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

12 MICHAEL MANZO, on behalf of himself,
13 and on behalf of other members of the general
public similarly situated,

14 Plaintiff,

15 v.

16 SOUTHSIDE PIZZA, INC., a California
17 corporation; PRIMA PIZZA, INC., a
18 California corporation; DOMINO'S PIZZA,
LLC, a Michigan limited liability company;
19 DOMINO'S PIZZA FRANCHISING, LLC, a
Delaware limited liability company; and
20 DOES 1 through 100, inclusive,

21 Defendants.
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Case No. 20STCV48870

Assigned for all purposes to:
Hon. Stuart Rice, Dept. 1

CLASS ACTION

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

[Declarations of Jennifer L. Connor and
Michael Manzo and Proposed Order submitted
concurrently herewith]

Preliminary Approval Hearing

Date: November 2, 2023

Time: 10:30 a.m.

Dept. 1 (Spring St.)

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

2 PLEASE TAKE NOTICE that on November 2, 2023 at 10:30 a.m., or as soon thereafter as
3 the matter may be heard before the Honorable Stuart Rice in Department 1 of the above-entitled
4 court located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Michael Manzo
5 (“Plaintiff”), individually, and on behalf of all others similarly situated, will and hereby does, move
6 this Court pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769,
7 subdivision (c), for an order:

- 8 1. Preliminarily certifying the Class for purposes of settlement;
- 9 2. Preliminarily approving Plaintiff Michael Manzo as Class Representative for
10 purposes of settlement;
- 11 3. Preliminarily appointing CounselOne, PC as Class Counsel for purposes of
12 settlement;
- 13 4. Preliminarily approving the settlement as fair, adequate, and reasonable based upon
14 the terms set forth in the Stipulation of Class and Representative Action Settlement (“Settlement
15 Agreement”), including payment by Defendants Southside Pizza, Inc. and Prima Pizza, Inc.
16 (collectively, “Defendants”) of the non-reversionary Gross Settlement Amount of \$1,200,000 for a
17 putative class of approximately 1,451 current and former non-exempt employees who are or were
18 employed by Defendants in California from December 23, 2016 to December 31, 2022;
- 19 5. Preliminarily approving an award of attorneys’ fees to Class Counsel in an amount
20 up to one-third (*i.e.*, \$400,000) of the Gross Settlement Amount, and reimbursement of actual
21 litigation costs, up to \$25,000;
- 22 6. Appointing CPT Group, Inc. as the third-party Settlement Administrator, and
23 approving reimbursement of up to \$25,000 from the Gross Settlement Amount for settlement
24 administration costs;
- 25 7. Approving the proposed Court Approved Notice of Class Action Settlement and
26 Hearing Date for Final Court Approval (“Class Notice”) and ordering that it be distributed to Class
27 Members; and

28 ///

1 8. Scheduling a hearing to consider whether the Settlement should be finally approved
2 and whether the Court should order distribution of the Individual Settlement Payments, Attorneys'
3 Fees and Costs, Settlement Administration Costs, Service Award Payment to Plaintiff, and payment
4 to the California Labor and Workforce Development Agency, as outlined herein.

5 This Motion is based on the attached Memorandum of Points and Authorities, the
6 Declarations of Jennifer L. Connor and Michael Manzo submitted concurrently herewith, along with
7 the exhibits thereto (including the Settlement Agreement and proposed Class Notice), as well as any
8 supplemental filings and exhibits as are required, all evidence and arguments of counsel that may
9 be presented at the hearing, and all additional matters as the Court may consider at the time of
10 hearing. Finally, given the multiplicity of issues addressed in this motion, Plaintiff believes that
11 there is good cause to exceed the 15-page and 20-page limits set forth in California Rules of Court,
12 rule 3.1113, subdivision (d), and rule 3.764, subdivision (c)(2), respectively, and respectfully
13 requests that the Court consider the attached Memorandum of Points and Authorities, which is 33
14 pages in length.

15
16 Dated: August 14, 2023

Respectfully submitted,

COUNSELONE, PC

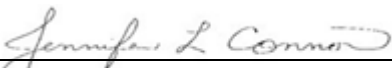
17
18 By: 
19 Jennifer L. Connor
20 Anthony J. Orshansky
21 Attorneys for Plaintiff, Class Members, and
22 Aggrieved Employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Michael Manzo (“Plaintiff” or “Class Representative”), on behalf of himself and on
4 behalf of a putative class of current and former non-exempt employees,¹ seeks preliminary approval
5 of the Stipulation of Class and Representative Action Settlement (“Settlement Agreement” or
6 “Settlement”) entered into with Defendants Southside Pizza, Inc. (“Southside Pizza”) and Prima
7 Pizza, Inc. (“Prima Pizza”; collectively, “Defendants”). The Settlement Agreement between
8 Plaintiff and Defendants (collectively, the “Parties”), if approved, will resolve all claims of Plaintiff
9 and participating Class Members in exchange for Defendants’ agreement to pay a gross settlement
10 amount of ***One Million Two Hundred Thousand Dollars (\$1,200,000)*** into a ***non-reversionary***
11 ***common settlement fund*** that will be made available for distribution to participating Class
12 Members. Based upon information received from Defendants, there are approximately 1,451 Class
13 Members who worked in non-exempt positions in California during the Class Period.²

14 This wage and hour class action alleges that Defendants Southside Pizza and Prima Pizza
15 failed to pay employees all minimum wages; failed to pay overtime wages for all hours worked;
16 failed to provide timely and compliant duty-free meal periods and pay premiums owed thereon;
17 failed to provide timely and compliant duty-free rest breaks and pay premiums owed thereon; failed
18 to maintain and provide accurate itemized wage statements; failed to timely pay wages during
19 employment and final wages owed upon separation; failed to reimburse for business expenses
20 incurred; and, based on the foregoing allegations, engaged in unfair business practices in violation
21 of Business and Professions Code sections 17200, *et seq.*, and violated the Private Attorneys General

22
23 ¹ There are approximately 1,451 Class Members through June 21, 2022. The “Class” or “Class
24 Members” are defined as all individuals who are or previously were employed by one or more
25 Defendants in the State of California who were classified as hourly, non-exempt employees during
the Class Period. (Settlement Agreement ¶ 4.) Further, the “Class Period” is defined as the period
beginning on December 23, 2016 and ending on December 31, 2022. (*Id.* at ¶ 7.)

