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

13 GESEL MALDONADO, an individual, on
14 behalf of herself and others similarly situated,

15 Plaintiff,

16 vs.

17 K & R CORPORATION, a California
corporation; and DOES 1 through 50,
18 inclusive,

19 Defendants.

Case No.: 20STCV27934

CLASS ACTION

Assigned for All Purposes To:
Hon. Elihu M. Berle
Dept. 6, Spring Street Courthouse

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE**

*[Filed concurrently with Notice of Motion and
Unopposed Motion; the Declarations of David
Yeremian, Alvin Lindsay, Walter Haines, and
Gesel Maldonado; and [Proposed] Order]*

Date: December 20, 2021
Time: 8:30 a.m.
Location: Department 6

Complaint Filed: July 21, 2019
First Amended Complaint: September 23, 2020
Trial Date: None Set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff Gesel Maldonado (“Plaintiff”), on behalf of herself and others similarly situated
3 and employed by Defendant K&R CORPORATION (“Defendant”) (collectively, “the parties”),
4 without opposition from Defendant, respectfully requests preliminary approval of the parties’ Joint
5 Stipulation of Class Action Settlement and Release of Claims (“Settlement” or “Settlement
6 Agreement”) pursuant to California Code of Civil Procedure § 382 and Rule 3.769 of the
7 California Rule of Court.

8 **1. INTRODUCTION**

9 This is a class and PAGA action against K&R Corporation, which is a restaurant
10 franchisee with locations in the Los Angeles area, and Plaintiff and the Class members and the
11 other aggrieved employees worked for Defendant as crew members. (See Declaration of David
12 Yeremian in support of Motion for Preliminary Approval (“Yeremian Decl.”), ¶ 10). On July 21,
13 2020, Plaintiff filed her putative Class Action Complaint against Defendant, and the operative
14 First Amended Complaint entered September 23, 2020 alleges the following eleven causes of
15 action against Defendant: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and
16 Overtime Under Labor Code § 510; (3) Failure to Keep Required Payroll Records Under Labor
17 Code §§ 1174 and 1174.5; (4) Meal Period Liability Under Labor Code § 226.7; (5) Rest-Break
18 Liability Under Labor Code § 226.7; (6) Violation of Labor Code § 226(a); (7) Violation of Labor
19 Code § 203; (8) Failure to Reimburse Necessary Business Expenditures Under Labor Code §
20 2802; (9) Violation of Business & Professions Code § 17200 *et seq.*; and (10) Penalties Under
21 Labor Code § 2698, *et seq.* (Yeremian Decl., ¶ 11).

22 Class counsel provides further detail of the procedure and background that has led to the
23 present settlement. (Yeremian Decl., ¶ 10-14). Without opposition from Defendant, Plaintiff
24 requests that the Court grant preliminary approval of the parties’ Settlement Agreement, at
25 **Exhibit A** to the concurrently filed Yeremian Declaration, and the Class Notice provided at
26 **Exhibit A** to the Settlement. Defendant’s records establish there are approximately **430** Settlement
27 Class members satisfying the following Class definition: “(a) all persons who, during the Class
28 Period, have previously been or currently are employed in California by Defendant, as an hourly-

1 paid, non-exempt employee and (b) all persons who between April 1, 2021 and October 22, 2021,
2 have previously been or currently are employed in California by Piazza Management Corporation,
3 as an hourly-paid, non-exempt employee and who between July 21, 2016, and March 31, 2021,
4 were employed in California by Defendant, as an hourly-paid, non-exempt employee.”
5 “Participating Class Member” is defined as all Class Members who have not submitted a
6 complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions
7 provided. The Settlement further defines a PAGA Group and PAGA Period. (Yeremian Decl., ¶ 9,
8 10, 25, 30, 39; Exhibit A thereto, Settlement, ¶¶ 3-4, 7-10).

9 The parties agreed to schedule a mediation, and after engaging in substantial investigation
10 and extensive negotiations with the assistance of a respected third-party neutral, Steven J.
11 Rottman, Esq., the parties reached an agreement on the general terms for settling Plaintiff’s class-
12 wide and PAGA claims against Defendant. The parties entered into a Memorandum of
13 Understanding detailing the general terms of their proposed Settlement. (Yeremian Decl., ¶¶ 12-
14 14, Exhibit A, Settlement, ¶¶ 32-37). The terms of the Settlement were then memorialized in the
15 Settlement Agreement now before the Court for preliminary approval. (*Id.*).

16 The agreed upon non-reversionary “Maximum Settlement Amount” is **\$500,000.00**,
17 inclusive of all fees and costs. (Yeremian Decl., ¶ 33). All **430** Class Members will automatically
18 receive a settlement share unless they opt out and will divide, on a *pro-rata* basis, a Net Settlement
19 Amount of approximately **\$271,333.00**, if all allocations are approved. The estimated average
20 gross individual settlement payment to the Class members, using a straight average, is **\$631.00**.
21 (Yeremian Decl., ¶¶ 39, 75). The Maximum Settlement Amount of \$500,000.00 therefore
22 represents a recovery for the Class members of approximately **16.32%** of the total maximum
23 liability exposure Plaintiff estimated Defendant could face on the class claims. (*Id.* at ¶¶ 76).

