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themselves, and all others similarly situated, and the
general public

[ADDITIONAL COUNSEL LISTED ON NEXT PAGE]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DAVID BACKHAUS, ANDREA MERINO
LOPEZ, LUSINE NALBANDIAN, TALEENA
PELAYO, NARCISO CHAN SOSA and
ANTONIO LEIRIA individuals, on behalf of
themselves, all others similarly situated, and the
general public,

Plaintiffs,

vs.

THE LANGHAM HUNTINGTON HOTEL
AND SPA, a business entity of unknown form;
LANGHAM HOTELS PACIFIC
CORPORATION, a Delaware corporation;
PACIFIC LANGHAM SERVICES
CORPORATION, a Delaware corporation;
GREAT EAGLE HOLDINGS, a California
corporation and DOES 1 to 10, inclusive,

Defendants.

Case No.: 19STCV24251
[Consolidated with Case Nos. 19STCV31136
and 20STCV36405]

Assigned for all purposes to the
Hon. David S. Cunningham, Dept. SSC-11

CLASS ACTION

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

**[Declaration of Paul T. Cullen and
[Proposed] Order submitted concurrently
herewith]**

Date: April 20, 2023
Time: 10:00 a.m.
Dept: SSC-11

Complaint Filed: July 12, 2019
Trial Date: TBD

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Attorneys for Plaintiffs NARCISO CHAN SOSA and ANTONIO LEIRIA,
on behalf of themselves and others similarly situated

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

2 **PLEASE TAKE NOTICE** that, pursuant to Rule 3.769 of the California Rules of Court, on
3 **April 20, 2023, at 10:00 a.m.** in Department 11 of the above-entitled Court, located at 312 N. Spring
4 Street, Los Angeles, California 90012, Plaintiffs David Backhaus, Andrea Merion Lopez, Lusine
5 Nalbandian, Taleena Pelayo, Narciso Chan Sosa and Antonio Leiria (“Plaintiffs” or “Class
6 Representatives”) individually and on behalf of all others similarly situated, will and hereby does
7 move this Court for:

8 1. Preliminary approval of the proposed “Class Action and PAGA Settlement
9 Agreement” (the “Settlement Agreement”);

10 2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional
11 certification of the following Class defined as follows:

12 “**Class**” means all current and former hourly paid or non-exempt employees who have
13 worked for the Langham in the State of California at any time during the Class Period.¹

14 3. Preliminary appointment of Plaintiffs David Backhaus, Andrea Merino Lopez,
15 Lusine Nalbandian, Taleena Pelayo, Narciso Chan Sosa and Antonio Leiria as Class
16 Representatives;

17 4. Preliminary appointment of The Cullen Law Firm, APC, CounselOne, P.C. and the
18 Law Office of Donald Potter as Class Counsel;

19 5. The scheduling of a hearing to consider whether the settlement should be finally
20 approved and award the Administration Expenses Payment, the Fee Award, Class Counsel
21 Litigation Expenses Payment, and the Class Representative Service Payments;

22 6. Appointment of CPT Group, Inc. as the third-party Administrator; and

23 7. Approval of the proposed Court Approved Notice of Class Action Settlement and
24 Hearing Date for Final Court Approval (“Class Notice”) and entry of the proposed Order instructing
25 the notice to be disseminated to the Class as provided in the settlement.

26 This motion is based on this notice of motion, the attached memorandum of points and

27 _____
28 ¹ The “Class” and “Class Period” are defined, respectively, in paragraphs 1.5 and 1.12 of the
Settlement Agreement.

1 authorities, the declarations of Paul T. Cullen, Anthony J. Orshansky, and Donald Potter filed
2 concurrently herewith, and the exhibits attached thereto, the pleadings and other papers filed in this
3 action, and on any further oral or documentary evidence or argument presented at the time of
4 hearing. Finally, given the multiplicity of issues addressed in this Motion, Plaintiff respectfully
5 submits there is good cause to exceed the 20-page limit set forth in California Rules of Court, Rule
6 3.764(c)(2), and respectfully requests that the Court consider the attached Memorandum of Points
7 and Authorities.

8
9 Respectfully submitted,

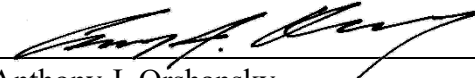
10 Dated: March 28, 2023

THE CULLEN LAW FIRM, APC

11 By: 
12 Paul T. Cullen
13 Attorneys for Plaintiffs
14 DAVID BACKHAUS, ANDREA MERION
15 LOPEZ and LUSINE NALBANDIAN,
individually on behalf of themselves, and all
others similarly situated, and the general
public

16 Dated: March 28, 2023

COUNSELONE, PC

17 By: 
18 Anthony J. Orshansky
19 Attorneys for Plaintiffs
20 NARCISO CHAN SOSA and ANTONIO
LEIRIA, on behalf of themselves and
others similarly situated

21 Dated: March 28, 2023

LAW OFFICE OF DONALD POTTER

22 By: 
23 Donald Potter
24 Attorneys for Plaintiff
25 TALEENA PELAYO, an individual and
26 on behalf of all others similarly situated
27
28

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs David Backhaus, Andrea Merino Lopez, Lusine Nalbandian, Taleena Pelayo, Narciso Chan Sosa and Antonio Leiria (“Plaintiffs” or “Class Representatives”), individually and on behalf of all others similarly situated,² seeks preliminary approval of the “Class Action and PAGA Settlement Agreement”³ (the “Settlement Agreement”) entered with defendant Langham Hotels Pacific Corporation (“Defendant”). Each of the Plaintiffs worked for Defendant during the Class Period—July 12, 2015 through April 16, 2023⁴—at Defendant’s hotel and spa in Pasadena, California (“the Langham Huntington”).

The Settlement Agreement between Plaintiff and Defendant (together, the “Parties”), if approved, will resolve specific claims of the Participating Class Members⁵ and all “Aggrieved Employees” for the purposes of “PAGA Penalties”⁶ in exchange for Defendant’s agreement to pay a maximum amount of **\$1,950,000 into a non-reversionary common settlement fund**. (Settlement Agreement, ¶ 1.22 (“Gross Settlement Amount”.) There are roughly 1,375 Class Members employed as hourly, non-exempt employees during the Class Period.⁷

² The “Class” is defined as “all current and former hourly paid or non-exempt employees who have worked for the Langham in the State of California at any time during the Class Period.” (Settlement Agreement, ¶ 1.5). The “Class Period” means the period from July 12, 2015 through April 16, 2023. (Id., ¶ 1.12).

³ The Settlement Agreement is attached as **EXHIBIT 1** to the Declaration of Paul T. Cullen (“Cullen Decl.”), ¶ 7. The Settlement Agreement is a lightly modified version of the Los Angeles County Superior Court model class action settlement agreement form. (*Ibid*, ¶ 8.) A redline version of the Settlement Agreement showing the modifications to the model LASC form is attached to the Cullen Decl. as **EXHIBIT 2**.

⁴ Settlement Agreement, ¶ 1.12 (“Class Period”).

⁵ “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (Settlement Agreement ¶ 1.36.)

⁶ “Aggrieved Employees” are “current and former hourly paid or non-exempt employees who worked for the Langham in the State of California at any time during the PAGA period which is September 3, 2018 through April 16, 2023. (Settlement Agreement, ¶¶ 1.4 and 1.32.) “PAGA Penalties” is \$150,000 within the Gross Settlement Amount in settlement of the Released PAGA Claims. (*Ibid*, ¶ 1.35.)

⁷ At mediation in January 2023, and based on employment records, the Parties agreed there were 1,328 current and former employees within the putative class. (Cullen Decl., ¶ 15.) Plaintiffs’ counsel is using a higher estimated class number of 1,375 to account, *potentially*, for subsequent hires that may have occurred and the possibility that additional class members will be identified when Defendant pulls the data for the Class Notice. (*Ibid*.)

1 This class and representative lawsuit alleges that Defendant violated wage-and-hour laws
2 under the California Labor Code and Business and Professions Code.⁸ It seeks to recover unpaid
3 wages and overtime, reporting time pay, premiums for non-compliant meal and rest breaks, penalties
4 for improper wage statements, waiting time penalties, Private Attorneys General Act (“PAGA”)
5 civil penalties, injunctive and equitable relief, prejudgment interest, and attorneys’ fees and costs.⁹

6 After substantial independent investigation and a mediation with Jill R. Sperber, Esq. of
7 Judicate West, the Parties agreed to settle the Class Members’ and Aggrieved Employees’ claims in
8 this litigation for the non-reversionary \$1,950,000 “Gross Settlement Amount” with Defendant
9 separately paying its share of payroll taxes. (Settlement Agreement, ¶ 1.22 (“Gross Settlement
10 Amount”).)¹⁰ A true and correct copy of the fully executed Settlement Agreement is attached as
11 **Exhibit 1** to the Declaration of Paul T. Cullen (“Cullen Decl.”), filed concurrently herewith.

