded, Plaintiffs would not be able
11 to establish the willful elements of their Labor Code sections 226 or 203 claims. For these reasons,
12 Defendants argue that Plaintiffs would not likely prevail on their claims. (Huether Dec. ¶25.)

13 If Plaintiffs continued litigating this matter, the Class Members could potentially receive
14 **nothing** if the court agreed with what Plaintiffs anticipate Defendants’ position to be or if
15 Defendants were able to defeat certification based on the individual inquiries that would be required
16 regarding Plaintiffs’ meal period and suitable seating claims. Furthermore, even if the Court agreed
17 with Plaintiffs, Plaintiffs still had to prove Defendants faced exposure under Plaintiffs’ derivative
18 claims and acted intentionally and *willfully* in order to receive the additional penalties under Labor
19 Code Sections 203. As such, Plaintiffs’ decision to settle this matter was in the best interest of the
20 Class Members.

21 This is a fair and reasonable result. Other substantial benefits also include that it is a non-
22 reversionary, non-claims made settlement, which distributes the Settlement Pool on a pro rata basis
23 based on the number of Eligible Workweeks each Settlement Class Member worked for Defendants
24 during the Class Period. The 25% portion of the PAGA Payment allocated to PAGA Members will
25 be distributed to each PAGA Member who worked during the PAGA Period based on their Eligible
26 Pay Periods during the PAGA Period. (Settlement, §6.6.2 & 6.7.2). Settlement Class Members and
27 Aggrieved Employees will have one hundred eighty (180) to cash their checks. A reminder post
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1 card will be sent to those individuals who do not cash their check within 90 calendar days of
2 issuance. (Settlement, § 6.6.2). If any checks remain uncashed or not deposited by the expiration of
3 the one hundred eighty (180) day period during which settlement checks are negotiable, the
4 Settlement Administrator shall tender the check to the California State Unclaimed Property Division
5 in the Office of the State Controller. (Settlement, § 7.4.3). (Huether Dec. ¶26.)

6 The Maximum Settlement Amount is reasonable in light of the risks involved in this
7 case—including the prospect of a potential adverse summary judgment ruling, class certification
8 issues as well as the uncertainty of class certification, manageability of PAGA claims, defenses to
9 the case, potential appeal, the elements of willfulness and/or injury required for certain penalties.

10 Plaintiffs’ Counsel is convinced that the proposed Settlement is in the best interest of the class
11 based on the negotiations and a detailed knowledge of the issues present in this Action. The
12 affirmative defenses Plaintiffs anticipate Defendants could assert, the prospect of a potential adverse
13 summary judgment ruling, class certification issues as well as the uncertainty of class certification,
14 manageability of PAGA claims, the difficulties of complex litigation, the lengthy process of
15 establishing specific damages and various possible delays and appeals were also carefully
16 considered by Class Counsel in agreeing to the proposed Settlement. In light of the above, the
17 proposed Settlement is well within the “ballpark” of reasonableness and should be granted
18 preliminary approval.

19 **V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES**

20 The Court may make an order approving certification of a provisional settlement class after
21 the preliminary settlement hearing. (California Rules of Court, Rule 3.769(d).) For settlement
22 purposes, courts use a less stringent standard for certification of classes. (*Global Minerals & Metals*
23 *Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) “The reason for this is that no trial is
24 anticipated in a settlement class case, so the case management issues inherent in the ascertainable
25 class determination need not be confronted.” (*Id.*; see also *7-Eleven Owners for Fair Franchising v.*
26 *Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming certification of class action
27
28

for settlement purposes only].) Accordingly, this Court has discretion to certify Plaintiffs' class for settlement purposes only.

The requirements under California Code of Civil Procedure Section 382 are all met for the purposes of certifying this case for settlement purposes:

- Numerosity: The settlement class consists of at least 253 Class Members. Thus, the requirement of numerosity is easily met because joinder of at least 253 individual plaintiffs into a single case is otherwise impracticable in light of the circumstances of this case.

- Typicality: The claims of the class representative are typical of the claims of the class members as a whole. The named Plaintiffs suffered the same alleged violations (e.g. failure to provide meal periods and associated meal period premiums, failure to pay timely wages during employment, failure to provide complete and accurate wage statements, and failure to pay all wages due upon separation of employment) as the class as a whole did and, thus, the claims of the named Plaintiffs fairly represents the claims of the class as a whole.

- Ascertainability: The proposed "Class" is easily ascertainable based on Defendant's own payroll records.

- Adequacy: Plaintiffs have proven to be adequate class representatives. They have conducted themselves diligently and responsibly in representing the class in this litigation, they understand their fiduciary obligations, and they have actively participated in the prosecution of this case. (Huether Dec. ¶31.) Plaintiffs have spent hours in meetings and conferences with counsel to get a better understanding of their work environment and requirements. Plaintiffs continue to be actively engaged in the ongoing settlement negotiations following mediation that were ultimately required to finalize settlement. (*Id.*) Further, Plaintiffs does not have any interest that is adverse to the interests of the other class members. (*Id.*) Moreover, proposed class counsel is adequate to represent the class for settlement purposes and has been appointed as class counsel before by this Court as well as both State and Federal Courts. (Huether Decl., ¶27.)