24 The proposed Settlement is fair, reasonable, and adequate, and in the best interests of the
25 Class. Plaintiff, with the consent of Defendant, respectfully requests that this Court issue an Order
26 in the form provided herewith: (1) preliminarily approving the proposed class-wide settlement of
27 this action; (2) approving the form and method for providing class-wide notice; (3) directing that
28 notice of the proposed settlement be given to the class; (4) appointing Plaintiff Gesel Maldonado

as Class Representative for settlement purposes only; (5) appointing David Yeremian and Alvin B. Lindsay of David Yeremian & Associates, Inc. and Walter Haines of United Employees Law Group as Class Counsel for settlement purposes only; and (6) scheduling a hearing date for Final Approval of the Settlement and Plaintiff's Application for attorneys' fees and costs.

2. FACTUAL BACKGROUND, DISCOVERY, AND MEDIATION

A. Plaintiff's Claims and Defendant's Denials

Plaintiff's operative First Amended Complaint alleges, *inter alia*, that she was generally scheduled to work varying shifts from Monday to Friday for generally 6 to 10 hours per shift and usually in the range of 30-40 hours per week. The operative Complaint alleges that Defendant recorded the time Class Members worked through an electronic time keeping machine that required a finger print and an employee ID number to access. This process on average took anywhere from thirty seconds to one minute, and would take longer depending on the number of employees who were in line waiting to clock in. To the extent timekeeping entries were added through the POS system or otherwise, the act of clocking in and out so many times during a work shift and the delays inherent to it resulted in several minutes of off the clock work per shift. In addition to asserting the other time when employees were working before and after their work periods or during their breaks, Plaintiff has also alleged this waiting time resulted in off the clock work which was not properly compensated and the underpayment of wages to the Class members. (Yeremian Decl., ¶ 17).

Plaintiff's operative First Amended Complaint has also alleged that Defendant underpaid her overtime. Plaintiff also contends Defendant's management would move the hours worked over eight on a shift to another day when she worked less than eight hours to avoid paying overtime for the shift. After review of produced payroll registers and timekeeping records for Plaintiff and the Class members, Plaintiff further argued at mediation various alleged facial violations as to wages and breaks, including for alleged underpaid hours worked and late or otherwise shortened meal and rest breaks. Plaintiff has also argued that management policy required clock entries for rest periods, and those produced evidence of significant numbers of late or shortened breaks, or missed breaks. (Yeremian Decl., ¶¶ 39, 75; *see also* ¶¶ 16-22, 51-76 for further summary of claims).

Defendant denies all of Plaintiff's Class and PAGA claims, and contends, among other things, it has complied at all times with all applicable laws and asserted that the Settlement Class Members were properly compensated for all time worked and were otherwise treated at all times in compliance with all applicable laws. (Yeremian Decl., ¶¶ 21-22; Exhibit A, Settlement, ¶ 33).

After extensive investigation and discovery, including exchange of comprehensive informal discovery and analysis of relevant documents and data, Class Counsel believed that this case was appropriate for resolution *via* mediation. Given the high level of risk present for both sides, and the substantial uncertainty and expense of protracted litigation, the parties elected to mediate Plaintiff's claims and explore settlement, which they achieved. (Yeremian Decl., ¶¶ 12-13, 23-32; Exhibit A, Settlement, ¶¶ 32-37).

B. Investigation and Discovery

Before filing, Class Counsel investigated and researched the circumstances and facts underlying the pertinent issues and the law applicable thereto. (Yeremian Decl., ¶¶ 12-13, 23-32, 51-72; Exhibit A, Settlement, ¶¶ 32-37). This required thorough discussions and interviews between Class Counsel and Plaintiff, in addition to the above described research into the various legal issues involved in the case. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including: (1) conducting formal and informal discovery and meeting and conferring with defense counsel about same; (2) reviewing and analyzing time and pay records as well as employment related policies; (3) Plaintiff's personnel file and other documentation; (4) interviewing Plaintiff and potential Class members; (5) researching the applicable law and potential defenses; (6) constructing damage models based on interpretations of California law; and (7) reviewing information provided by Defendant in response to discovery and in advance of the mediation. (Yeremian Decl., ¶¶ 23-31, 96-108; Exhibit A, Settlement, ¶ 35).

Upon agreeing to schedule mediation, and leading up to their agreement, the parties conducted discovery regarding the claims and defenses and the items Plaintiff believed were required to file a motion for class certification and complete a constructive and meaningful mediation. (Yeremian Decl., ¶¶ 12-14, 23-30). In addition to the documents and data produced in formal discovery, Plaintiff provided a comprehensive listing of data and items required to which

1 Defendant responded, including by producing all relevant policy related documents and
2 timekeeping and payroll documents. (*Id.*). Plaintiff's counsel and Defendant's counsel also
3 exchanged class-wide data and numbers, including the total numbers of Class members, work
4 weeks, pay periods, average wage rates, etc., and Plaintiff's expert reviewed the documents and
5 data and provided summaries and recommendations to Class Counsel. (*Id.* at a ¶ 28-30). After
6 conducting the initial investigation, Class Counsel determined Plaintiff's claims were suited for
7 class action adjudication based on what they believed was a common course of conduct affecting
8 similarly situated employees. (*Id.* at ¶¶ 23, 32, 79, 103-104; Exhibit A, Settlement, ¶¶ 32-37).