12 After deductions for the Administration Expenses Payment, the Fee Award, Class Counsel
13 Litigation Expenses Payment, and the Class Representative Service Payments, and the LWDA
14 PAGA Payment, the remaining amount (the “Net Settlement Amount”) of approximately \$987,500
15 will be distributed to the Participating Class Members. (Settlement Agreement ¶ 1.29 (“Net
16 Settlement Amount”).) The entire Net Settlement Amount will be paid out to Participating Class
17 Members and Aggrieved Employees. Participating Class Members and Aggrieved Employees shall
18 automatically receive payments without submitting a claim form, and the Aggrieved Employees
19 shall receive Individual PAGA Payments irrespective of whether or not they opt-out. (Cullen Decl.,
20 ¶¶ 11-14; Settlement Agreement ¶¶ 1.23, 1.24, 3.2(d), 3.2(d)(1) & 3.2(d)(2).)

21 The settlement is fair, reasonable, and adequate, and in the best interests of Class Members
22 and Aggrieved Employees. Consequently, Plaintiffs, with the consent and approval of Defendant,
23 hereby moves for an order: (1) conditionally certifying the Class for settlement purposes; (2)
24 granting preliminary approval of the Settlement Agreement; (3) approving the Court Approved

25 ⁸ The details of the specific claims are set forth in the Settlement Agreement ¶ 2.2 and in the
26 Cullen Decl., ¶ 30-36 (stating the claims in each of the 3 class actions that were consolidated).

27 ⁹ *Ibid.*

28 ¹⁰ Payment of Defendant’s share of employer payroll taxes for payments on the Individual
Settlement Shares allocated as wages shall be separately funded (*i.e.*, outside of the settlement fund)
by Defendant. (Settlement Agreement ¶¶ 1.22, and 3.1.)

1 Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”); and
2 (4) setting a hearing for final approval of the settlement.

3 **II. THE EXTENT OF INVESTIGATION AND STAGE OF PROCEEDINGS**

4 **A. The Consolidated *Backhaus* Class Action And PAGA Lawsuit Procedural** 5 **History.**

6 On July 12, 2019, the present class action (the “*Backhaus* class action” or “*Backhaus*
7 lawsuit”) was filed asserting various wage and hour claims against Defendant. (Cullen Decl., ¶ 30.)
8 The original Backhaus complaint didn’t include a PAGA claim.

9 On September 3, 2019, Plaintiff Taleena Pelayo (“Pelayo”) provided pre-filing written notice
10 to the LWDA and by certified mail to Defendant of various Labor Code violations on behalf of
11 Plaintiff Pelayo and similarly situated aggrieved employees in accord with the PAGA, Labor Code
12 § 2698, *et seq.* (Cullen Decl. ¶ 31. and Declaration of Donald Potter (“Potter Decl.”. ¶ 2 .)

13 On September 4, 2019, Pelayo filed her class action asserting various wage and hour claims
14 against Defendant including allegations that it failed to properly calculate the regular rate for
15 employees inclusive of all non-discretionary pay (e.g., bonus, etc.).¹¹ On December 11, 2019, Pelayo
16 filed a First Amended Complaint adding a PAGA claim. (Cullen Decl., ¶ 33 and Potter Decl. ¶ 3.)

17 On July 30, 2020, Plaintiffs Narcisco Chan Sosa (“Sosa”) and Antonio Leiria (“Leiria”)
18 provided pre-filing written notice to the LWDA and by certified mail to Defendant of various Labor
19 Code violations on behalf of themselves and similarly situated aggrieved employees in accord with
20 the PAGA, California Labor Code § 2698, *et seq.* (Cullen Decl., ¶ 34.)

21 On September 23, 2020, Plaintiffs Sosa and Leiria filed their class action asserting various
22 wage and hour claims and a PAGA claim against Defendant.¹²

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27 ¹¹ The case is entitled, *Pelayo v. Langham Hotels Pacific Corporation* (Los Angeles Superior
Court, Case No. 19STCV31136). (Cullen Decl., ¶ 32 and Potter Decl. ¶ 3.)

28 ¹² The case is entitled, *Sosa v. Langham Hotels Pacific Corporation, et al.*, LASC Case No.
20STCV36405. (Cullen Decl., ¶ 35.)

1 On March 15, 2021, the *Pelayo* and *Sosa* lawsuits were consolidated into the *Backhaus* class
2 action and a consolidated complaint was filed that includes the class claims and allegations of all
3 three lawsuits along with the PAGA representative action claims.¹³

4 On April 7, 2021, Defendant filed its Answer to the consolidated complaint pleading general
5 denial of wrongdoing and asserting sixteen affirmative defenses. (Cullen Decl. ¶ 37.)

6 Defendant denies Plaintiffs' allegations of wrongdoing. Defendant doesn't believe that any
7 liability to Plaintiffs or other Class Members exists, or that Plaintiffs or Class Members are
8 entitled to any recovery. (Settlement Agreement ¶ 12.1 ("No Admission of Liability"); Cullen
9 Decl. ¶ 39.) In settling, Defendant does not admit liability with respect to the alleged claims and
10 makes no admissions regarding any facts or law related to the lawsuit. (*Ibid.*)

11 **B. Defendant's Wage-And-Hour Class Action Settlement Prior To The *Backhaus***
12 **Class Action.**

13 On May 24, 2017—and approximately 2 years before the *Backhaus* class action was
14 filed—Defendant received court approval of a \$650,000 class settlement and release of claims in a
15 wage-and-hour class action entitled, *Vega v. Langham Hotels Pacific Corporation* (the "*Vega*
16 class action").¹⁴ The *Vega* class action alleged that Defendant included similar claims to the
17 Backhaus class action (e.g., unpaid overtime, meal and rest period violations, waiting-time
18 penalties, etc.).¹⁵ The *Vega* settlement class included 345 current and former employees of the
19 Langham Huntington and the class period ran from February 13, 2011 through August 18, 2016.¹⁶

21 ¹³ Plaintiffs allege the following claims within the Consolidated Complaint: (1) Recovery of Unpaid
22 Minimum and Overtime Wages; (2) Recovery of Reporting Time Pay; (3) Failure to Provide Meal
23 Periods; (4) Failure to Provide Paid Rest Periods in Violation of Cal. Lab. Code §§ 226.2 & 226.7;
24 (5) Failure to Timely Furnish Accurate, Itemized Wage Statements; (6) Violations of Labor Code
§203; (7) Declaratory Relief; and Unfair Business Practices; (8) Violation of Labor Code § 558; (9)
Violation of Labor Code § 1174(d); and (10) Violation of PAGA, Labor Code §2699 et seq.. (Cullen
Decl. ¶ 36 and Settlement Agreement, ¶ 2,2.)

25 ¹⁴ The class settlement in *Vega v. Langham Hotels Pacific Corporation*, Los Angeles Superior
Court Case No. BC572323 received final approval on May 24, 2017. A copy of the final approval
is attached to the Cullen Decl. as **EXHIBIT 3**. (Cullen Decl., ¶ 40.)

26 ¹⁵ The *Vega* class action included claims for failure to pay overtime, failure to pay premium wages
27 for missed meal and rest periods, failure to furnish accurate itemized wage statements, unfair
business practices, and PAGA penalties. (See *Vega* Final Approval Order § 1, page 2 attached as
EXHIBIT 3 to the Cullen Decl. and Cullen Decl., ¶ 41.)

28 ¹⁶ *Ibid.*

1 **C. Discovery and Investigation**

2 Here, the Parties engaged in formal discovery and extensive informal exchange of data and
3 information—which included propounding written discovery, noticing PMK depositions,
4 exchanging information and documents, and reviewing and analyzing extensive data made available
5 by Defendant—which enabled the Parties to thoroughly evaluate each of the Plaintiffs’ claims, the
6 claims of the putative Class Members, and the aggrieved employees’ PAGA claim, along with the
7 affirmative defenses, and the likely outcomes, risks, and expense of litigation. (Cullen Decl., ¶ 42.)

8 Prior to initiating the lawsuit, putative Class Counsel thoroughly investigated the claims and
9 considered the facts and circumstances underlying the pertinent issues and applicable law. (Cullen
10 Decl., ¶ 43.) This required thorough discussions and interviews with Plaintiffs and other Class
11 Members as well as research into the various legal issues involved in the case. (*Ibid.*) After
12 conducting their initial investigation, Class Counsel determined that the claims were well-suited for
13 class adjudication owing to what appeared to be a common course of conduct affecting a similarly
14 situated group of employees. (*Ibid.*)

15 Class Counsel conducted written discovery, noticed depositions of Defendant’s PMK on
16 various topics and, later after the three cases were consolidated, agreed to an exchange of significant
17 documentation and data. (Cullen Decl. ¶ 44; and Settlement Agreement ¶ 2.4.) This included
18 production of voluminous information and documentation concerning the alleged violations, such
19 as, Defendant’s written policies concerning those claims, including Defendant’s employee
20 handbooks, policies and procedures regarding the payment of wages, the provision of meal and rest
21 breaks, time keeping policies, such as recording hours, issuance of wage statements, and providing
22 all wages at separation, as well as the class data regarding the number of Class Members, the mix
23 of current versus former employees, total number of pay periods, total number of workweeks, and
24 the average hourly rate in effect. (*Ibid.*) **Defendant also produced time and pay records for**
25 **approximately 1,328 Class Members which covered approximately 591,784 shifts.** (*Ibid.*) Class
26 Counsel met and conferred at length regarding the information and documents produced. (Cullen
27 Decl., ¶ 45.) Class Counsel interviewed Class Members, analyzed the documents and data produced,
28 and spent significant time consulting with an expert to assess liability and potential damages. (*Ibid.*)