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1 • Commonality: Many common issues of law and fact unite the class. The common
2 questions of law and fact include, but are not limited to:

- 3 1) Whether Defendants failed to provide the Class Members meal periods and
4 premium wages for missed meal periods;
- 5 2) Whether Defendants failed to pay timely wages to Class Members;
- 6 3) Whether Defendants failed to provide the Class Members complete and
7 accurate wage statements;
- 8 4) Whether Class Members are entitled to waiting time penalties for
9 Defendants' failure to pay all wages upon separation of employment; and
- 10 5) Whether Defendants violated Business and Professions Code section 17200.

11 • Superiority: A class action is superior to other available means for the fair and
12 efficient adjudication of this controversy. Joinder of all members of the proposed class is
13 impractical. Class treatment will permit a large number of similarly-situated persons to prosecute
14 their common claims in a single forum simultaneously for settlement purposes without the
15 unnecessary duplication of effort and expense that numerous individual actions would engender.

16 **VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE APPROVED**

17 The proposed Class Notice in the form attached to the Settlement as Exhibit 1, should be
18 approved for dissemination to the Class Members. This document informs the Class of the terms of
19 the Settlement, of their right to receive their proportional share of the Settlement and the manner in
20 which to do so, of their right to request exclusion or to comment upon or object to the Settlement,
21 and of their right to appear in person or by counsel at the final approval hearing and to be heard
22 regarding approval of the Settlement. Adequate periods of time are provided by each of these
23 procedures. Furthermore, the date and time of the Final Approval hearing will be inserted in the
24 Notice will identify the information upon which the Class Member's share will be calculated as well
25 as the estimated amount he or she can expect to receive if he or she chooses to participate in the
26 settlement.

27 **VII. THE PROPOSED ATTORNEY FEES AND COSTS ARE REASONABLE**

28 Plaintiffs' Counsel seeks attorneys' fees and costs award of one-third (1/3) of the Maximum
Settlement Amount or One Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-
Seven Cents (\$166,666.67) and Class Counsel's costs not to exceed Twenty-Five Thousand Dollars

1 (\$25,000), for the time spent litigating this matter as well as expenses incurred in the prosecution of
2 the action thus far. Defendants will not object to an award of attorneys' fees and costs in these
3 amounts. The requested fee falls well within the historical range of attorneys' fee awards under the
4 common fund theory, which is generally from 20% to 50%. The requested fee is a fair
5 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
6 contingent fee basis, especially in light of the substantial benefits achieved by Plaintiffs' counsel
7 for the Settlement Class Members. Plaintiffs' counsel diligently litigated and investigated this case.

8 California courts have recognized that an appropriate method for awarding attorney's fees in
9 class actions is to award a percentage of the "common fund" created as a result of the settlement.
10 (*City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15
11 Cal. 3d 162, 168; *see also Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253,
12 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26.) The basis of the
13 common fund is fairness to the successful litigant, who might otherwise receive no benefit because
14 his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to
15 others who are entitled to share in the fund and who should bear their share of the burden of its
16 recovery; encouragement of the attorney for the successful litigant, who will be more willing to
17 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he
18 is assured that he will be properly and directly compensated should his efforts be successful. (*City*
19 *& County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 111.) In *Quinn*, the California Supreme
20 Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from
21 which others derive benefits may require those passive beneficiaries to bear a fair share of the
22 litigation costs." (*Quinn v. State, supra*, 15 Cal. 3d at 167.) Similarly, in *Sweet*, the California
23 Supreme Court recognized that the common fund doctrine has been applied "consistently in
24 California when an action brought by one party creates a fund in which other persons are entitled to
25 share." (*City & County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 110.)

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1 Several courts have expressed frustration with the alternative “lodestar” approach for
2 deciding fee awards, which usually involves wading through voluminous and often indecipherable
3 time records. (*Lealao, supra*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D.
4 Cal 1989)] 723 F. Supp. 1373, 1375[.]) The percentage approach is preferable to the lodestar
5 because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages
6 efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement;
7 and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at
8 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to
9 determine the award of attorney’s fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific*
10 *Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 [approving attorney’s fee of 33%].)

11 Plaintiffs’ counsel’s request for fees equal to 1/3 [33.33%] of the Maximum Settlement
12 Amount is within the range of reasonableness. Historically, courts have awarded percentage fees in
13 the range of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec.*
14 *Litig., supra*, 723 F. Supp. at 1378.) According to Professor Newberg: “No general rule can be
15 articulated on what is a reasonable percentage of a common fund...Usually 50 per cent of the fund
16 is the upper limit on a reasonable fee award from a common fund, in order to assure that fees do
17 not consume a disproportionate part of the recovery obtained for the class, though somewhat larger
18 percentages are not unprecedented.” (Newberg, *supra*, §14.6.)