9 **C. Mediation and Settlement Efforts**

10 On **August 23, 2021**, the parties completed their mediation with Steven J. Rottman, Esq.,
11 and with his assistance entered into a Memorandum of Understanding detailing the general terms
12 of their proposed Settlement. (Yeremian Decl., ¶¶ 2, 14, 31; Exhibit A, Settlement, ¶¶ 34-36). Mr.
13 Rottman is a respected and highly experienced mediator in wage and hour class actions. The
14 mediation took place only after the parties exchanged extensive informal information, documents,
15 and data. During the mediation, the parties discussed all aspects of the case, including the risks of
16 litigation and the risks to both parties of proceeding with a motion for class certification as well as
17 the law relating to meal periods and rest breaks and off the clock work. (Yeremian Decl., ¶¶ 12-14,
18 32, 77-80, 86). Upon completion of the mediation and formulating the general details of their
19 class-wide settlement, the parties agreed to a Memorandum of Understanding setting forth the
20 material terms of their Settlement, which were later memorialized in the Settlement Agreement
21 now before the Court for preliminary approval. (*Id.* at ¶¶ 2, 14, 31).

22 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks
23 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Counsel
24 believes that the recovery for each Class Member is fair and reasonable taking into consideration
25 the amounts received in other wage and hour class actions, the risks inherent in litigation of this
26 genre, and the reasonable tailoring of each Class Member's claim to the settlement award he or she
27 will receive. (Yeremian Decl., ¶ 32). Based on the settlement negotiations, which were extensive
28 and conducted in good faith and at arm's length between attorneys with substantial experience

litigating wage and hour cases, the Settlement was the product of a non-collusive settlement process and compromises in the interest of reaching a full and complete settlement. (Yeremian Decl., ¶¶ 12-14, 23-30; Exhibit A, Settlement, ¶¶ 35-38).

3. THE PROPOSED SETTLEMENT, TERMS, AND NOTICE

Defendant has agreed to pay a Maximum Settlement Amount of **\$500,000.00** on a non-reversionary basis to settle and release all claims asserted by Plaintiff and the Class. (Yeremian Decl., ¶ 33; Exhibit A, Settlement, ¶ 24). The Settlement Agreement defines the “Class” as: “(a) all persons who, during the Class Period, have previously been or currently are employed in California by Defendant, as an hourly-paid, non-exempt employee and (b) all persons who between April 1, 2021, and October 22, 2021, have previously been or currently are employed in California by Piazza Management Corporation, as an hourly-paid, non-exempt employee and who between July 21, 2016, and March 31, 2021, were employed in California by Defendant, as an hourly-paid, non-exempt employee.” Participating Class Members are those who do not opt-out, and persons currently employed in California by Piazza Management Corporation who were not previously employed by Defendant are excluded from the Class. (Yeremian Decl., ¶ 35; Exhibit A, Settlement, ¶¶ 3-4).

Defendant’s records establish approximately **430** Settlement Class Members. (Yeremian Decl., ¶¶ 10, 25, 30, 39, 75, 97-98). The Settlement also defines the PAGA Group and the PAGA Period and the PAGA Payment Share that aggrieved employees will receive. (Yeremian Decl., ¶¶ 36, 38; Exhibit A, Settlement, ¶¶ 8-9, 23, 58 and 58(a)-(c)). Each Class Member who fails to opt out will be a Participating Class Member entitled provisionally to a Settlement Share of the Net Settlement Amount, which the Settlement Administrator will calculate based on a fixed proportional amount per workweek. (Yeremian Decl., ¶ 10; Exhibit A, Settlement, ¶¶ 22, 57 and 57(a)-(c)). Similarly the “PAGA Payment Share” is the value of each PAGA Group Member’s share of the PAGA Payment (25% of \$28,000 PAGA Payment, i.e. \$7,000), and the Administrator will calculate the PAGA Payment Shares for each PAGA Group Member based on their pay periods worked during the PAGA Period (i.e. July 21, 2019 through October 22, 2021). (Yeremian Decl., ¶ 10; Exhibit A, Settlement, ¶¶ 8, 9, 23, 58 and 58(a)-(c)).

1 The “Net Settlement Amount” is the Maximum Settlement Amount, less (i) the Class
2 Representative Payment (up to \$10,000) (ii) the Class Counsel Fees Payment (up to \$166,667);
3 (iii) the Class Counsel Litigation Expenses Payment documented by Class Counsel (up to
4 \$15,000); (iv) the LWDA Payment approved by the Court (i.e. \$21,000, which is 75% of \$28,000);
5 (v) the PAGA Payment (i.e. \$7,000, which is 25% of \$28,000); (vi) the Settlement Administrator
6 Payment (\$9,000); and (vii) any other fees or expenses incurred in implementing the terms and
7 conditions of this Agreement as approved by the Court. (Yeremian Decl., ¶ 34; Exhibit A,
8 Settlement, ¶ 26).

9 If the Court approves all requested allocations and awards above, the Net Settlement
10 Amount is estimated to be **\$271,333.00**. For the approximately **430** estimated Class Members (if
11 no exclusions), the average gross individual settlement payment share, using a straight average, is
12 **\$631.00**. Any amounts not approved by the Court as a Class Representative Payment, or Class
13 Counsel Fees and Costs, or Settlement Administration costs or for the PAGA claim will be added
14 back to Net Settlement Amount to be distributed to the Settlement Class Members who are Class
15 participants. The parties have selected Phoenix Class Action Administrators as the Settlement
16 Administrator. (Yeremian Decl., ¶ 39; Exhibit A, Settlement, ¶¶ 12, 63; see also Exhibit A thereto,
17 Class Notice).