1 **D. Mediation and Settlement**

2 Thereafter, the Parties participated in a lengthy full-day mediation session with Jill R.
3 Sperber, Esq. of Judicate West, where they debated and discussed their respective positions. (Cullen
4 Decl. ¶ 46.) Ms. Sperber is experienced in mediating complex general litigation, labor and
5 employment claims, class actions, and PAGA cases, among others. (*Ibid.*) During the mediation,
6 the Parties exchanged further information and discussed all aspects of the case, including the risks
7 and delays of litigation and the risk to both Parties for proceeding with a motion for class
8 certification, liability under the claims asserted, and the implications of a PAGA representative
9 action. (*Ibid.*) These were contentious issues because of the factual and legal complexity of the case.
10 (*Ibid.*) The parties reached the general settlement terms at mediation. (*Ibid.*) Subsequently, the
11 parties negotiated and entered a Memorandum of Understanding. (*Ibid.*) Thereafter, the Parties
12 engaged in negotiations to draft the long-form Settlement Agreement. (*Ibid.*)

13 From Class Counsel’s review of the facts, strengths, and weaknesses of this consolidated
14 case, the *Vega* class action settlement and release that preceded this class action, the Defendant’s
15 changes to its policies and practices after the *Vega* class action settlement, the risks and delays posed
16 by further litigation, and Class Counsel’s own prior litigation experience, Class Counsel believe that
17 the recovery being made available to Class Members is fair, reasonable, and adequate taking into
18 consideration the amounts received in other wage and hour class and representative actions, the risks
19 inherent in litigation of this genre, and the reasonable tailoring of each Class Members’ claim to the
20 settlement award he or she will receive. (Cullen Decl. ¶ 49.) Class Counsel believes that the
21 settlement serves the best interests of Class Members. (*Ibid.*) Further, and based on the settlement
22 negotiations, which were hard fought and conducted in good faith and at arm’s length between
23 attorneys with substantial experience litigating class actions, representative actions, and wage and
24 hour cases, the settlement was the product of a non-collusive settlement process in which the Parties
25 were forced to make significant compromises in the interest of reaching a full and complete
26 settlement of the action. (Cullen Decl. ¶ 50 and Settlement Agreement, ¶ 2.4.) The Parties concluded
27 that it is in their best interests to compromise, settle, and accept the terms of the Settlement
28 Agreement. (*Ibid.*)

III. SUMMARY OF BASIC SETTLEMENT TERMS

Under the terms of the Settlement Agreement, Defendant agreed to pay a **\$1,950,000 “Gross Settlement Amount” into a non-reversionary common settlement fund** to settle the specific wage and hour claims of the Participating Class Members and the Aggrieved Employees. (Cullen Decl. ¶¶ 9-11; Settlement Agreement ¶¶ 1.22 (“Gross Settlement Amount”) and 3.1.) Gross Settlement Amount will be used to fund the following payments: (a) the Individual Class Payments, (b) the Individual PAGA Payments, (c) the LWDA PAGA Payment, (d) the Fee Award to Class Counsel; (e) the Class Counsel Litigation Expenses Payment, (f) the Class Representative Service Payments, and (g) the Administration Expenses Payment. (*Ibid.*) The only monies excluded from the Gross Settlement Amount is that amount to be paid by Defendant as the employer’s share of payroll taxes with respect to the wage portion of the settlement payments to Participating Class Members which shall be paid separately. (*Ibid.*)

The amount available for distribution to Participating Class Members is determined by deducting the following from the Gross Settlement Amount:

- Up to \$682,500 – which is 35% of the Gross Settlement Amount – for attorney’s fees and up to \$40,000 in litigation costs to Class Counsel. (Cullen Decl., ¶ 11; Settlement Agreement ¶¶ 1.7 (“Class Counsel Litigation Expenses Payment”), 1.19 (“Fee Award”) and 3.2(b);
- Up to \$10,000 to each Class Representative as a Service Payment (\$60,000 in total) – as a service award and in exchange for a general release of claims. (Cullen Decl., ¶ 11; Settlement Agreement ¶¶ 1.14 (“Class Representative Service Payment”) and 3.2(b);
- Up to \$150,000 allocated as the PAGA Penalties – of which 75% is allocated for payment to the LWDA for civil penalties pursuant to statute and 25% of the PAGA Payment is to be distributed to Aggrieved Employees (Cullen Decl., ¶ 11; Settlement Agreement ¶¶ 1.35 (“PAGA Penalties”) and 3.2(e)); and
- Up to \$30,000 to the Administrator to notify Class Members and Aggrieved Employees and otherwise administer the settlement. (Cullen Decl., ¶ 11; Settlement Agreement ¶¶ 1.3 (“Administration Expenses Payment”) and 3.2(e).)

1 The amount remaining after the foregoing deductions, approximately \$987,500 is called the
2 “Net Settlement Amount.” (Cullen Decl., ¶¶ 11-12; Settlement Agreement ¶ 1.29 (“Net Settlement
3 Amount.”)) The entire Net Settlement Amount will be paid out to Participating Class Members.
4 (Cullen Decl., ¶ 11.) Participating Class Members shall automatically receive Individual Class
5 Payments without the need to submit a claim form, and the Aggrieved Employees shall receive
6 Individual PAGA Payments irrespective of whether or not they opt-out. (Cullen Decl., ¶ 13;
7 Settlement Agreement ¶¶ 1.23, 1.24, 3.2(d), 3.2(d)(1) and 3.2(d)(2).)

8 **A. The Settlement Provides for Reasonable Monetary Payments**

9 Although exact recovery amounts depend on each Participating Class Members’ relative
10 number of qualifying workweeks, for estimation purposes only, if all of the approximately 1375
11 Class Members participate in the settlement, then the average Individual Class Payment would be
12 an estimated \$718.18 per Class Member. (Cullen Decl. ¶ 15.) Of course, any Class Member who
13 prefers to preserve his or her right to pursue relief or seek an alternative recovery may opt out. *Ibid.*;
14 Settlement Agreement ¶ 7.5 (“Class Members’ Request for Exclusion (Opt-Outs)”.)

15 The Net Settlement Amount will be the amount that is available for distribution to
16 Participating Class Members on a *pro rata* basis, based on workweeks during the Class Period.
17 (Cullen Decl., ¶ 12; Settlement Agreement ¶¶ 1.29 (“Net Settlement Amount.”) & 3.2(d).) Each
18 Individual Settlement Share shall be calculated as follows: Specifically, an Individual Class
19 Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of
20 Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying
21 the result by the total Workweeks worked by each Participating Class Member during the Class
22 Period. (Cullen Decl., ¶ 12; Settlement Agreement ¶¶ 1.23 (“Individual Class Payment”) & 3.2(d))

23 In addition, each Class Member who is an Aggrieved Employee will receive a pro rata share
24 of the 25% of the PAGA Penalties based on his or her pay periods during the PAGA Period. (Cullen
25 Decl., ¶ 13; Settlement Agreement ¶¶ 1.24 (“Individual PAGA Payment”), 1.35 (“PAGA
26 Penalties”), 3.2(e)(1) & 3.1(e)(2).) Specifically, the Administrator will calculate each Individual
27 PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA
28 Penalties (\$37,500) by the total number of PAGA Pay Periods worked by all Aggrieved Employees,

1 and (b) multiplying the result by the total PAGA Pay Periods worked by each Aggrieved Employee,
2 and irrespective of whether he or she is a Participating Class Member. (*Ibid.*)

3 After reduction for the employee's share of taxes on the wage portion,¹⁷ the net payment to
4 each Participating Class Member/Aggrieved Employee will be the sum of his or her Individual Class
5 Payment plus, if applicable, the Individual PAGA Payment (collectively, "Individual Settlement
6 Payment"). (Cullen Decl. ¶ 14.; Settlement Agreement ¶¶ 1.23, 1.24, 1.35 3.2(d), 3.2(e)(1) &
7 3.1(e)(2).) As a result of the distribution formulas, the consideration paid to each Participating Class
8 Member/Aggrieved Employee is tailored to the impact of Defendant's alleged violations as well to
9 the claims he or she is releasing. (*Ibid.*) Further, a Participating Class Member may submit a faxed,
10 emailed, or mailed letter to the Settlement Administrator disputing the number of workweeks and
11 pay periods credited if he or she believes that count is inaccurate. (Settlement Agreement ¶ 7.5(e).)
12 Finally, any Class Member who prefers to preserve his or her right to pursue relief or seek an
13 alternative recovery may opt out of the class settlement. (Settlement Agreement ¶ 7.5(a)-7.5(d).)¹⁸

14 **B. Class Representative Service Payments, Attorneys' Fees, and Expenses**

15 As part of the settlement, Plaintiffs will each apply for a Class Representative Service
16 Payment at the time of seeking final approval in the amount of \$10,000 for services to the Class and
17 a general release of all claims against Defendant. (Cullen Decl. ¶¶ 16-17; Settlement Agreement ¶
18 1.14 ("Class Representative Service Payment"). "[I]ncentive awards are fairly typical in class action
19 cases . . . and are intended to compensate class representatives for work done on behalf of the class
20 [and] to make up for financial or reputational risk undertaken in bringing the action." (*In re*
21 *Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-1394.) Plaintiffs' requested
22 service payment is intended to recognize the significant benefits conferred upon the Settlement Class
23 and be proportional to the time and effort that Plaintiffs expended on behalf of the Class including,
24 providing factual information and documents to Class Counsel, discussing the claims and theories

25 _____
26 ¹⁷ The Parties agreed to allocate twenty five percent (25%) of each Individual Settlement Payment
27 to wages and seventy-five percent (75%) of each Individual Settlement Payment to interest,
penalties, and other non-wage damages. Individual PAGA Payments will be allocated as one
hundred percent (100%) penalties. (Settlement Agreement ¶ 3.2(d)(1).)