26 ² Plaintiff expects a modest increase in the class size count from June 22, 2022 through December
31, 2022, which is the close of the Class Period. In the event of any significant variation (*i.e.*
27 exceeding 10% of associated workweeks), however, such is safeguarded by the pro rata increase
escalator clause. (Settlement Agreement ¶ 55.) The precise count will be available after Defendants
28 have culled their records for purposes of distribution of the Class Notice, and the updated figure
provided at final approval.

1 Act of 2004 (Lab. Code, §§ 2698, *et seq.*; “PAGA”). Plaintiff’s lawsuit seeks to recover unpaid
2 wages, premiums for improper meal and rest breaks, reimbursement of business expenses,
3 restitution, damages, liquidated damages, statutory penalties, civil penalties, injunctive and other
4 equitable relief, prejudgment interest, and attorneys’ fees and costs.

5 After engaging in substantial exchange of information, records, and investigation and after
6 a full day mediation with the Honorable Lisa R. Cole (Ret.) of Signature Resolution, a highly
7 experienced mediator in wage and hour class actions, and following months of continued
8 negotiations, the Parties agreed to settle Plaintiff’s and the Settlement Class Members’ claims
9 alleged in the action for *a non-reversionary* sum of ***One Million and Two Hundred Thousand***
10 ***Dollars (\$1,200,000)*** (“Gross Settlement Amount”). After deducting for Court-approved Attorneys’
11 Fees and Costs to Class Counsel, a Service Award payment to the Class Representative, Settlement
12 Administration Costs, and penalties recoverable pursuant to the PAGA, the remaining amount is the
13 Net Settlement Amount (“Net Settlement Amount”) of which an estimated \$622,000 will be
14 distributed to participating Class Members. The entire Net Settlement Amount must be paid out as
15 this is a non-reversionary settlement.

16 The Settlement is fair, reasonable, and adequate, and in the best interests of the Class
17 Members. Consequently, Plaintiff, with the consent of Defendants, hereby moves for an order: (1)
18 conditionally certifying the Class for settlement purposes; (2) granting preliminary approval of the
19 Settlement Agreement; (3) approving the proposed Court Approved Notice of Class Action
20 Settlement and Hearing Date for Final Court Approval (“Class Notice”) to be sent to Class
21 Members; and (4) setting a hearing for final approval of the Settlement.

22 **II. STATUS OF THE LITIGATION**

23 This litigation arises out Plaintiff’s allegations that Defendants Southside Pizza, Inc. and
24 Prima Pizza, Inc. failed to comply with numerous California wage and hour laws and protections
25 applicable to him and other similarly situated non-exempt employees. Founded by Robert Brent
26 Hamill in June 1986 and January 1992 respectively, Defendants Prima Pizza, Inc. and Southside
27 Pizza, Inc. are commonly owned and operated franchisees in the business of selling pizza and other
28 authorized food and beverages at Domino’s Pizza® stores in Los Angeles County, California.

1 Plaintiff Michael Manzo worked as a non-exempt, hourly-paid employee for Southside Pizza from
2 November 2018 to May 2020, at its Manchester Ave., Los Angeles, California store location. (*See*
3 Declaration of Michael Manzo (“Manzo Decl.”), filed concurrently herewith, at ¶ 3.)

4 Plaintiff alleges that Defendants understaffed the pizza stores and exerted pressure on
5 employees to complete unreasonable workloads within scheduled hours thereby resulting in off-the-
6 clock work and non-compliant meal and rest breaks. (Manzo Decl. ¶ 4.) Specifically, Plaintiff
7 alleges that he was not properly paid all minimum and overtime wages because of uncompensated
8 time arising from non-compliant meal and rest breaks, along with off-the-clock tasks during pre-
9 shift, lunch, and post shift hours. Plaintiff alleges that he did not receive all legally compliant meal
10 periods, which were often missed, late, short, and/or subject to work-related interruptions. Rest
11 breaks were non-compliant as, in practice, they depended on workflow and customer demand
12 coupled with understaffing. Problematically, Defendants did not pay meal or rest period premiums
13 on each of the days that Plaintiff received such non-compliant meal and rest breaks. Plaintiff also
14 incurred necessary business expenses (*i.e.*, cell phone use, uniform attire expenditures, and personal
15 vehicle mileage) that were not reimbursed. As a result of these violations, Plaintiff believes that he
16 did not receive accurate and complete itemized wage statements and was not paid all wages owed
17 at the end of his employment. Such alleged non-compliance also gives rise to derivative claims for
18 inaccurate wage statements (including failure to maintain certain time and pay records), untimely
19 wages during employ and upon separation, unfair business practices, along with assessments of
20 statutory and civil penalties, liquidated damages, and restitution. (*See* Manzo Decl. ¶¶ 4-5, 7.)