18 For the Settlement Shares paid in exchange for the Participating Class Member Released
19 Claims, twenty percent (20%) of each Settlement Share will represent unpaid wages and the
20 remaining eighty percent (80%) of each Settlement Share will represent penalties and interest.
21 (Yeremian Decl., ¶ 42; Exhibit A, Settlement, ¶¶ 59-60).

22 The Effective Date of the Agreement and the releases is defined as follows: “(i) if no Class
23 Member both objects and files either a timely motion to intervene and/or timely motion to vacate
24 the judgment, then the date the Court enters an order granting Final Approval of the Settlement;
25 ...”, and the Settlement Agreement provides the further details in the event there are objectors or
26 an appeal. (Yeremian Decl., ¶ 43; Exhibit A, Settlement, ¶ 28).

27 Checks issued to Settlement Class Members pursuant to the Settlement Agreement will
28 remain negotiable for 180 days. After the Administrator attempts a skip trace as needed, the funds

1 represented by Settlement Share and/or PAGA Payment Share checks remaining uncashed for
2 more than 180 calendar days after issuance will be voided and transmitted to the Controller of the
3 State of California to be held pursuant to the Unclaimed Property Law, California Civil Code
4 Section 1500, *et seq.*, in the names of those Participating Class Members and/or PAGA Group
5 Members who did not cash their checks until such time they claim their property. (Yeremian Decl.,
6 ¶¶ 44-45, Exhibit A, Settlement, ¶¶ 53-54).

7 As of the date of the Judgment, each Participating Class Member will release the Released
8 Parties from all causes of action and claims that were alleged in the Action or reasonably could
9 have been alleged based on the facts and legal theories contained in the Action, including all of the
10 claims articulated in the Settlement and detailed in the Class Notice. (Yeremian Decl., ¶ 46;
11 Exhibit A, Settlement, ¶ 64). Similarly, as of the date of the Judgment, each PAGA Group
12 Member, and without the need to manually sign a release document, will release the Released
13 Parties and the State of California for claims for civil penalties pursuant to PAGA based upon all
14 causes of action and claims that were alleged in the Action or reasonably could have been alleged
15 based on the facts and legal theories contained in the Action and/or the LWDA Exhaustion Letter,
16 including all the claims articulated in the Settlement Agreement. (Yeremian Decl., ¶ 47; Exhibit A,
17 Settlement, ¶ 65).

18 The parties have selected Phoenix Class Action Administrators as the Settlement
19 Administrator. (Yeremian Decl., ¶ 39, 25, 81, Exhibit A, Settlement, ¶¶ 12, 63; *see also* Exhibit A
20 thereto, Class Notice). The Settlement Agreement budgets up to \$9,000.00 for Administration
21 costs. (*Id.*). Notice of the Settlement will be provided by the Administrator to the Settlement Class
22 in the form of the Class Notice attached to the Settlement as Exhibit A. (Yeremian Decl., ¶ 43;
23 Exhibit A, ¶ 47; and Settlement Class Notice at Exhibit A thereto). The Class Notice includes a
24 summary of the case and settlement terms and provides Class Members with instructions on how
25 to exclude themselves, dispute their workweeks, and object to the settlement, and addresses the
26 deadlines and procedures for doing so. (Yeremian Decl., ¶¶ 48-50; Exhibit A, Settlement, ¶¶ 27,
27 43, 44, 44(b), 44(c)-(d), 44(g), 46; and Exhibit A thereto, Class Notice).

1 **4. THE THREE-STEP APPROVAL PROCESS**

2 California Rule of Court 3.769 requires court approval of the settlement of class action
3 lawsuits. Preliminary approval is merely the first of three steps that comprise the approval
4 procedure for settlements of class actions. *See* Manual for Complex Litigation, Second §30.44
5 (1993); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The second approval step is
6 dissemination of notice of the settlement to all Class Members. *Id.* The third step is a final
7 settlement approval hearing, at which evidence and argument concerning the fairness, adequacy,
8 and reasonableness of the settlement may be presented and Class Members may be heard. *Id.*

9 The determinations of whether a settlement should be preliminarily approved requires,
10 “basic information about the nature and magnitude of the claims in question and the basis for
11 concluding that the consideration being paid for the release of those claims represents a reasonable
12 compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 133 (2008). However, the
13 record need not contain an explicit statement of the maximum theoretical amount that the class
14 could recover. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399,
15 409 (2010) (“*Kullar* does not,... require any such explicit statement of value; it requires a record
16 which allows “an understanding of the amount that is in controversy and the realistic range of
17 outcomes of the litigation.”). Nonetheless, Class Counsel with the assistance of Plaintiff’s expert
18 performed a potential liability exposure analysis in advance of mediation, which the parties
19 addressed in detail with the mediator. (Yeremian Decl., ¶¶ 12-14, 23-32, 51-72, 96-108;
20 Exhibit A, Settlement, ¶¶ 32-37). “If the proposed settlement appears to be the product of serious,
21 informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant
22 preferential treatment to class representatives or segments of the class, and falls within the range
23 of possible approval, then the court should direct that notice be given to the class members of a
24 formal fairness hearing, at which evidence may be presented in support of and in opposition to the
25 settlement.” Manual for Complex Litigation, Second § 30.44, at 229.

26 In deciding whether to approve a proposed class action settlement, the Court must find that
27 a proposed settlement is “fair, adequate, and reasonable” and falls within the “range of approval.”
28 *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as “the

1 strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
2 the risk of maintaining class action status through trial, the amount offered in settlement, the
3 extent of discovery completed and the stage of the proceedings, the experience and views of
4 counsel, the presence of a governmental participant, and the reaction of the class members to the
5 proposed settlement." *Id.* The instant settlement satisfies all of these requirements.