28 ¹⁸ Again, if approved, Aggrieved Employees receive their Individual PAGA Payment irrespective
of whether they opt-out of the Class. (Settlement Agreement ¶ 46(d).)

1 at issue in the case with Class Counsel, identifying potential witnesses and reviewing documents,
2 reviewing the Settlement Agreement, as well as the significant risks Plaintiffs undertook by agreeing
3 to serve as a named plaintiff, and the fact that Plaintiffs agreed to a general release of all claims
4 subject to a waiver of Civil Code § 1542. (Cullen Decl. ¶ 17; Settlement Agreement ¶¶ 5.1
5 (“Plaintiffs’ Release”) and 5.1(a) (Plaintiffs’ Civil Code §1542 Release.)

6 Class Counsel will apply for an attorneys’ fees award of no more than 35% of the Gross
7 Settlement Amount, and reimbursement of litigation costs in an amount up to \$40,000. (Cullen Decl.
8 ¶¶ 18-21; Settlement Agreement ¶¶ 1.7 (“Class Counsel Litigation Expenses Payment”), 1.19 (“Fee
9 Award”) & 3.2(b) (Payment to Class Counsel from Gross Settlement Amount). Plaintiffs submit
10 that the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
11 consuming litigation on a purely contingent fee basis. (Cullen Decl. ¶¶ 18-21.) Class Counsel have
12 incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing each of the
13 Plaintiffs’ claims, conducting legal research and analysis, conducting discovery, meeting and
14 conferring with defense counsel, interviewing putative class members, analyzing documents
15 produced by Defendant, including corporate policies and employee time and payroll records,
16 consulting with an expert, building damages models, preparing for and attending mediation, routine
17 case updates and consultations with the client, and negotiating and preparing the Memorandum of
18 Understanding and the long-form Settlement Agreement, the Class Notice, and this motion for
19 preliminary approval and supporting documents. (*Ibid.*) Class Counsel will also expend future
20 attorney time in attending the hearing on this Motion, overseeing the notice and administration
21 process, drafting the Final Approval Motion, and supporting documents, and attending the Final
22 Approval hearing, among other tasks, such as addressing questions from Class Members. (*Ibid.*)

23 Both California and federal courts have recognized that an appropriate method for awarding
24 attorneys’ fees in class actions is to award a percentage of the “common fund” created as a result of
25 the settlement. (*See Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 506 [“the
26 percentage of fund method survives in California class action cases...”]; *Wershba v. Apple*
27 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 [recognizing both the “percentage of recovery” and
28 “lodestar/multiplier” methods].) Historically, courts have awarded percentage fees in the range of

20% to 50%, depending on the circumstances of the case. (*See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013) [“No general rule can be articulated on what is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.”].)

Class Counsel submit that their request for attorneys’ fees is reasonable when viewed as an overall percentage of the settlement amount in light of the substantial risks and significant work undertaken, the excellent results obtained for the Class Members, and the efficiency with which the Parties have conducted the litigation. (Cullen Decl. ¶¶ 18-21.) Assuming that the Court grants preliminary approval, Class Counsel will seek an award of attorneys’ fees and litigation costs at the time of seeking final approval of this settlement.

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE

Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince v. CLS Transp., Inc.* (2004) 118 Cal.App.4th 1320, 1328; *Richard v. Dart Industries, Inc.* (1981) 29 Cal.3d 462 [finding that California public policy “encourages the use of the class action device”].) Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. (*Id.* at pp. 473-475.) The decision to certify a class is purely a procedural one and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-441.)

To certify a settlement class, the trial court must find the two primary requirements for maintaining a class action: (1) there must be an ascertainable class and (2) there must be a well-defined community of interest in the questions of law and fact involving the parties to be represented. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 805-809; *Daar v. Yellow Cab Company* (1967) 67 Cal.2d 695, 704; *Daniels v. Centennial Capital Group* (1993) 16 Cal.App.4th 467, 471; *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341.) These criteria are met here for the reasons set forth below.

1 **A. There Is an Ascertainable and Sufficiently Numerous Class**

2 Whether a class is ascertainable is determined by examining the class definition, the size of
3 the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal.3d at
4 pp. 821-822; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263,
5 1271; *Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Class members are “ascertainable” where
6 they may be readily identified without unreasonable expense or time.

7 Here, the class definition is “precise, objective and presently ascertainable.” (*Sevidal v.*
8 *Target Corp.* (2010) 189 Cal.App.4th 905, 919.) Class Members are comprised of all current and
9 former hourly-paid or non-exempt employees who worked for Defendant in the State of California
10 at any time during the Class Period. (Settlement Agreement ¶ 1.5 (“Class”).) Further, the Class
11 Period is defined as the period between July 12, 2015 through April 16, 2023. (Settlement
12 Agreement ¶ 1.12 (“Class Period”).) Thus, all Class Members are of a specific type (hourly-paid or
13 non-exempt employees) employed within California. Defendant is required to and does maintain
14 employment records of such persons, including contact information and Social Security numbers.
15 (Cullen Decl. ¶ 92.) Documents and information exchanged reflect a class of approximately 1375
16 current and former hourly non-exempt employees working in California during the Class Period.
17 (*Ibid.*) Thus, the proposed Class satisfies the ascertainability and numerosity requirements. (*See*
18 *e.g., Collins v. Rocha* (1972) 7 Cal.3d 232 [finding a class of 44 farm workers sufficiently
19 numerous].)

20 **B. There Is a Well-Defined Community of Interest**

21 A community of interest is established by the preponderance of common issues of law and
22 fact. (*See Vasquez, supra*, 4 Cal.3d at p. 811.) The requirement of a community of interest:

23 [D]oes not depend upon an identical recovery, and the fact that each member of the
24 class must prove his separate claim to a portion of any recovery by the class is only
25 one factor to be considered...The mere fact that separate transactions are involved
26 does not of itself preclude a finding of the requisite community of interest so long as
27 every member of the alleged class would not be required to litigate numerous and
28 substantial questions to determine his individual right to recover subsequent to the
rendering of any class judgment which determined in plaintiffs’ favor whatever
questions were common to the class.

(*Id.* at p. 809.) litigation is predicated on uniform company policies and systemic top-down business practices revolving principally around Defendant’s timekeeping and pay practices – *e.g.*, failing to include all non-discretionary income within the regular rate, not paying for reporting time pay/short shifts, not providing legally-compliant meal periods and rest breaks, failure to properly pay meal and rest break premiums. These allegations have given rise to the following claims: failure to pay minimum and overtime wages; failure to provide reporting time pay, meal period liability; rest break liability; and derivative claims arising therefrom. (Cullen Decl. ¶ 93.)

Because Plaintiffs have alleged a single top-down compensation scheme where “the relevant proof[does] not vary among class members” and “clearly present[] a common question fundamental to all class members.” (*See In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997) 172 F.R.D. 119, 123 [citing *In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997) 169 F.R.D. 493, 518].) California courts show “no hesitancy” in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1350 [granting class certification in a manufacturing defect case when a common course of action had been proven].) This inference “*eliminates* the need for each class member to prove individually the consequences of the defendants’ actions to him or her.” (*Id.* at p. 1351 [emphasis added].) Thus, the outcome of this matter depends upon questions that are common to members of the Class. (Cullen Decl. ¶ 98.) These types of claims are commonly held to be proper for class certification. (*Ibid.*; *see, e.g., Bluford v. Safeway, Inc.* (2013) 216 Cal.App.4th 864, 871 [reversing denial of rest period claim]; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 [certifying meal period claim].)

C. The Claims of the Named Plaintiffs Are Typical

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. (*B.W.I Custom Kitchen, supra*, 191 Cal.App.3d at p. 1347.)

Here, Plaintiffs’ claims are typical of those held by the members of the Class. (Cullen Decl. ¶ 95.) Like all other Class Members, Plaintiffs were non-exempt hourly employee working for Defendant in California during the Class Period. (*Ibid.*) As alleged, Plaintiffs weren’t properly compensated for all hours worked, and not provided with legally compliant meal and rest breaks.

1 (*Ibid.*) Plaintiffs were therefore impacted by the same challenged policies that allegedly injured the
2 Class as a whole and subject to the same defenses forwarded by Defendant as to the Class, thus each
3 of their claims are therefore typical. (*Ibid.*)

4 **D. Named Plaintiffs and Class Counsel Will Fairly and Adequately Represent the**
5 **Class**

6 The adequacy of representation requirement examines conflicts of interest between named
7 parties and the class(es) they seek to represent. (*Capital People First v. Department of*
8 *Developmental Services* (2007) 155 Cal.App.4th 676, 697.) Here, Plaintiffs and Class Counsel will
9 adequately represent the Class as there are no conflicts between the named Plaintiffs and the Class
10 they seek to represent. (Cullen Decl. ¶ 100; *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442,
11 450 [finding adequacy satisfied where there was no indication that plaintiff's counsel were not
12 qualified and the named plaintiff had no interests antagonistic to those of the proposed class].) Class
13 Counsel also have extensive experience in wage and hour litigation. (Cullen Decl. ¶¶ 87-91; Potter
14 Decl. ¶¶ 5-16, and Orshansky Decl., ¶¶ 5-12.)