21 **A. Procedural History**

22 On December 23, 2020, through his attorneys, Plaintiff filed his putative class and
23 representative action complaint against Defendants in the Los Angeles County Superior Court,
24 alleging claims for: (1) failure to pay minimum wages pursuant to Labor Code sections 221, 350,
25 351, 1194, 1194.2, 1197, 1197.1, and Wage Order No. 5-2001; (2) failure to pay overtime pursuant
26 to Labor Code sections 510 and 1198, and Wage Order No. 5-2001; (3) failure to provide meal
27 period premiums in violation of Labor Code sections 226.7, 512, and Wage Order No. 5-2001; (4)
28 failure to provide rest period premiums in violation of Labor Code section 226.7 and Wage Order

No. 5-2001; (5) failure to maintain and provide accurate itemized wage statements in violation of Labor Code sections 226, 226.3, and 1174; (6) failure to pay wages timely during employment and upon termination in violation of Labor Code sections 201-204, and 210; (7) failure to reimburse business expenses in violation of Labor Code sections 2800 and 2802; (8) violations of Business and Professions Code sections 17200, *et seq.*, and (9) violations of the PAGA. (*See* Declaration of Jennifer L. Connor (“Connor Decl.”), filed concurrently herewith, at ¶¶ 27-28.)

In advance of filing the operative Complaint, on August 24, 2020, Plaintiff submitted notice to the California Labor and Workforce Development Agency (“LWDA”) seeking authority to pursue penalties under the PAGA for the above-identified alleged violations of California law. The LWDA did not provide notice of its intent to investigate the alleged violations within 65 calendar days of submission, thereby entitling Plaintiff to commence a representative action under the PAGA. (Connor Decl. ¶ 29.) Plaintiff’s ninth cause of action thus asserts a PAGA representative action claim on behalf of Plaintiff and similarly situated aggrieved employees under Labor Code section 2698. (Connor Decl. ¶ 29.) On August 27, 2021, Defendants filed their Answers denying each of the allegations and asserting multiple affirmative defenses. (*Id.* at ¶ 30.)

Defendants deny Plaintiff’s allegations of wrongdoing. Defendants do not believe that any liability to Plaintiff or Class Members or PAGA Group Members exist, or that Plaintiff or Class Members or PAGA Group Members are entitled to any recovery. (Settlement Agreement ¶¶ 42, 45.) In settling, Defendants do not admit liability with respect to the alleged claims made by Plaintiff and make no admission regarding any facts or law related to the lawsuit. (*Id.* at ¶¶ 42, 45; Connor Decl. ¶ 31.)

B. Discovery and Investigation

Prior to initiating this Lawsuit, counsel for Plaintiff, CounselOne, PC (herein, “Class Counsel”), thoroughly investigated the claims and considered the facts and circumstances underlying the pertinent issues and applicable law. (*See* Connor Decl. ¶ 26.) This required thorough discussions and interviews with Plaintiff as well as research into the various legal issues involved in the case. (*Ibid.*) After conducting their initial investigation, Class Counsel determined that the claims were well suited for class action adjudication owing to what appeared to be a common

1 course of conduct affecting a similarly situated group of employees. (*Ibid.*)

2 Plaintiff originally sued as named defendants, Domino's Pizza, LLC and Domino's Pizza
3 Franchising, LLC, as well as the two franchisees, Southside Pizza and Prima Pizza. After entering
4 into an approved Stipulated Protective Order, Defendants produced highly confidential Domino's
5 Pizza franchise agreements, related documents, and the Parties met and conferred regarding the
6 propriety of suit against franchisors. On September 6, 2022, the Court granted Plaintiff's request
7 for dismissal of these two Domino's named entities *without prejudice*. Plaintiff agreed to dismissal
8 based on current legal precedent that is averse to imposing employer defined wage and hour
9 obligations on franchisors. (*See, e.g., Patterson v. Domino's Pizza, LLC* (2014) 60 Cal.4th 474; *see*
10 *also* Settlement Agreement ¶ 37; Connor Decl. ¶ 32.)

11 Notwithstanding that the Parties explored resolution prior to briefing on class certification,
12 Class Counsel conducted a thorough investigation in advance of mediation. For example, Class
13 Counsel propounded formal written discovery consisting of multiple sets of requests for production
14 of documents to each of the Defendants (172 requests in the aggregate), and special interrogatories
15 regarding wage and hour policies and procedures, plus special interrogatories seeking putative class
16 contact information to each of the Defendants (74 special interrogatories in the aggregate).
17 Defendants substantively responded in part and objected in part. The Parties also met and conferred
18 over the formal discovery, along with a contemplated *Belaire-West* opt-out notice. In advance of
19 mediation, Plaintiff also made an informal discovery request for information and data that further
20 expanded on the discovery sought. (Connor Decl. ¶ 33.)

21 Specifically, Class Counsel's discovery and investigation yielded information and
22 substantial documentation (*i.e.* over 1,752 pages) concerning the claims alleged, such as Plaintiff's
23 personnel file and Defendants' written policies concerning the claims at issue, including
24 Defendants' employee handbooks, policies and procedures regarding the payment of wages, the
25 provision of meal and rest breaks, time keeping policies, such as recording hours, issuance of wage
26 statements, and providing all wages at separation. (Settlement Agreement ¶ 39; *see also* Connor
27 Decl. ¶ 34.) Defendants also provided composite data for the Class including total number of
28 putative class members; mix of current versus former non-exempt employees; total number of pay

1 periods; total number of workweeks; and the average hourly rate in effect. (*Id.* at ¶ 35.)
2 Significantly, Defendants produced a random sampling of time and wage records for 18.7% of the
3 putative class members (*i.e.*, 271 out of 1,451 employees), consisting of records for approximately
4 52,973 shifts and 6,374 pay periods. (*Ibid.*) With the assistance of a consultant, Class Counsel
5 analyzed the documents and data produced to determine Defendants' degree of liability and
6 potential amounts due in damages. (*Id.* at ¶ 36.)