6 **5. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR APPROVAL**

7 The Court's decision to preliminarily approve a settlement is granted great deference, as an
8 exercise within its broad discretion. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-
9 235 (2001). Applying the above factors, the proposed settlement provides a substantial benefit to
10 the Class. It is fair, reasonable, and adequate, and should be preliminarily approved.

11 **A. The Settlement Is the Result of Serious, Informed, Non-Collusive Negotiations**

12 The proposed settlement was reached as a result of arm's length negotiations after the
13 completion of substantial discovery and the exchange of necessary class data. (Yeremian Decl., ¶¶
14 2, 12-14, 23-32, 51-72, 96-108; Exhibit A, Settlement, ¶¶ 34-36). The negotiations have been, at
15 all times, adversarial and non-collusive in nature. *See*, 4 Newberg on Class Actions § 13:45 (5th
16 ed.) (due to the preference of settlement over litigation, "a court will presume that a proposed class
17 action settlement is fair when certain factors are present, particularly evidence that the settlement
18 is the product of arms-length negotiation, untainted by collusion."). While Plaintiff believes in the
19 merits of her case, she and counsel also recognized the inherent risks of litigation and understood
20 the benefit of the Settlement Class receiving funds immediately, as opposed to risking an
21 unfavorable decision on class certification, or then at trial and appeal, that would take several
22 more years to litigate. (Yeremian Decl., ¶¶ 12-14, 23-30; 32; 77-80, 86; Exhibit A, Settlement, ¶¶
23 32-37). Assistance from a well-respected mediator ensured negotiations were non-collusive and
24 well-informed.

25 **B. The Parties Engaged In Extensive Discovery and Investigation**

26 As discussed above, the parties engaged in substantial informal discovery before the
27 Settlement was reached to allow them to fully evaluate the class claims and Defendant's defenses.
28 (Yeremian Decl., ¶¶ 12-14, 23-32, 51-72, 96-108; Exhibit A, Settlement, ¶¶ 32-37). This litigation

has reached the stage where the parties have a clear view of the strengths and weaknesses of their cases sufficient to support the settlement.

C. Class Counsel Are Experienced Class Action and Employment Attorneys

Experienced counsel, operating at arm's length, have weighed the strengths of the case and examined all the issues and risks of litigation and endorse the proposed settlement. Class Counsel are experienced in class actions, have represented their clients zealously, and have no conflicts of interest. (Yeremian Decl., ¶¶ 3-9, 88, 101; Declaration of Alvin Lindsay ("Lindsay Decl.") filed concurrently herewith, ¶¶ 3-12). Class counsel submits the Settlement is fair, adequate and reasonable in view of the risks and other considerations addressed, and is well-suited for final approval upon completion of the administration process. (Yeremian Decl., ¶¶ 2, 9, 14, 23, 31-32, 48; Exhibit A, Settlement, ¶¶ 36-37, 73, 87; Lindsay Decl., ¶ 12; see also Declaration of Walter L. Haines filed herewith ("Haines Decl."), ¶ 2).

D. The Presence of a Governmental Participant

Class Counsel will be submitting the Settlement Agreement to the LWDA concurrently with the filing of this motion pursuant to Labor Code § 2699(1)(2). (Yeremian Decl., ¶ 15).

E. The Strength of Plaintiff's Case and the Risks and Cost of Further Litigation.

As with all litigation, there was risk that Plaintiff would not prevail on the merits of her class claims. (Yeremian Decl., ¶¶ 12-14, 23-30; 32; 51-72, 77-80, 86; Exhibit A, Settlement, ¶¶ 32-37). Class counsel has addressed the strengths of each of the main class claims, Defendant's arguments against liability, and the estimated potential liability exposure Defendant faced on each. (Yeremian Decl., ¶¶ 51-72). For example, Plaintiff contends she and the other class members were not properly provided meal and rest periods. (Yeremian Decl., ¶¶ 55-59). Defendant contended that Plaintiff and other class members were provided with the opportunity to take proper meal and rest periods, on-duty breaks were not required, and its policies were lawful. (*Id*; see also, *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1028-29).

Plaintiff also alleged she was not paid for all hours worked, including overtime pay, due to Defendant's policy and practice of requiring off the clock work and unlawful rounding or paying

1 at incorrect rates of pay. (Yeremian Decl., ¶¶ 53-54). Defendant again argued these claims were
2 not suitable for class treatment, they did not require off the clock work, and individualized issues
3 predominated. (*Id.*). If Defendant prevailed, there would be no recovery.

4 There were also risks in proving liability for failure to provide accurate wage statements
5 under Labor Code § 226 and failure to pay all wages at termination under Labor Code § 203.
6 (Yeremian Decl., ¶¶ 61-67). These derivative claims require that the underlying claims be proven
7 first, and there are conflicting interpretations as to whether alleged meal and rest claims can even
8 provide the predicate violations for inaccurate wage statement and waiting time penalties claims.¹

9 Defendant also disputed liability for the underlying wage and meal and rest claims, and
10 penalties under Labor Code § 203 are available only if “an employer willfully fails to pay...any
11 wages of an employee who is discharged or quits...” With these penalties, there is always the risk
12 that the trier of fact will not find Defendant’s actions willful. There was also risk associated with
13 the PAGA claim given the Court’s discretion to award a lesser amount. *See*, Labor Code §
14 2699(e)(2). Plaintiff’s counsel addresses these risks. (Yeremian Decl., ¶¶ 64-71).