15 **E. A Class Action is Superior to a Multiplicity of Litigation**

16 In making its class certification decision, the court must determine that a class action would
17 be superior to alternative means for the fair and efficient adjudication of the litigation. By
18 consolidating over 1,000 individual actions into a single action, this Court's use of the class action
19 device enables it to manage this litigation in a manner that serves the efficiency interests of the
20 litigants and the judicial system. (Cullen Decl. ¶ 101.) Absent class treatment, the only alternative
21 would be to force these employees to file individual actions. (*Sav-On Drug Stores v. Super. Ct.*
22 (2004) 34 Cal.4th 319, 339, fn. 10 [stating "[t]he relevant comparison lies between the costs and
23 benefits of adjudicating Plaintiffs' claims in a class action and the costs and benefits of proceeding
24 by numerous separate actions – not between the complexity of a class suit that must accommodate
25 some individualized inquires and the absence of any remedial proceeding whatsoever."].) Finally,
26 in the context of settlement, superiority concerns are essentially non-existent.

1 **V. THE TWO-STEP APPROVAL PROCESS**

2 Any settlement of class action litigation must be reviewed and approved by a court. This is
3 accomplished in two steps: (1) an early (preliminary) review by the trial court, and (2) a detailed
4 review after the notice has been distributed to the class members for their comments or objections.

5 In this regard, the Federal Manual for Complex Litigation (Second) explains:

6 A two-step process is followed when considering class settlements...If the proposed
7 settlement appears to be the product of serious, informed, non-collusive negotiations,
8 has no obvious deficiencies, does not improperly grant preferential treatment to class
9 representatives or segments of the class, and falls within the range of possible
approval, then the court should direct that notice be given to the class members of a
formal fairness hearing, at which evidence may be presented in support of and in
opposition to the settlement.

10 See Federal Manual for Complex Litigation (Second) (1985) (“MCL 2d”) at § 30.44. The
11 preliminary approval of the class action settlement by the trial court is simply a conditional finding
12 that the settlement appears to be within the range of acceptable settlements. (*See, e.g.,* Newberg, §
13 11.25; *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
14 1085, 1094-1095; MCL 2d § 30.44 [“Preliminary approval is appropriate if the agreement is ‘fair,
15 reasonable, and adequate under the circumstances’”].) Thus, the preliminary approval of the class
16 action settlement by the Court is simply a conditional finding that the settlement appears to be within
17 the range of acceptable settlements. A review of the preliminary approval criteria demonstrates a
18 substantial basis for granting the preliminary approval requested by this Motion and proceeding to
19 a full settlement hearing.

20 **VI. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

21 As a matter of public policy, courts both encourage the use of the class action device and
22 favor settlement over continued litigation. (*See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th
23 429, 434 [“Courts have long acknowledged the importance of class actions as a means to prevent a
24 failure of justice in our judicial system.”]; *State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 471;
25 *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268, 1276 [“[S]trong judicial policy...favors
26 settlements, particularly where complex class action litigation is concerned.”]; Newberg, § 11.41.)
27 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Superior*
28 *Court* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The

fact that plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement.”].)

To summarize, the settlement here is fair because it offers payment to each Participating Class Member/Aggrieved Employee for releasing his or her claims, extinguishes the risk of litigation, and provides a fair and adequate distribution of the settlement proceeds whereby the funds are allocated proportionally based on the respective number of workweeks/pay periods that he or she worked during the relevant period. (Cullen Decl., *passim*.) Furthermore, in addition to the foregoing, when compared to the settlement reached in the *Vega* class action, a case previously litigated against the same Defendant on similar claims, and after which Defendant’s policies were tightened and improved, further illustrates the proposed settlement here is fair, reasonable, and adequate. (Cullen Decl. ¶ 49.) For all of these reasons, the proposed settlement should be preliminarily approved.

A. The Settlement Is Entitled to a Presumption of Fairness

Moreover, courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (See Newberg, § 11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, *24-25; *In re Chicken Antitrust Litigation* (N.D. Ga. 1980) 560 F.Supp. 957, 962; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.* (7th Cir. 1987) 834 F.2d 677, 681.) Courts do not substitute their judgment for that of the proponents, particularly when settlement has been reached by experienced counsel familiar with the litigation. (*Rodriguez, supra*, 2007 U.S. Dist. LEXIS 74767 at *24.) As detailed at length in the accompanying Declaration of Paul T. Cullen, the settlement is the result of extensive settlement negotiations between the Parties, conducted at arm’s length, and informed by substantial factual and legal investigations. (Cullen Decl., *passim*.)

B. Negotiations Were at Arm’s-Length before a Respected Mediator

The Parties engaged in a mediation session with Jill R. Sperber, Esq. of Judicate West (Cullen Decl. ¶ 46.) Ms. Sperber is experienced in resolving complex general litigation, labor and employment claims, class actions, and PAGA cases, among others. (*Ibid.*) As noted above, the

1 mediation resulted in s Memorandum of Understanding and, later, a long-form Settlement
2 Agreement. (*Ibid.*) The settlement negotiations were hard fought and conducted in good faith and
3 at arm's length between attorneys with substantial experience litigating class actions, representative
4 actions, and wage and hour cases. (Cullen Decl. ¶ 47.) The settlement was the product of a non-
5 collusive settlement process in which the Parties were forced to make significant compromises in
6 the interest of reaching a full and complete settlement of the action. (*Ibid.*)

7 **C. Investigation Was Sufficient to Allow Counsel to Act Intelligently**

8 Throughout this case, Class Members have been represented by counsel who have years of
9 experience in employment class action litigation. ((Cullen Decl. ¶¶ 87-91; Potter Decl. ¶¶ 5-16, and
10 Orshansky Decl., ¶¶ 5-12.) Class Counsel devoted a considerable amount of time to the prosecution
11 of this case, including, but not limited to, conducting pre-filing investigation and research;
12 conducting discovery; noticing the depositions of the person most knowledgeable designees for
13 Defendant; reviewing Defendant's policies concerning the claims set forth in the action, including
14 Defendant's policies and procedures regarding the payment of wages, the provision of meal and rest
15 breaks, time keeping policies, issuance of wage statements, and providing all wages at separation;
16 reviewing and analyzing time and pay records; meeting and conferring regarding the information
17 and documents produced; interviewing Class Members; drafting pleadings; researching California
18 law; preparing damages models; consulting with an expert; preparing for and attending mediation;
19 and negotiating and finalizing the settlement and related documents. (Cullen Decl. ¶¶ 18-19.)

20 **D. Class Counsel Are Experienced in Similar Litigation**

21 Class Counsel believes that the settlement is fair and reasonable and serves the best interests
22 of the Class Members. (Cullen Decl. ¶ 21.) Although the recommendations of counsel proposing
23 the class settlement are not conclusive, the Court can properly take the recommendations into
24 account, particularly if counsel have been involved in litigation for some period of time, appear to
25 be competent, have experience with this type of litigation, and significant discovery has been
26 completed. (*See Newberg* § 11.47.) Here, Plaintiffs are represented by competent and experienced
27 counsel with extensive experience litigating wage and hour class actions and have been appointed
28

1 as class counsel in numerous cases alleging similar claims. (Cullen Decl. ¶¶ 87-91; Potter Decl. ¶¶
2 5-16, and Orshansky Decl., ¶¶ 5-12.)

3 **E. The Settlement Is Fair, Reasonable, and Adequate**

4 To make a fairness determination, the Court should consider several factors, including “the
5 strength of plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the
6 risk of maintaining class action status through trial, the amount offered in settlement, the extent of
7 discovery and the stage of proceedings, [and] the experience and views of counsel.” (*Dunk v. Ford*
8 *Motor Co.* (1986) 48 Cal.App.4th 1794, 1801.) “The list of factors is not exclusive and the court is
9 free to engage in a balancing and weighing of factors depending on the circumstance of each case.”
10 (*Wershba, supra*, 91 Cal.App.4th at p. 245.) As discussed below, the proposed settlement is fair,
11 adequate, and reasonable in light of the overall factors in this case.

12 **1. The Strength of Plaintiffs’ Case**

13 Class Counsel carefully vetted the claims at issue to arrive at a comprehensive damages
14 model for Defendant’s liability. (Cullen Decl. ¶¶ 43-45.) Although Plaintiffs steadfastly maintain
15 that their claims are meritorious, they acknowledge that there are substantial risks and uncertainty
16 in proceeding with class certification and trial. (*Ibid.*) As explained in further detail in Section VI.E.4
17 *infra*, Defendant presented numerous defenses to Plaintiffs’ claims, both on the merits and with
18 respect to class certification. (Cullen Decl. ¶¶ 43-45.) For example, Defendant defended against the
19 minimum and overtime wage claims by relying on written policies and procedures that they contend
20 include all non-discretionary income in the regular rate, compensate Class Members for all hours
21 worked, and authorize and permit all meal periods and rest breaks. (Cullen Decl. ¶¶ 52, 54.)
22 Defendant also argued that Class Members worked in different job positions and had different
23 managers, and that, as a result, Defendant contended there was variation to the circumstances that
24 could allegedly cause the employees to be deprived of the opportunity to take legally compliant,
25 duty-free meal and rest periods, and this variation in circumstances raised highly individualized
26 questions of fact militating against certification. (*Ibid.*) Additionally, with regard to Plaintiff’s meal
27 period violation claims, Defendant contended that its employees signed valid meal period waivers
28 that are compliant with California law (*Ibid.*) Moreover, Defendant alleged it had strengthened its

1 policies and practices after entering the Vega class action settlement prior to the filing of this class
2 action. (*Ibid.*)

3 Although Plaintiffs were prepared to litigate these claims through class certification and,
4 ultimately, through trial, given the substantial amount offered in settlement, Class Counsel predicted
5 that it was far from certain that Plaintiffs would be able to recover a greater amount at trial,
6 particularly after considering the increased litigation costs that would accrue. (Cullen Decl. ¶ 55.)
7 Thus, this factor supports preliminary approval of the settlement.