7 **C. Mediation and Settlement**

8 Thereafter, on October 26, 2022, the Parties participated in a private mediation where they
9 debated and discussed their respective positions. (Connor Decl. ¶ 37.) The Parties' mediation session
10 was facilitated by the Hon. Lisa Hart Cole (Ret.) of Signature Resolution. In addition to her nearly
11 twenty-five (25) years on the bench, Judge Cole is experienced in mediating and arbitrating complex
12 general litigation, labor and employment claims, class actions, and PAGA cases, among others.
13 (*Ibid.*) During the mediation, the Parties exchanged further information and discussed all aspects of
14 the case, including the risks and delays of litigation and the risk to both Parties for proceeding with
15 a motion for class certification and liability under the claims asserted, along with the potential for
16 PAGA penalties to be asserted. (*Id.* at ¶ 38.) These were contentious issues because of the factual
17 and legal complexity of the case. (*Ibid.*) The matter did not settle at that mediation session.

18 With continued settlement negotiations assisted by Judge Cole, on November 17, 2022, a
19 written mediator's proposal was made to all parties with an expiration date of December 5, 2022;
20 however, the matter still did not resolve. After further mediator facilitation and months of continued
21 negotiations, on March 8, 2023, the Parties agreed to resolve the matter and reached the terms of
22 this proposed arm's-length Settlement. (Settlement Agreement ¶ 40; Connor Decl. ¶ 39.) On April
23 19, 2023, the Parties executed a short-form Memorandum of Understanding and, thereafter, the
24 Parties memorialized these terms in the Settlement Agreement, attached as **Exhibit 1** to the Connor
25 Decl. filed concurrently herewith.

26 Based on the settlement negotiations, which were hard fought and conducted in good faith
27 and at arm's length between attorneys with substantial experience litigating class actions,
28 representative actions, and wage and hour cases, the Settlement was the product of a non-collusive

1 settlement process in which the Parties were forced to make significant compromises in the interest
2 of reaching a full and complete settlement of the action. (Connor Decl. ¶ 41.) From Class Counsel's
3 review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further
4 litigation, and Class Counsel's own prior litigation experience, Class Counsel believe that the
5 recovery being made available to Class Members is fair, reasonable, and adequate taking into
6 consideration the amounts received in other wage and hour class and representative actions, the risks
7 inherent in litigation of this genre, and the reasonable tailoring of each Class Members' claim to the
8 settlement award he or she will receive. (*Id.* at ¶ 42.) Class Counsel believe that the Settlement
9 serves the best interests of Class Members. (*Ibid.*) Accordingly, the Parties have concluded that it is
10 in their best interests to compromise, settle, and accept the terms of the Settlement Agreement.
11 (Settlement Agreement ¶¶ 41-45.)

12 **III. SUMMARY OF SETTLEMENT TERMS**

13 Under the terms of the settlement, Defendants agree to pay a non-reversionary amount of
14 One Million Two Hundred Thousand Dollars (\$1,200,000.00) to settle the claims asserted in the
15 Lawsuit. (*See* Settlement Agreement ¶¶ 14, 49.) This amount shall be inclusive of all Individual
16 Settlement Payments to all participating Class Members (*e.g.*, those who do not opt out of the
17 Settlement), the Service Award to Plaintiff, Settlement Administration Costs to the Settlement
18 Administrator, Attorneys' Fees and Costs, and the PAGA Payment, but exclusive of employer-side
19 federal and state payroll taxes. The amount available for distribution to participating Class Members
20 is determined by deducting the following from the Gross Settlement Amount:

- 21 • Up to thirty-three and one-third percent (33 ⅓%) of the Gross Settlement Amount in
22 attorneys' fees (*i.e.*, \$400,000) and actual litigation expenses up to \$25,000 to Class Counsel
23 ("Attorneys' Fees and Costs");
- 24 • Up to \$8,000 to Plaintiff as Class Representative as a service award (allocated at 75%) and
25 in exchange for a general release of claims (allocated at 25%) ("Service Award");
- 26 • Up to \$25,000 to the Settlement Administrator, CPT Group, Inc., to notify members of the
27 Class and administer the Settlement ("Settlement Administration Expenses"); and
- 28 • \$90,000 to the LWDA for penalties pursuant to the PAGA ("LWDA Payment") (*i.e.*, 75%

1 of the \$120,000 allocated to civil penalties pursuant to the PAGA (“PAGA Payment”); the
2 remaining 25% in the amount of \$30,000 will be distributed to PAGA Group Members³).
3 The amount remaining after the foregoing deductions (the Net Settlement Amount, as defined
4 above), approximately \$622,000, as non-reversionary, will be paid out in its entirety. (Settlement
5 Agreement ¶¶ 18, 49(e).) Class Members will automatically receive payments *without the need to*
6 *submit a claim form*, and PAGA Group Members shall receive their pro rata share of the eligible
7 PAGA Payment irrespective of whether or not they opt-out. (*Id.* at ¶¶ 22, 46(d).)