15 While Plaintiff believes and continues to believe this is a strong case for certification,
16 there is risk and significant expense associated with class certification proceedings. As set forth
17 above, Defendant disputed liability and the anticipated class certification motion, arguing
18 significant legal uncertainties are associated with wage and hour cases, which can be factually
19 complex and require protracted litigation to resolve. Plaintiff alleges there were company-wide
20 policies that affected the employees uniformly, and which could be established using
21 representative testimony and company documents that would not require separate mini-trials on
22 liability, but Defendant vigorously contested liability and would have presented several
23 significant defenses to the wage claims as well as to class certification. (Yeremian Decl., ¶¶ 2, 12-
24 14, 23-32, 51-72, 96-108; Exhibit A, Settlement, ¶¶ 34-36).

25
26
27 ¹ *See, Stewart v. San Luis Ambulance, Inc.*, 878 F.3d 883, 887 (9th Cir. 2017) (recognizing that the
28 “*Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094 (2007) “Court characterized the
extra hours paid for meal period violations as a ‘premium wage’ rather than a penalty,” but, in
Kirby v. Immoos Fire Protection, Inc., 53 Cal. 4th 1244 1167–68 (2012), “the Court held that a
meal-period violation is not tied to the nonpayment of wages.”).

1 Finally, in class actions, decertification is always a possibility, and there is always a risk
2 that a trial of this magnitude can become unmanageable. (Yeremian Decl., ¶¶ 12-14, 23-30; 32;
3 77-80, 86, 107; Exhibit A, Settlement, ¶¶ 32-37). Cases like *Duran v. U.S. Bank Nat. Assn.*, 59
4 Cal. 4th 1, 34 (2014) address the complexity of using statistical samples in class actions, and
5 decertification is a real risk that Class Counsel must take into account. (*See also*, Yeremian Decl.,
6 ¶ 79). A class trial would have also required expert witnesses, the accrual of extensive litigation
7 costs, and commitment of extensive further time and financial resources. Finally, given the
8 complexity and unsettled nature of the issues, it is likely that any outcome at trial would have
9 resulted in a lengthy and costly appeal. An appeal would result in further delay for the class
10 members who have already waited years for resolution in this matter. (*Id.* at ¶ 80). Risk and legal
11 uncertainty must be dealt with in any litigation, and this Settlement was the product of
12 compromise accounting for those risks and that uncertainty.

13 **F. The Amount Offered in Settlement and Method of Allocation are Fair**

14 In light of the uncertainties and risks of certification and litigation, the parties agreed to a
15 compromise settlement of **\$500,000.00**. Class Counsel estimated **\$3,063,812.92** in potential
16 liability exposure to Defendant for Plaintiff's main claims for damages and penalties, and the
17 Maximum Settlement Amount of **\$500,000.00** therefore represents a recovery for the Class
18 members of approximately **16.32%** of the total estimated maximum liability exposure. (Yeremian
19 Decl., ¶¶ 75-76). Under the Settlement, if the Court approves all requested allocations and
20 awards, the Net Fund Value is estimated to be **\$271,333.00**, if all allocations are approved. For
21 the approximately **430** estimated Settlement Class Members (if no exclusions), the average gross
22 individual settlement payment, using a straight average, is **\$631.00**. (Yeremian Decl., ¶¶ 39, 75).

23 Plaintiff and Class counsel submit this is an excellent result and the Settlement is fair,
24 reasonable, and certainly advantageous to the Class. (Yeremian Decl., ¶¶ 2, 9, 14, 23, 31-32, 48;
25 Exhibit A, Settlement, ¶¶ 36-37, 73, 87; Lindsay Decl., ¶ 12; Haines Decl., ¶ 2). Each Settlement
26 Class Member will be compensated using a formula based on the total number of workweeks
27 during the Class Period or pay periods during the PAGA Period. (Yeremian Decl., ¶¶ 37-42,
28 Exhibit A, Settlement, ¶¶ 8, 9, 12, 22, 23, 57 and 57(a)-(c), 58 and 58(a)-(c), 59-60, 63, 67).

1 Basing the size of the award on Settlement Class Members' work weeks during the Class Period
2 or pay periods during the PAGA period ensures that those with more valuable potential claims
3 receive more money. All Settlement Class Members will enjoy benefits under the same formula,
4 and none are singled out for special treatment, save for Plaintiff's requested representative
5 enhancement payment. (Yeremian Decl., ¶¶ 90-95; *see also* concurrently filed Declaration of
6 Gesel Maldonado ("Maldonado Decl."), ¶¶ 2-18).

7 **G. A Balance of Risk Factors and Kullar Analysis Support Approval**

8 In deciding whether to approve the settlement, the Court must balance these risk factors
9 against an "understanding of the amount in controversy and the realistic range of outcomes of the
10 litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI*
11 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09. The court "must stop
12 short of the detailed and thorough investigation that it would undertake if it were actually trying
13 the case" *Munoz*, at 408. Plaintiff's counsel used the comprehensive data and documents
14 provided to perform an analysis of the potential liability exposure Defendant faced on Plaintiff's
15 main class-wide claims, establishing the realistic upper range of the outcome here. (Yeremian
16 Decl., ¶¶ 12-14, 23-32, 51-72, 96-108; Exhibit A, Settlement, ¶¶ 32-37). As noted above, the
17 Maximum Settlement Amount represents a recovery of approximately **16.32%** of the total
18 maximum liability exposure Plaintiff estimated. (Yeremian Decl., ¶¶ 39, 75-76).