19 Class Counsel have borne, and continue to bear, the entire risk and cost of litigation
20 associated with this class action on a pure contingency basis. The factual and legal issues posed in
21 this case were highly disputed, and there were also risks as to whether or not a class would be
22 certified, leaving a large number of putative class members unlikely to receive any recovery.

23 Based on Class Counsel’s past experience in class action wage and hour litigation, it is safe
24 to state that Class Counsel is very likely to be called upon, after the Class Notice has been sent, to
25 expend substantial amounts of additional time to help Class Members understand the terms of the
26 proposed Settlement. It is also likely that, even after final approval of the Settlement has been
27 granted, Class Counsel will be called upon to expend additional amounts of time in the presentation

1 and resolution of contests and questions relating to Class Members' allocation under the terms of
2 the proposed Settlement, as to the amounts of individual claims and perhaps other individual
3 issues.

4 The Court should preliminarily approve the requested attorney's fees and costs, which are
5 justified by the results achieved, the complexity of the issues, the difficulty of the case, and the
6 great risk undertaken by Class Counsel. The requested attorneys' fees and costs will not be opposed
7 by Defendants and are well within established guidelines. The Class Members will also be notified
8 of the requested amount and have an opportunity to object to the requested fees.

9 **VIII. THE REQUESTED SERVICE PAYMENTS ARE REASONABLE**

10 The named Plaintiffs are each entitled to a Service Payment for their service as class
11 representatives and the risks associated with their role as Class Representatives and named
12 Plaintiffs in this action. Plaintiffs understood and continue to understand their role as Class
13 Representatives, they have protected the interests of Class Members during the pending of this
14 matter and will continue to do so. (Huether Dec. ¶31; *See generally* Declaration of Elsy Quezada
15 and Declaration of Rosa Rodriguez.) Plaintiffs have each spent hours in meetings and conferences
16 with counsel to get a better understanding of their work environment. (*Id.*) Even after mediation,
17 they continued to be engaged with counsel for the months of the continued negotiations that it took
18 to ultimately finalize a settlement as well as understanding and discussing the settlement agreement
19 with their attorneys. (*Id.*) Further, Plaintiffs do not have any interest that is adverse to the interests
20 of the other class members. (*Id.*) Defendants will not oppose the application for an enhancement of
21 \$7,500 to Plaintiff Quezada and \$5,000 to Plaintiff Rodriguez as the Class Representatives from
22 the Maximum Settlement Amount for their services to the Class in this action. Class Counsel can
23 attest that Plaintiffs devoted a proportionate amount of time and work assisting counsel in the case,
24 communicating with counsel frequently, providing documents and information regarding their
25 employer and employment, which led to increase in the value and ultimate success of the
26 Settlement. (*Id.*)

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IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

The Parties propose the following schedule for the fairness hearing and final proceedings:

1. No later than fourteen (14) calendar days after the Court issues the order granting preliminary approval, Defendants shall provide to the Settlement Administrator in electronic form, a list of each Class Member, including each person's name, last known address, social security number, and number of Eligible Workweeks and Eligible Pay Periods ("Database"). The Database shall be based on Defendants' personnel, payroll, and/or other business records and provided in a format acceptable to the Settlement Administrator. (Settlement, § 7.2.1.)
2. Within thirty (30) calendar days of the Preliminary Approval Date, the Settlement Administrator will send via United States first class mail the Notice of Class Action Settlement to the Class Members. (Settlement, § 7.2.2.)
3. If a Class Member wishes to dispute their Eligible Workweeks or Eligible Pay Periods, they can do so by following the instructions in the Class Notice and submitting a dispute to the Settlement Administrator. (Settlement, Exhibit A.)
4. Class Members may request exclusion from or "opt out" of the Settlement Class. The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written Opt Out Request postmarked by the Response Deadline. (Settlement, § 7.2.4.)
5. Class Members may also object to the Settlement Agreement by submitting written objections (to the Settlement Administrator no later than the Response Deadline. (Settlement, § 7.2.5)
6. The filing date for the Motion for Final Approval of the Class Action Settlement, and Motion for Final Approval of Plaintiffs' Attorneys' Fees and Costs and Service Payments to the Class Representatives will be determined by the Court.
7. The Final Fairness and Approval Hearing date will be determined by Court. The parties request that the Final Fairness and Approval Hearing be set approximately one hundred twenty (120) days following the Court's granting of preliminary approval of the proposed Class Action Settlement.

X. CONCLUSION

The proposed class action settlement is fair, adequate, and reasonable. It will result in fair and immediate payment to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arms' length negotiations conducted by counsel for respective parties who

1 are experienced in wage and hour class action litigation. For the foregoing reasons, the parties
2 respectfully request that the Court grant preliminary approval of the proposed Settlement, sign the
3 proposed Order, approve and authorize mailing of the proposed Class Notice of Settlement and set a
4 date for a final approval hearing.

5
6 Dated: December 14, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

7
8 By: 
9 Joseph Lavi, Esq.
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