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

9 If all the approximately 1,451 Class Members participate (*i.e.*, do not request exclusion/opt-
10 out), and assuming hypothetically that distribution was on and individual pro rata basis then each
11 individual settlement payment would be an estimated \$428.67 per Settlement Class Member.
12 (Connor Decl. ¶ 12.) In actuality, each Settlement Class Member will receive a proportional share
13 of the Net Settlement Amount based on his or her individual Workweeks during the Class Period.
14 (Settlement Agreement ¶ 49(e).) The Settlement Administrator will determine each Settlement
15 Class Member’s Individual Settlement Share as follows: The sum of all Settlement Class Members’
16 individual Workweeks will be the “Total Workweeks.” The Net Settlement Amount will be divided
17 by the Total Workweeks to yield the “Workweeks Value.” Each Settlement Class Member’s
18 Individual Settlement Share will then be determined by multiplying his or her individual
19 Workweeks by that Workweek Value. (*Id.* at ¶¶ 15, 49(e).) Additionally, all PAGA Group
20 Members will receive a proportional share of the 25% of the PAGA Payment based on his or her
21 own individual Pay Periods relative to the total Pay Periods of all PAGA Group Members during
22 the PAGA Period. (*Id.* at ¶¶ 20-22, 49(d).)

23 After reduction for the employee’s share of taxes on the wage portion,⁴ the net payment to
24 each Settlement Class Member will be the sum of his or her Individual Settlement Share, plus his

25 _____
26 ³ “PAGA Group” and “PAGA Group Members” means all Aggrieved Employees, whether or not
27 they submit a request for exclusion from the Settlement Class, employed by Defendants during
28 PAGA Period. Further, the PAGA Period is defined as the period beginning on October 19, 2019
and ending on December 31, 2022. (Settlement Agreement ¶¶ 20, 22.)

⁴ The Parties agreed to allocate twenty percent (20%) of each Individual Settlement Share to wages,
to be reported on IRS Form W-2, with the other eighty percent (80%) to be equally split between

1 or her share of the 25% of the PAGA Payment, if applicable, which is together is called the
2 Individual Settlement Payment. (Settlement Agreement ¶ 49(f).) As a result of the distribution
3 formula, the consideration paid to each Settlement Class Member is tailored to the impact of
4 Defendants’ alleged violations as well as to the claims he or she is releasing. (Connor Decl. ¶¶ 10-
5 11; Settlement Agreement ¶¶ 46, 49.) Finally, any Class Member who prefers to preserve his or her
6 right to pursue relief or seek an alternative recovery may request exclusion. (Settlement Agreement
7 ¶ 56.)⁵ Settlement checks will remain valid for 180-days from the mailing. (*Id.* at ¶ 59(d).)
8 Thereafter, any uncashed checks will be cancelled and funds transferred to the Controller of the
9 State of California to be held pursuant to the Unclaimed Property Law (Code Civ. Proc., §§ 1500,
10 *et seq.*) in the names of the Settlement Class Members and PAGA Group Members who did not cash
11 their settlement checks until such time as they claim their property. (Settlement Agreement ¶ 59(d).)

12 **B. Class Representative Service Award and Attorneys’ Fees and Costs**

13 As part of the Settlement, Plaintiff will apply for a service award payment at the time of
14 seeking final approval in the amount of \$8,000 for services to the Class in prosecution of the lawsuit
15 as a class representative and for a general release of all claims against Defendants. (Settlement
16 Agreement ¶¶ 30, 49(c); Connor Decl. ¶ 13; *see also* Manzo Decl., *passim*.) “[I]ncentive awards are
17 fairly typical in class action cases . . . and are intended to compensate class representatives for work
18 done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing
19 the action.” (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-1394.)
20 Plaintiff’s requested service award payment is intended to recognize the significant benefits
21 conferred upon the Class and be proportional to the respective time and effort that Plaintiff expended
22 on behalf of the Class and the PAGA Group Members, including providing factual information and
23 documents to Class Counsel, discussing the claims and theories at issue in the case with Class
24 Counsel, identifying potential witnesses and reviewing documents, reading and providing input into

25
26 non-wage penalties and non-wage interest (*i.e.*, 40% interest and 40% penalties), to be reported on
27 IRS Form 1099. (Settlement Agreement ¶ 51(a).)

28 ⁵ Again, if approved, all Class Members who are Aggrieved Employees/PAGA Group Members
will receive their individual pro rata PAGA Payment irrespective of whether they opt-out of the
Class Settlement. (Settlement Agreement ¶ 49(d).)

1 the mediation brief, making himself available for a full day of settlement negotiations, inquiring
2 about and staying apprised of the status of the litigation, and reviewing the Settlement Agreement,
3 as well as the significant risks Plaintiff undertook by agreeing to serve as named plaintiff, and the
4 fact that Plaintiff agreed to a general release of all claims subject to a waiver of Civil Code section
5 1542. (*See* Settlement Agreement ¶¶ 30, 49(c); Connor Decl. ¶ 14; Manzo Decl. ¶¶ 11-21.)