19 The fact remains there was a very real prospect that nothing would be recovered if
20 litigation continued and class certification was ultimately denied. At the same time, further
21 litigation would require the expenditure of significant time and financial resources, and there is
22 always the possibility of adverse developments in the law and the likelihood of extended battles in
23 both the trial court and the courts of appeal. Settlement is a prudent compromise that benefits the
24 Class Members promptly and eliminates such concern.

25 **6. THE NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS**

26 To be deemed proper, a Notice must provide the class members with sufficient information
27 to make an informed decision as to whether to accept or object to the settlement. *Mullane v.*
28 *Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314. The notice must apprise the class

1 members of the pendency of the action; reasonably convey information regarding the settlement
2 and the class members' rights, entitlements, and obligations; and afford class members the
3 opportunity to present their objections. *Id.* The Notice (at Yeremian Decl., Exhibit A, Settlement,
4 Exhibit A thereto) provides all the information a reasonable person would need to make a fully
5 informed decision about the settlement. It will notify all Class members of the terms of the
6 settlement, of its effect on their rights, of their options as Class members (i.e., participate, object,
7 opt out, and dispute work weeks), and of the consequences of and procedures for exercising those
8 options. (Yeremian Decl., ¶¶ 48-50; Exhibit A, Settlement, ¶¶ 27, 43, 44, 44(b), 44(c)-(d), 44(g),
9 46; and Exhibit A thereto, Class Notice).

10 The standard for determining the adequacy of notice is whether it has "a reasonable chance
11 of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50
12 Cal.App.3d 960, 974. Here, the Notice will be sent via first-class mail to each of the 430 Class
13 members at their addresses from Defendant's records. (Yeremian Decl., ¶ 81; Exhibit A,
14 Settlement, ¶¶ 43 and 43(c)). If any Notice Packets are returned undeliverable without a
15 forwarding address, the Claims Administrator will use the national change of address database and
16 perform a skip trace to locate the Class member and mail a new Notice to the correct address.
17 (*Id.*). The Class Notice (at Settlement, Exhibit A) should be approved as the best and most
18 practicable way to ensure the greatest possible number of Class members will receive notice.

19 **7. CLASS REPRESENTATIVE ENHANCEMENT IS FAIR AND REASONABLE**

20 "At the conclusion of a class action, the class representatives are eligible for a special
21 payment in recognition of their service to the class." 5 Newberg on Class Actions § 17:1 (5th ed.).
22 Plaintiff requests a reasonable enhancement payment for her effort and initiative in bringing and
23 helping to prosecute this class action. Plaintiff has dedicated significant time and effort to these
24 proceedings. (Yeremian Decl., ¶¶ 90-95; Maldonado Decl., ¶¶ 2-18). Plaintiff's courage in
25 proceeding with her class-wide claims should not be underestimated. By suing Defendant,
26 Plaintiff contends she increased her risk of retaliation by prospective employers, who must choose
27 between an applicant who has never sued a prior employer and one who has. (Yeremian Decl., ¶
28 92; Maldonado Decl., ¶¶ 14-15). Plaintiff contends this risk is particularly real in the information

age, where employers can perform background checks of prospective employees, sometimes with the stroke of a key. (*Id.*).

Plaintiff has devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation. (Yeremian Decl., ¶¶ 90-95; Maldonado Decl., ¶¶ 2-14). Both before and after filing, Plaintiff conferred with Class Counsel to discuss every aspect of this case. She provided Class Counsel with information about Defendant and the industry, reviewed documents, identified witnesses, consulted Class Counsel throughout the litigation, helped complete discovery and provide responses, and participated in the mediation process and reviewed and signed the settlement agreement after several conferences with Class Counsel. (*Id.*)

Plaintiff has spent a significant amount of time with Class Counsel detailing her knowledge of Defendant's practices. She has diligently, adequately, and fairly represented the Class members, and has not placed her interests above any member of the putative Class. This sort of payment to a Class representative has been a common feature of settlements negotiated by Class Counsel and has been routinely approved by trial courts. The representative enhancement award payment in the amount of **\$10,000.00** to the Class Representative is fair and reasonable. (Yeremian Decl., ¶¶ 90-95; Exhibit A, Settlement, ¶ 15; Maldonado Decl., ¶¶ 2-18).

8. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Class Counsel respectfully requests, without opposition from Defendant, an award of attorneys' fees in an amount not to exceed one-third of the Maximum Settlement Amount (i.e. up to **\$166,667.00**), and for an award of reasonable costs and expenses in an amount not to exceed **\$10,000.00**, subject to approval by the Court. (Yeremian Decl., ¶¶ 85-89; Settlement, ¶¶ 13-14).

Class counsel submits it has the requisite experience, knowledge, and resources to serve as Class counsel and to zealously represent the Class. (Yeremian Decl., ¶¶ 2, 9, 14, 23, 31-32, 48; Lindsay Decl., ¶¶ 3-12; Haines Decl., ¶¶ 2-8). Plaintiff's counsel has incurred substantial fees and costs thus far in the litigation, including approximately \$13,667.36 in litigation costs, and will provide further details regarding hourly rates, lodestar, and hours, and will document expenses incurred, in support of final approval and its fees and costs motion. (Yeremian Decl., ¶¶ 88-89).