8 **2. Risk, Expense, Complexity, and Duration of Further Litigation**

9 Although Plaintiffs conducted formal and informal discovery prior to settlement (including
10 propounding Special Interrogatories, a set of Requests for Production of Documents, and noticing
11 the depositions of the person most knowledgeable designees for Defendant in the *Pelayo* class
12 action), the Parties agreed to focus on exhausting early settlement efforts before launching into full-
13 fledged and hotly contested certification battle. (Cullen Decl. ¶ 53.) Therefore, absent settlement,
14 the Parties would have needed to conduct substantial additional discovery, such as the production
15 of voluminous records and numerous depositions of experts and percipient witnesses and prepare
16 the case for class certification and trial. (*Ibid.*) The Parties would have had to depose a number of
17 people such as managers, supervisors, human resource representatives, and employees in order to
18 establish liability. (*Ibid.*) Discovery disputes would have been in the offing and liability likely would
19 have entailed a battle of experts. (*Ibid.*) This settlement avoids the considerable time, attorneys' fees
20 and costs, and party resources associated with conducting additional discovery, moving for class
21 certification and potentially summary judgment or adjudication, and ultimately, trial, as well as the
22 risks and the accompanying burden of continued litigation on the Court. (*Ibid.*) Thus, this factor
23 supports preliminary approval of the settlement.

24 **3. Risk of Maintaining Class Action Status**

25 Here, settlement was reached prior to class certification and the result was a successful
26 outcome for the Class. (Cullen Decl. ¶ 54.) Class certification was by no means a foregone
27 conclusion. (*Ibid.*) Defendant defended against the minimum and overtime wage claims by: relying
28 on written policies and procedures that they contend show Defendant properly included all non-

1 discretionary income in the regular rate for overtime and premium payments for missed meal periods
2 and rest breaks. (*Ibid.*) Defendant also argued that Class Members worked in different job positions
3 and had different managers, and that, as a result, Defendant contended there was sufficient variation
4 in circumstances that could allegedly cause the employees to be deprived of the opportunity to take
5 legally compliant, duty-free meal periods and rest breaks, and this variation in circumstances raised
6 highly individualized questions of fact. (*Ibid.*) Additionally, with regard to Plaintiffs' meal period
7 violation claims, Defendant contended that its employees signed valid meal period waivers that are
8 compliant with California law. (*Ibid.*) Moreover, Defendant alleged it strengthened its policies and
9 practices after entering into the *Vega* class action settlement prior to the filing of this class action.
10 (*Ibid.*) In sum, Defendant disputed Plaintiffs' characterization of working conditions, liability, and
11 damages. (*Ibid.*)

12 Even if Plaintiff prevailed and certified a class action as to them, there is no guarantee
13 Defendant would not later move for and obtain decertification. (Cullen Decl. ¶ 55.) If the Court
14 either denied class certification or later decertified it, the Class would recover nothing, and Class
15 Members would need to retain their own counsel and proceed with individual claims only. (*Ibid.*)

16 Here, Class Members may avoid each of the risks described and receive substantial monetary
17 benefits, which also weighs in favor of preliminary approval.

18 4. Amount Offered in Settlement Given Realistic Value of Claims

19 A settlement is not judged against what might have been recovered had a plaintiff prevailed
20 at trial, nor does the settlement have to provide 100% of the damages to be fair and reasonable.
21 (*Wershba, supra*, 91 Cal.App.4th at pp. 246, 250 [acknowledging that "Compromise is inherent and
22 necessary in the settlement process ... even if the relief afforded by the proposed settlement is
23 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to
24 a class settlement because the public interest may indeed be served by a voluntary settlement in
25 which each side gives in the interest of avoiding litigation."].)

26 Plaintiffs' settlement recovery is a reasonable percentage of possible recoverable damages
27 at trial. Plaintiffs' damages analysis shows that the proposed settlement amount to Class Members
28 of **\$1,950,000 represents: an approximate 22% of Plaintiffs' estimated potential total**

1 **maximum recovery including 100% of all civil penalties and 85% of the potential total**
2 **maximum recovery for the unpaid wages, and meal and rest period violations excluding civil**
3 **penalties**, while avoiding the further expense and serious risk of proceeding toward class
4 certification and trial. (Cullen Decl. ¶ 85.) Utilizing a class-wide damages study to assess the nature
5 and magnitude of the claims in question, *see Kullar v. Foot Locker Retail, Inc.* (2008) 168
6 Cal.App.4th 116, 123, this case clearly meets requirements establishing that the class settlement is
7 within the “ballpark” of reasonableness. The settlement provides a fair and reasonable monetary
8 recovery for the Class in the face of disputed claims.

9 **Unpaid Wages**

10 Plaintiffs contend that Defendant underpaid wages due to Plaintiff and the putative class
11 because they failed to include all non-discretionary income (e.g., bonus, commissions, etc.) when
12 calculating the regular rate for the purposes of paying overtime wages and premium payments for
13 missed meal periods and rest breaks. (Cullen Decl. ¶ 58.); *Marin v. Costco Wholesale Corp.*, 169
14 Cal.App.4th 804, 807 (2008) (holding that bonus must be included in overtime rate calculation under
15 California law); 29 C.F.R. §§ 778.119 (“When the commission can be computed and paid, additional
16 overtime compensation due by reason of the inclusion of the commission in the employee’s regular
17 rate must also be paid. To compute this additional overtime compensation, it is necessary, as a
18 general rule, that the commission be apportioned back over the workweeks of the period during
19 which it was earned.”) and *Ferra v. Lowes Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, 878
20 (holding that one hour of “regular rate” pay for missed meal and rest breaks has the same meaning
21 as “regular rate” for overtime payments).

22 Class Counsel analyzed the documents and data produced by Defendant through an expert
23 witness and, in conjunction with interviews of Plaintiffs and Class Members, determined
24 Defendant’s degree of potential liability and amounts due in damages – specifically, the incidence
25 and amount of underpayment of overtime and premium payments for missed meal periods due to
26 failing to include all non-discretionary income in the regular rate, as well as, any unpaid potential
27 reporting time pay. (Cullen Decl. ¶ 59.)

Based on Defendant’s payroll and timekeeping records, and using expert analysis, Plaintiffs determined that the following potential liability existed as to the unpaid wages due to the alleged miscalculation of the regular rate: (a) \$31,511 for unpaid overtime and (b) \$129,399 for underpayment on premium pay for meal period violations for a **total of \$160,910 in estimated unpaid wages**. Based on the Plaintiffs review and analysis of records, and the individualized nature of reasons employees may have reported to work for a “short shift” or left prior to working less than four hours, Plaintiffs assigned a *de minimus* value for unpaid wages for reporting time pay for the purposes of settlement. (Cullen Decl. ¶ 60.)

In opposition to Plaintiffs’ arguments, Defendant contends that Plaintiff’s claim for regular rate violations was not amenable to class treatment because employees worked in a variety of departments with different compensation plans, and it would require an unmanageable series of mini-trials to determine which items of non-discretionary income should (or shouldn’t) be included in the regular rate. (Cullen Decl. ¶ 61.) Further, in terms of merit defenses, Defendant vigorously disagreed with Plaintiffs’ contention that Defendant failed to properly calculate the regular rate for overtime and meal period and rest break premiums. (Cullen Decl. ¶ 62.) Defendant further contends that it made changes to its policies and procedures after the *Vega* class settlement; it began paying the meal period and rest break premium payments using the overtime regular rate *before* the California Supreme Court’s 2021 ruling in *Ferra*, *supra*, and that Plaintiffs incorrectly include items of non-discretionary income and other amounts that are not legally-required to be included within regular rate calculation. (*Ibid.*) Although Class Counsel investigated Defendant’s policies and procedures, and communicated with Class Members about the compensation plans, for Plaintiffs to establish the regular rate calculation for various job titles under different compensation plans, would be a contentious, extremely costly, time-consuming, and daunting endeavor. (Cullen Decl. ¶ 63.)

In light of these considerations – especially the evidentiary difficulties of demonstrating the legality of all regular rate calculations on a class-wide basis – Class Counsel applied a discount that incorporated the risks of non-certification and being unsuccessful on the merits. (Cullen Decl. ¶ 64.)