6 Class Counsel will apply for an attorneys' fees award of 33 ⅓ percent of the Gross Settlement
7 Amount (*i.e.*, \$400,000) and reimbursement of litigation costs in an amount up to \$25,000.
8 (Settlement Agreement ¶¶ 2, 49(a); Connor Decl. ¶ 15.) Plaintiff submits that the requested fee is
9 fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
10 purely contingent fee basis. (*Ibid.*) Class Counsel have devoted substantial attorney time to pre-
11 filing investigation; analyzing Plaintiff's claims; conducting legal research and analysis; preparing
12 and submitting notice to the LWDA; drafting and filing the operative complaint; propounding
13 discovery; meeting and conferring; researching the factual and legal merits of wage and hour claims
14 in the context of franchises; examining over 1,752 pages of pre-mediation information and data;
15 reviewing policies and procedures regarding Southside Pizza's and Prima Pizza's timekeeping
16 protocol, payment of wages, provision and tracking of meal and rest breaks, along with examining
17 an 18.7% random sample employees' time and pay records comprising 271 of 1,451 individuals
18 (consisting of approximately 52,973 out of 362,817 shifts and 6,374 out of 41,697 pay periods);
19 reviewing wage statements; building damages models; preparing, briefing, and attending a fully day
20 mediation before Hon. Lisa Hart Cole (Ret.) of Signature Resolution, along with subsequent
21 negotiations thereafter; preparing the Settlement Agreement and Class Notice; preparing this
22 Motion for Preliminary Approval and supporting documents; and otherwise litigating the case.
23 (*Ibid.*) Class Counsel will also expend future attorney time attending the hearing on this Motion,
24 overseeing the notice and administration process, drafting the Final Approval Motion and
25 supporting documents, and attending the Final Approval hearing, among other tasks, such as
26 addressing questions from Class Members. (*Id.* at ¶ 16.)

27 Both California and federal courts have recognized that an appropriate method for awarding
28 attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of

1 the settlement. (*See Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 506 [“the
2 percentage of fund method survives in California class action cases...”]; *Wershba v. Apple*
3 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 [recognizing both the “percentage of recovery” and
4 “lodestar/multiplier” methods].) Historically, courts have awarded percentage fees in the range of
5 20% to 50%, depending on the circumstances of the case. (*See Conte & Newberg, 4 Newberg on*
6 *Class Actions* (4th Ed. 2002) § 14.6 [“No general rule can be articulated on what is a reasonable
7 percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award
8 from a common fund in order to assure that the fees do not consume a disproportionate part of the
9 recovery obtained for the class, although somewhat larger percentages are not unprecedented.”].)

10 Class Counsel submit that their request for attorneys’ fees is reasonable when viewed as an
11 overall percentage of the settlement amount in light of the substantial risks and significant work
12 undertaken, the excellent results obtained for the Class Members, and the efficiency with which
13 the Parties have conducted the litigation. (Connor Decl. ¶ 17.) Assuming that the Court grants
14 preliminary approval, Class Counsel will seek an award of attorneys’ fees and litigation costs at
15 the time of seeking final approval of the Settlement.

16 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE**

17 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince*
18 *v. CLS Transp., Inc.* (2004) 118 Cal.App.4th 1320, 1328; *Richard v. Dart Industries, Inc.* (1981) 29
19 Cal.3d 462 [finding that California public policy “encourages the use of the class action device”].)
20 Any doubt as to the appropriateness of class treatment should be resolved in favor of class
21 certification, subject to later modification if necessary. (*Id.* at pp. 473-475.) The decision to certify
22 a class is purely a procedural one, and should be based on the allegations in the operative complaint,
23 and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000)
24 23 Cal.4th 429, 439-441.)

25 To certify a settlement class, the trial court must find the two primary requirements for
26 maintaining a class action: (1) there must be an ascertainable class; and (2) there must be a well-
27 defined community of interest in the questions of law and fact involving the parties to be
28 represented. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 805-809; *Daar v. Yellow Cab*

1 *Company* (1967) 67 Cal.2d 695, 704; *Daniels v. Centennial Capital Group* (1993) 16 Cal.App.4th
2 467, 471; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341. These
3 criteria are met here for the reasons set forth below.

4 **A. There is an Ascertainable and Sufficiently Numerous Class**

5 Whether a class is ascertainable is determined by examining the class definition, the size of
6 the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal.3d at
7 pp. 821-822; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263,
8 1271; *Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Class members are “ascertainable” where
9 they may be readily identified without unreasonable expense or time.

10 Here, the class definition is “precise, objective and presently ascertainable.” (*Sevidal v.*
11 *Target Corp.* (2010) 189 Cal.App.4th 905, 919.) Class Members are comprised of “[a]ll individuals
12 who are or previously were employed by one or more Defendants in the State of California who
13 were classified as hourly, non-exempt employees during the Class Period,” which is explicitly
14 defined as the timeframe beginning on December 23, 2016 and ending on December 31, 2022.
15 (Settlement Agreement ¶¶ 4, 7.) Defendants are required to and do maintain employment records of
16 such persons, including contact information and social security numbers. Documents and
17 information exchanged reflect a Class of approximately 1,451 putative class member employees
18 from the beginning of the Class Period through June 21, 2022.⁶ (Settlement Agreement ¶ 55; Connor
19 Decl. ¶ 111.) Hence, the proposed Class satisfies the ascertainability and numerosity requirements.
20 (*See, e.g., Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 [stating “[n]o set number is
21 required as a matter of law for the maintenance of a class action,” and citing examples where classes
22 comprised of as little as 10 [*Bowles v. Superior Court* (1955) 44 Cal.2d 574] and 28 [*Hebbard v.*
23 *Colgrove* (1972) 28 Cal.App.3d 1017] members were upheld as sufficiently numerous]; *see also*
24 *Collins v. Rocha* (1972) 7 Cal.3d 232 [finding a class of 44 farm workers sufficiently numerous].)

25
26 ⁶ Again, Plaintiff expects a modest increase in the class size from June 22, 2022 through December
27 31, 2022, the latter of which is the close of the Class Period. In the event of any significant variation
28 (*i.e.*, exceeding 10% of associated workweeks), however, such is safeguarded by a pro rata increase
escalator clause. (Settlement Agreement ¶ 55.) The precise count will be available after mailing the
Class Notice and the updated figure provided at the final approval stage.