1 **9. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

2 Certification is appropriate when the moving party has demonstrated the existence of an
3 ascertainable class and a well-defined community of interest among the class. *See, e.g., Brinker*
4 *Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021. Defendant does not dispute,
5 for settlement purposes only, that all of the elements for class certification are met here. Defendant
6 does not concede that certification is appropriate outside of this Settlement and preserve all rights
7 to oppose certification if, for any reason, the settlement does not become effective. (Yeremian
8 Decl., ¶ 96, Exhibit A, Settlement Agreement, ¶¶ 33, 36, 49-50).

9 **A. There Is A Numerous and Ascertainable Class**

10 Whether a class is ascertainable is determined by examining the class definition, the size of
11 the class and the means available for identifying class members. *See, Vasquez v. Superior Court*
12 (1971) 4 Cal. 3d 800, 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.
13 App. 3d 1263, 1271. Defendant’s records at the time of the mediation reflected approximately **430**
14 total Class members. (Yeremian Decl., ¶ 9, 10, 25, 30, 39; Exhibit A thereto, Settlement, ¶¶ 3-4, 7-
15 10). Defendant does not dispute, for settlement purposes, that at least 430 Class Members are
16 ascertainable and sufficiently numerous. (Yeremian Decl., ¶¶ 97-98).

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

18 A community of interest is established by predominant common issues of law and fact. *See*
19 *Vasquez*, 4 Cal. 3d at 811. It “does not depend upon an identical recovery,...The mere fact that
20 separate transactions are involved does not of itself preclude a finding of the requisite community
21 of interest so long as every member of the alleged class would not be required to litigate numerous
22 and substantial questions to determine his individual right to recover...” *Id.* at 809.

23 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
24 common issues of fact and law predominate as to each of the claims alleged by Plaintiff.
25 (Yeremian Decl., ¶¶ 103-104). California courts show “no hesitancy” in inferring class-wide
26 causation, injury, and damages when a common course of action has been shown. *B.W.I. Custom*
27 *Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1350. This inference ““eliminates
28 the need for each class member to prove individually the consequences of the defendants’ actions

1 to him or her.” *Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d
2 741, 753).

3 This action involves, *inter alia*, a determination about Defendant’s alleged failure to
4 provide meal and rest periods, failure to pay wages and overtime due to allegedly common off the
5 clock work policies, the resulting failure to pay final wages when required, the failure to provide
6 accurate paystubs, and largely derivative claims under the UCL and PAGA. (Yeremian Decl., ¶¶
7 2, 12-14, 23-32, 51-72). Plaintiff contends these practices affected Class members in the same way
8 and present questions that are suitable for common adjudication because all Class members were
9 subject to the same employment policies and practices, which applied uniformly to all Class
10 members. The outcome of litigation on this matter depends upon questions that are common to
11 Class members. (Yeremian Decl., ¶¶ 103-104). While Defendant maintained otherwise, these
12 issues will not be decided on the basis of facts peculiar to each Class member, but rather on facts
13 common to them all, and liability can be determined on a class-wide basis. (*Id.*)

14 **C. The Named Plaintiff’s Claims Are Typical**

15 A class representative’s claims are typical when they arise from the same event, practice,
16 or course of conduct that gives rise to the claims of other putative class members, and if their
17 claims rest on the same legal theories. The class representative’s claims must be “typical” but not
18 necessarily identical to the claims of other class members. It is sufficient that the representative is
19 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
20 *Classen v. Weller* (1983)145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
21 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class
22 representative must have identical interests with the class members.”). Thus, it is not necessary
23 that the class representative should have personally incurred all of the damages suffered by each of
24 the other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

25 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
26 Plaintiff’s claims are typical of class members’ claims because they arose from the same factual
27 basis and are based on the same legal theories. (Yeremian Decl., ¶¶ 99-100).

1 **D. Adequacy of Class Counsel and Class Representatives**

2 Class Counsel are experienced in class actions, have represented their clients zealously and
3 have no conflicts of interest. (Yeremian Decl., ¶¶ 3-9, 88, 101; Lindsay Decl., ¶¶ 3-12; Haines
4 Decl., ¶¶ 2-8). The Class Representative's interests are aligned with those of the Class Members,
5 she has suffered the same injuries, and has no conflicts of interest. (Yeremian Decl., ¶¶ 90-95;
6 Maldonado Decl., ¶¶ 5, 10-11). Class Counsel and the Class Representative are adequate.

7 **E. Predominance and Superiority**

8 Individual issues do not predominate over those common to the class, as addressed above.
9 (Yeremian Decl., ¶¶ 104-105). Additionally, class proceedings are superior to individualized
10 actions, as there is little interest or incentive for Class members to individually control the
11 prosecution of separate actions. If Class members are forced to litigate their claims individually, it
12 would result in 430 individual actions against Defendant, and the cost of individually litigating
13 each such case against Defendant would easily exceed the value of any relief that could be
14 obtained. (Yeremian Decl., ¶¶ 104-107). Class proceedings are superior to individual ones.

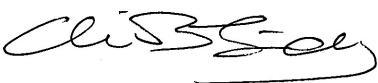
15 **10. CONCLUSION**

16 Plaintiff respectfully requests that this Court grant preliminary approval; provisionally
17 certify the proposed Class for settlement purposes; approve Plaintiff as the Class Representative
18 and her counsel as Class Counsel; approve the proposed form of the Class Notice and plan for
19 administration; and schedule the final settlement approval hearing by entering the concurrently
20 provided [Proposed] Order.

21
22 DATED: November 19, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

23
24 By



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