Meal and Rest Period Violations

While Defendant produced a facially legally compliant meal period and rest break policy, Plaintiffs assert that there are compliance issues *vis-à-vis* meal breaks—some are late, missed, short, or interrupted. (Cullen Decl. ¶ 65.) Furthermore, Plaintiffs review of timekeeping records found entries showing late (after 5 hours for first meal periods and after 10 for second meal periods) and missed first and second meal periods. (*Ibid.*) Additionally, communications with Plaintiffs and Class Members revealed that Defendant’s employees would receive late meal periods or rest periods, or none at all, due to understaffing and directives from management to remain on-duty. (*Ibid.*) Consequently, Plaintiffs alleged that Defendant violated Labor Code §§ 226.7, 512, and applicable Wage Orders by failing to compensate Plaintiffs and Class Members for short, late, interrupted, and missed meal periods. (*Ibid.*)

Defendant, however, contends that it had practices, policies, and procedures to provide meal and rest breaks every workday to their employees that fully complied with the law. (Cullen Decl. ¶ 66.) Defendant vehemently argued that it complied with the requirements articulated by the California Supreme Court in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. (*Ibid.*) Specifically, Defendant maintained that it “provides” employees with a reasonable opportunity to take timely meal periods of at least 30 minutes, relieves employees of all duties during meal periods, and relinquishes control over employees’ activities, including the ability to leave the premises during meal periods. (*Ibid.*) Defendant further alleged that its timekeeping records evidence that it employs such a policy and that any deviance from the policy are minor, individualized occurrences and not the result of systemic policy. (*Ibid.*) It further asserts, and produced records showing, that Defendant had class members sign valid, written meal period waivers which it contends explain and nullify time records showing purported meal period violations. (*Ibid.*)

Further, after the *Vega* class action and settlement, Defendant contended it has since further tightened its policies and procedures to ensure compliance with California law. (Cullen Decl. ¶ 67) They also had employees sign valid, legally-complaint written meal period waivers that account for many of the timekeeping entries that show no meal period taken. (*Ibid.*) As such, Defendant argued

1 that employees were apprised of their right to take meal periods and provided compliant meal
2 periods, but some voluntarily waived them. (*Ibid.*) Defendant contended that the issue of voluntary
3 waiver would necessarily devolve into a series of individualized mini-trials, precluding class
4 certification. (*Ibid.*; see *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25 [holding
5 that the defendant must be provided an opportunity to litigate affirmative defenses, even when they
6 turn on individual questions].)

7 Based upon the analysis of Class Members' time and payroll records for 591,784 shifts,
8 Plaintiffs believe that 90,584 shifts (15%) of all shifts analyzed show unique, uncompensated meal
9 period violations. (Cullen Decl. ¶ 68.) As such, **Plaintiffs determined that the potential exposure**
10 **for these missed, short, or late unique meal period violations to be \$1,115,002.** (*Ibid.*)

11 Plaintiffs also allege that Class Members did not receive authorized rest breaks as required
12 whereby employers "relinquish control over how employees spend their time and relieve employees
13 of all duties." (Cullen Decl. ¶ 69.) Due to Defendant's work demands and inadequate staffing,
14 Plaintiffs and Class Members allege they did not receive timely and compliant rest breaks, nor did
15 Defendant relinquish control over how employees spent their 10-minute rest periods. (*Ibid.*) As with
16 the meal periods, Plaintiffs and the putative class did not receive rest break premium payments for
17 non-compliant rest breaks, nor is there evidence that Defendant made all rest break premium
18 payments to Class Members. (*Ibid.*) Thus, Plaintiffs allege that Defendant did not provide premium
19 pay for each non-compliant rest break as required under Labor Code § 226.7. (*Ibid.*)

20 Here again, Defendant disputed liability and damages. Defendant maintained that it
21 authorized and permitted duty-free rest breaks of not less than 10 minutes for every major fraction
22 of 4 hours worked as required by Labor Code § 226.7. (Cullen Decl. ¶ 70.) Defendant explained that
23 Class Members had ample opportunity to take, and did take, regular rest breaks. (*Ibid.*) As with meal
24 periods, Defendant argued that any Class Member who failed to take a rest break, or took a short or
25 late rest break, did so voluntarily and that all rest breaks were authorized and provided. (*Ibid.*)

26 Unlike meal periods, rest breaks need not be recorded and thus establishing Defendant's
27 exertion of pressure, control, and resulting violations is likely to be more difficult. (Cullen Decl. ¶
28 70.) Thus, **Class Counsel applied a 10% violation rate based on the narratives of Plaintiffs and**

1 **other Class Members for a maximum estimated exposure rate of \$1,012,710 for rest break**
2 **violations.** (*Ibid.*) For settlement, and to account for difficulties in certifying and proving unrecorded
3 rest break violations, a downward departure from that maximum exposure is warranted. (*Ibid.*)

4 **Wage Statement Violations**

5 Plaintiffs allege a cause of action under Labor Code § 226(a) for Defendant's failure to
6 provide accurate itemized wage statements. (Cullen Decl. ¶ 72.) Failure to comply with the statute
7 entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for the initial
8 pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a
9 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). (*See*
10 Labor Code § 226.) (*Ibid.*) This cause of action is derivative of the foregoing causes of action
11 because if Defendant did not provide wages for all hours worked, meal and rest breaks, and so forth,
12 then the wage statements were inevitably inaccurate. (*Ibid.*)

13 Defendant argues that Labor Code § 226(e) penalties are not automatic. (Cullen Decl. ¶ 73.)
14 Rather, the employee must show that Defendant's non-compliance was "knowing and intentional."
15 (*Ibid.*) Defendant suggested that any non-compliance was not knowing and intentional. (*Ibid.*)

16 Because the damages for this cause of action are penalties, the statute of limitations is only
17 one year prior to the filing of the original complaint. (*See* Code Civ. Proc. § 340.) (Cullen Decl. ¶
18 74.) The Parties discussed these issues and, based on the \$50 initial violation plus the \$100 per pay
19 period subsequent violation rates, **Plaintiffs estimate the total maximum wage statement**
20 **exposure to be \$2,000,000.** (*Ibid.*)

21 **Derivative Waiting Time and UCL Claims**

22 Plaintiffs further assert causes of action against Defendant for failure to timely pay all wages
23 due employees at separation, for civil penalties under the PAGA, and for engaging in unfair,
24 unlawful, and fraudulent business practices. (Cullen Decl. ¶ 75; *see* Labor Code §§ 203, 2699, *et*
25 *seq.* and Cal. Business and Professions Code § 17200, *et seq.*) As with other claims, Defendant
26 vigorously disagreed that it engaged in any conduct giving rise to liability or entitlement to recovery
27 of penalties or equitable relief. (*Ibid.*)

1 Defendant argued that waiting time penalties are not appropriate because it attempted to pay
2 employees all final wages owed in good faith upon their separation, thereby precluding a finding of
3 willfulness necessary to obtain waiting time penalties. (Cullen Decl. ¶ 76.) Moreover, Defendant
4 maintained that no waiting time penalties were recoverable from alleged meal or rest period
5 violations. (*Ibid.*) Defendant also raised that waiting-time penalties aren't appropriate for employees
6 whose employment terminated prior to the *Ferra* decision in 2021, because the prevailing view pre-
7 *Ferra* was that the law did not require "regular rate" premium payments for missed meal periods
8 and rest breaks. Likewise, Defendant argued that payment of waiting-time penalties is not
9 appropriate here because such penalties for missed meal breaks and rest periods was not clearly
10 established law until the May 2022 California Supreme Court decision in *Naranjo v. Spectrum*
11 *Security Services, Inc.*, (2022) 15 Cal. 5th 93. Finally, Defendant argued that adequate remedies at
12 law exist to render the action unsuitable for equitable remedies, and again contended that the
13 allegations underlying the unfair competition claim lacked merit. (*Ibid.*)

14 The parties concluded that 1002 class members constitute "former employees" although
15 many of those individuals were terminated during the pandemic and subsequently re-hired by
16 Defendant. **Class Counsel calculated the maximum value of the waiting time claim to be**
17 **\$3,939,026.** (Cullen Decl. ¶ 77.) However, to account for uncertainty of proving the underlying
18 claims, Class Counsel made a realistic allowance with the agreed upon settlement figure. (*Ibid.*)

19 **PAGA Penalties**

20 The success of Plaintiff's PAGA claim is wholly dependent upon the success of her
21 underlying claims occurring within the one-year statute of limitations applicable to the PAGA.
22 (Cullen Decl. ¶ 79.) Defendant maintains it had legally compliant employment policies and practices
23 throughout the statutory period. (*Ibid.*) Defendant denied and continues to deny that it ever violated
24 any provision of the California Labor Code and argued that, even assuming such violations occurred,
25 Defendant will not be treated as having engaged in subsequent violations giving rise to heightened
26 penalties. (*Ibid.*) In other words, Defendant argued that heightened civil penalties for subsequent
27 violations would not be assessed unless it could be shown that Defendant had notice that it was
28 violating the laws, *e.g.*, it had been cited by a labor agency or adjudged by a court to have done so.