1 **B. There is a Well-Defined Community of Interest**

2 A community of interest is established by the preponderance of common issues of law and
3 fact. (*See Vasquez, supra*, 4 Cal.3d at p. 811.) “The community of interest requirement involves
4 three factors: (1) predominant common questions of law or fact; (2) class representatives with claim
5 or defenses typical of the class; and (3) class representatives who can adequately represent the
6 class.” (*Linder, supra*, 23 Cal.4th at p. 435.)

7 **1. Common Issues of Law and Fact Predominate**

8 The Court should grant class certification when questions of law and fact common to all
9 Class Member predominate over any questions affecting only individual Class Members. The
10 predominant inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication
11 by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605; *Lazar v.*
12 *Hertz Corp.* (1983) 143 Cal.App.3d 128.)

13 In the matter *sub judice*, common issues of fact and law predominate as to each of the claims
14 alleged by Plaintiff and Class Members. Here, litigation is predicated on uniform company policies
15 and systemic top-down business practices revolving principally around Defendants’ understaffing,
16 timekeeping, and pay practices—*e.g.*, frequent missed meal breaks due to workflow, customer
17 demands, and understaffed stores, off-the-clock work attributed to common pre-shift and post-shift
18 job duties, failure to pay all meal and rest break premiums owed despite records depicting non-
19 compliance, miscalculated regular rates when paying said premiums, unreimbursed business
20 expenses etc.—as well as derivative inaccurate wage statements and pay owed upon separation.
21 These allegations have given rise to the following claims: failure to pay minimum and overtime
22 wages; meal period liability; rest break liability; unreimbursed business expenses; failure to pay
23 wages timely and all final wages at termination of employment; failure to maintain and provide
24 accurate itemized wage statements; and derivative UCL and PAGA claims arising therefrom.
25 (Settlement Agreement ¶ 36; Connor Decl. ¶ 112.)

26 It is also important to note that Defendants are commonly owned and operated franchises:
27 both are registered and active California corporations that share identical presidents/officers,
28 principal place of business, and mailing addresses. Further, both Prima Pizza and Southside Pizza

1 share common policies, the same and/or similar employee handbooks (*e.g.*, the 2015 Prima Pizza
2 and Southside Pizza Employee Handbook was in use during a majority of the Class Period), conduct
3 business under a uniform business format, along with common training for employees. (Connor
4 Decl. ¶ 113.) Thus, the experiences of Class Members employed by Southside Pizza and Prima
5 Pizza are common in terms of written policy and business practice.

6 Because Plaintiff has alleged a single top-down compensation scheme, “the relevant proof
7 [does] not vary among class members” and “clearly presents a common question fundamental to all
8 class members.” (*See In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997) 172
9 F.R.D. 119, 123 [citing *In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997) 169
10 F.R.D. 493, 518].) California courts show “no hesitancy” in inferring class-wide causation, class-
11 wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I.*
12 *Custom Kitchens, supra*, 191 Cal.App.3d at p. 1350 [granting class certification in a manufacturing
13 defect case when a common course of action had been proven].) This inference “*eliminates* the need
14 for each class member to prove individually the consequences of the defendants’ actions to him or
15 her.” (*Id.* at p. 1351.) Thus, the outcome of this matter depends upon questions that are common to
16 members of the Class. These types of claims are commonly held to be proper for class certification.
17 (*See, e.g., Bluford v. Safeway, Inc.* (2013) 216 Cal.App.4th 864, 871 [reversing denial of rest period
18 claim]; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 [certifying
19 meal period claim]; Connor Decl. ¶ 114.)

20 2. Plaintiff’s Claims are Typical of the Claims of the Settlement Class

21 The typicality requirement is satisfied where class representatives have claims that are
22 typical of the rest of the class. (*B.W.I. Custom Kitchens, supra*, 191 Cal.App.3d at pp. 1347.) Here,
23 Plaintiff’s claims are typical of those held by members of the proposed Class. Like other Class
24 Members, Plaintiff was a non-exempt employee working for Southside Pizza in California during
25 the Class Period. (Manzo Decl. ¶¶ 3, 9.) Like other Class Members, Plaintiff was not paid for all
26 hours worked due to off-the-clock work (*i.e.*, interrupted meals and tasks performed during pre/post-
27 shift hours) and/or was not paid all overtime wages owed, neither received timely, duty-free meal
28 and rest breaks, nor was paid all premiums owed for non-compliant breaks, incurred necessary

1 business expenses that were unreimbursed, and did not receive accurate itemized wage statements
2 and all wages and premiums owed him upon termination of employment. (Manzo Decl. ¶¶ 4-5;
3 Connor Decl. ¶ 115.) Plaintiff was therefore impacted by the same challenged policies and practices
4 that allegedly injured the Class as a whole, and subject to the same defenses raised by Defendants
5 as to the Class; therefore, his claims are typical.

6 **3. Plaintiff and His Counsel Meet the Adequacy Requirements**

7 The adequacy of representation requirement examines conflicts of interest between named
8 parties and the class(es) they seek to represent. (*Capital People First v. Department of*
9 *Developmental Services* (2007) 155 Cal.App.4th 676, 697.) Here, Plaintiff and Class Counsel will
10 adequately represent the Class, as there are no conflicts between the Plaintiff and the Class he seeks
11 to represent. (Manzo Decl. ¶ 8; Connor Decl. ¶ 116; *McGhee v. Bank of Bank of America* (1976) 60
12 Cal.App.3d 442, 450 [finding adequacy satisfied where there was no indication that plaintiff's
13 counsel were not qualified and the named plaintiff had no interests antagonistic to those of the
14 proposed class].) Class Counsel also has extensive experience in wage and hour litigation. (See
15 Connor Decl. ¶¶ 96-100, 116.)