1 (*Ibid.*; *see, e.g., Amaral v. Cintas Corp.* (2008) 163 Cal.4th 1157, 1209.) Thus, Defendant asserts
2 that, at best, even if a violation giving rise to a penalty was shown for each pay period, only the
3 lower civil penalty associated with initial violations would apply. (*Ibid.*)

4 Moreover, Defendant asserted that, before a PAGA claim could be tried, under existing law,
5 the court of law would have to be satisfied that the adjudication of the PAGA claim, based on a
6 theory of uniform wage and hour practices relating to a large group of aggrieved employees, is
7 sufficiently “manageable” so as not to interfere with Defendant’s right to due process. (Cullen Decl.
8 ¶ 80.) Defendant reiterated how hourly employees’ job duties and work hours varied. (*Ibid.*)
9 Defendant contended that there was variation as to the compensation plans and the reasons behind
10 an employee being deprived of the opportunity to take legally compliant, duty-free meal and/or rest
11 periods. (*Ibid.*) Defendant further opined that these issues presented challenges not only to liability
12 but also challenges to Plaintiff’s ability to show that a PAGA claim could be efficiently and
13 manageably adjudicated without abridging Defendant’s due process rights. (*Ibid.*)

14 Finally, Defendant maintained that the Court has discretion to reduce any award of PAGA
15 penalties where it views them as duplicative. (*See* Labor Code § 2699e(2) [the Court may “award a
16 lesser amount than the maximum civil penalty amount [authorized by PAGA] if, based on the facts
17 and circumstances of the particular case, to do otherwise would result in an award that is unjust,
18 arbitrary and oppressive, or confiscatory.”]; Cullen Decl. ¶ 81.)

19 Although, strictly speaking, class certification requirements are not required to be satisfied
20 in order to adjudicate a PAGA claim, the state of the law with respect to the adjudication and
21 valuation of a PAGA claim remains uncertain.¹⁹ (Cullen Decl. ¶ 82.) Thus, Class Counsel applied

22 ¹⁹ Instead, what is clear is that the purpose of the PAGA is not to generate revenue for the State but
23 rather to facilitate the enforcement of the labor laws. (*Ibid.*; *see, e.g., Williams v. Superior Court*
24 (2017) 3 Cal.5th 531, 546; *Augustus v. Superior Court* (2009) 46 Cal.4th 969, 986; Labor Code §
25 2699(i).) In assessing the adequacy of the recovery under a PAGA claim, the focus is not the amount
26 which the LWDA and the aggrieved employees are to receive formally in the form of monetary civil
27 penalties but instead whether the total settlement amount achieves the PAGA’s objectives. “When
28 PAGA claims are settled, courts “consider whether the proposed PAGA settlement is fair and
adequate in view of the purposes and policies of the statute[]” and “[t]hose purposes and policies
include benefit[ing] the public by augmenting the state’s enforcement capabilities, encouraging
compliance with California Labor Code provisions, and deterring noncompliance.” (*O’Connor v.*
Uber Techs., Inc. (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1132-33 and 1135.) A “[c]ourt does not
review the PAGA allocation in isolation, but rather reviews the settlement as a whole, to determine

1 discounts for the risks in establishing manageability and possible bifurcation of discovery and/or
2 trial, the risks regarding success on the merits and establishing liability, and the risks with proving
3 the extent of penalties that are warranted and possible discretionary reduction of penalties by the
4 Court. (*Ibid.*)

5 Using the “initial” \$100 per pay period violation and the \$200 subsequent per violation rate
6 to calculate PAGA exposure, **Plaintiffs determined the maximum PAGA penalty exposure to be**
7 **\$3,078,700 – of which, by statute, only 25%, or \$769,675 – would be recoverable by aggrieved**
8 **employees.** (Cullen Decl. ¶ 83.)

9 **Summary**

10 After Class Counsel calculated the realistic possible recovery to Class Members for each of
11 the above claims, **the aggregate estimated maximum dollar amount result is \$8,997,323 in**
12 **realistic total damages and penalties.**²⁰ (Cullen Decl. ¶ 85.) **Of that total estimated maximum**
13 **value, \$6,708,701 — or 75% of the total amount — is attributed to civil penalties** under statutes
14 that, generally, give the Court discretion as to whether or not to award those penalties and, if so, in
15 what (if any) amount. (*Ibid.*)

16 Thus, the proposed settlement amount to Class Members of **\$1,950,0000 represents**
17 **approximately 22% of Plaintiffs’ estimated potential total maximum recovery for Class**
18 **Members including 100% of all civil penalties and 85% of the potential total maximum**
19 **recovery for the unpaid wages, and meal and rest period violations excluding civil penalties,**

20 while avoiding the further expense and serious risk of proceeding toward class certification and trial.
21 (Cullen Decl. ¶ 86.) “The fact that a proposed settlement may only amount to a fraction of the
22 potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate
23 and should be disapproved.” (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234,

24
25 whether it is fundamentally fair, reasonable and adequate, with primary consideration for the
26 interests of absent class members.” (LWDA’s Comments on Proposed PAGA Settlement in
27 *O’Connor v. Uber Techns.* (N.D. Cal. July 29, 2016) No. 13-CV-03826-EMC, Docket No. 736, at
28 4:17-19.) “PAGA penalties must be evaluated in terms of their public policy objective and not just
through the prism of what private relief has been sought or obtained.” (*Id.* at p. 4:14-16.)

²⁰ To wit, \$160,910 (unpaid wages) + \$2,127,712 (meal and rest violations) + \$2,000,000 (226
penalties) + \$3,939,026 (203 penalties) + \$769,675 (25% of PAGA penalties) = \$8,997,323.

1242 [internal quotations omitted]; *see, e.g., Altamirano v. Shaw Industries, Inc.* (N.D. Cal. 2015) 2015 WL 4512372, at *9 [preliminarily approving wage and hour class action settlement stating, “[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff’s claims.”].) Taking into account the risk of non-certification, failure to prevail on the merits, and the Court’s power to reduce the civil penalties, the proposed settlement falls within the realm of being fair, reasonable, and adequate. “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 [internal quotations omitted]; *see, e.g., Altamirano v. Shaw Industries, Inc.* (N.D. Cal. 2015) 2015 WL 4512372, at *9 [preliminarily approving wage and hour class action settlement stating, “[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff’s claims.”].) Taking into account the risk of non-certification, failure to prevail on the merits, and the Court’s power to reduce the civil penalties, the proposed settlement falls within the realm of being fair, reasonable, and adequate. (Cullen Decl. ¶ 86.)

VII. PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS

This Court should order distribution of the proposed “Court Approved Notice of Class Action Settlement And Hearing For Final Court Approval”— which is the LASC form Class Notice with minor modifications and is attached as **Exhibit A** to the Settlement Agreement (**EXHIBIT 1** to the Cullen Declaration)—to Class Members and Aggrieved Employees by first class mail, postage prepaid, using the last known mailing address information provided by Defendant. (Cullen Decl. ¶ 99.) Here, Plaintiff proposes that the settlement be administered by CPT Group, Inc. (“CPT”), an experienced class action settlement administrator. (Settlement Agreement ¶¶ 1.230, 7.1-7.4; Cullen Decl. ¶ 102.) Class Members’ addresses will be ascertainable through Defendant’s personnel and payroll records, which Defendant will provide to CPT within fifteen (15) calendar days after preliminary approval of the settlement. (Settlement Agreement ¶ 1.8, 7.4; Cullen Decl. ¶ 102.) To the extent that any notices are returned, CPT will run those addresses through the National Change

1 of Address database and/or conduct skip traces to obtain current address information. (Settlement
2 Agreement ¶ 7.4(c); Cullen Decl. ¶ 102.)

3 The content of the proposed Class Notice satisfies California Rules of Court, Rule 3.766(d)
4 because it advises Class Members of the nature of the claims, basic contentions and denials of the
5 Parties, the key terms of the Settlement Agreement, the uniform 60-day deadline to submit a dispute,
6 opt-out, or object to the class settlement and the procedure by which to do so, and explains the
7 recovery formula and credited number of workweeks and pay periods for each Class Member.
8 (Cullen Decl. ¶ 103.) The proposed Class Notice will also notify Class Members of the final
9 approval hearing date, provide the contact information for Class Counsel, and advise Participating
10 Class Members that they may enter an appearance through counsel if they wish. (*Ibid.*) This manner
11 of giving notice satisfies California Rules of Court, Rule 3.766(e) as the most reliable and cost-
12 effective method of reaching Class Members. Thus, the proposed method of notice is reasonably
13 calculated to reach Class Members by the best means practicable and should be approved. (*Ibid.*)

14 **VIII. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

15 Finally, this Court should set a hearing for final approval of the settlement on a date
16 appropriately scheduled to follow the deadline by which Class Members must file objections to the
17 settlement or opt out. (*See* California Rules of Court, Rule 3.769.)

18 **IX. CONCLUSION**

19 Based upon the foregoing, and because the proposed settlement is fair, reasonable, and
20 advantageous to the Class Members, Plaintiffs respectfully request that the Court enter an Order:

- 21 1. Preliminarily approving the Settlement Agreement as fair, reasonable, and adequate;
- 22 2. Preliminarily approving the form and content of the Notice of Pendency of Class and
23 Representative Action Settlement, attached as Exhibit A to the Settlement Agreement;
- 24 3. Provisionally certifying the Settlement Agreement's proposed Class comprised of the
25 Class Members identified during the Class Period under Civil Code § 382 for settlement purposes
26 only;
- 27 4. Approving and appointing Plaintiffs David Backhaus, Andrea Merino Lopez, Lusine
28 Nalbandian, Taleena Pelayo, Narciso Chan Sosa and Antonio Leiria as the Class Representatives;