16 **C. A Class Action is Superior to a Multiplicity of Litigation**

17 In making its class certification decision, the court must determine that a class action would
18 be superior to alternative means for the fair and efficient adjudication of the litigation. By
19 consolidating over 1,400 individual actions into a single proceeding, this Court's use of the class
20 action device enables it to manage this litigation in a manner that serves the efficiency interests of
21 the litigants and the judicial system. Absent class treatment, the only alternative would be to force
22 numerous employees to file individual actions. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004)
23 34 Cal.4th 319, 339 fn. 10 [stating "[t]he relevant comparison lies between the costs and benefits of
24 adjudicating plaintiffs' claims in a class action and the costs and benefits of proceeding by numerous
25 separate actions—not between the complexity of a class suit that must accommodate some
26 individualized inquires and the absence of any remedial proceeding whatsoever."].) Finally, in the
27 context of settlement, the superiority concerns are essentially non-existent. (Connor Decl. ¶ 117.)

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 “A court may preliminarily approve a settlement and direct notice to the class if ‘the proposed
6 settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious
7 deficiencies, does not improperly grant preferential treatment to class representatives or segments
8 of the class, and falls within the range of possible approval.’” (*Draney v. Westco Chems., Inc.*
9 (C.D.Cal. Sep. 29, 2021, No. 2:19-cv-01405-ODW (AGRx)) 2021 U.S. Dist. LEXIS 187250, at *11
10 [citing *In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1078, 1079].) 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.,* 4 Conte &
13 Newberg, *Newberg on Class Actions* (4th Ed. 2002) § 11.25; *North County Contractor’s Assn., Inc.*
14 *v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1094-1095.) Thus, the preliminary
15 approval of the class action settlement by the Court is simply a conditional finding that the
16 Settlement appears to be within the range of acceptable settlements. A review of the preliminary
17 approval criteria demonstrates a substantial basis for granting the preliminary approval requested
18 by this Motion and proceeding to a full settlement hearing.

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

20 As a matter of public policy, courts both encourage the use of the class action device and
21 favor settlement over continued litigation. (*See, e.g., Linder, supra*, 23 Cal.4th at p. 434 [“Courts
22 have long acknowledged the importance of class actions as a means to prevent a failure of justice in
23 our judicial system.”]; *State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 471; *Class Plaintiffs v.*
24 *City of Seattle* (1992) 955 F.2d 1268, 1276 [“[S]trong judicial policy...favors settlements,
25 particularly where complex class action litigation is concerned.”]; 4 Conte & Newberg, *Newberg on*
26 *Class Actions* (4th Ed. 2002) § 11.41.) Settlement is favored, and settlement agreements are
27 realistically assessed. (*Stamburgh v. Superior Court* (1976) 62 Cal.App.3d 231, 236; *Priddy v.*
28 *Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that plaintiff might have received more if the

1 case had been fully litigated is no reason not to approve the settlement.”].)

2 To summarize, the Settlement here is fair because it offers payment to each Class Member
3 for releasing his or her claims, extinguishes the risk of litigation, and provides a fair and adequate
4 distribution of the Settlement proceeds whereby the Net Settlement Amount is allocated to
5 Settlement Class Members proportionally based on his or her respective number of eligible
6 Workweeks worked during the Class Period, along with proportionally eligible Pay Periods to
7 PAGA Group Members who worked during the PAGA Period. (Connor Decl., *passim*.)

8 **A. The Settlement is Entitled to a Presumption of Fairness**

9 Moreover, courts presume the absence of fraud or collusion in the negotiation of a settlement
10 unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were
11 conducted in good faith. (*See* 4 Conte & Newberg, *Newberg on Class Actions* (4th Ed. 2002) §
12 11.51; *Rodriguez v. West Publ. Corp.* (C.D.Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, at
13 *24-25; *In re Chicken Antitrust Litigation* (N.D.Ga. 1980) 560 F.Supp. 957, 962; *Priddy, supra*, 883
14 F.2d at p. 447; *Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.* (7th Cir. 1987)
15 834 F.2d 677, 681.) Courts do not substitute their judgment for that of the proponents, particularly
16 when settlement has been reached by experienced counsel familiar with the litigation. (*Rodriguez,*
17 *supra*, 2007 U.S. Dist. LEXIS 74767, at *24.) As detailed at length in the Declaration of Jennifer L.
18 Connor, the settlement is the result of extensive settlement negotiations between the Parties,
19 conducted at arm’s length, and informed by substantial factual and legal investigations.

20 **1. Negotiations Were at Arm’s-Length Before a Respected Mediator**

21 Here, the settlement is the result of extensive settlement negotiations between the Parties,
22 conducted at arm’s-length, and informed by substantial factual and legal investigations. (Connor
23 Decl. ¶¶ 33-41.) As noted above, the Parties participated in a full-day mediation with Hon. Lisa R.
24 Cole (Ret.) of Signature Resolution. (*Id.* at ¶ 37.) Judge Cole brought nearly twenty-five (25) years
25 on the bench to bear, along with her considerable experience in mediating employment and wage
26 and hour class action matters, and with whose help the Parties eventually agreed to resolve this case
27 according to the terms set forth in Settlement Agreement. (*Id.* at ¶¶ 37-39.) Plaintiff and his counsel
28 believe that the alleged claims asserted have merit. However, Plaintiff and his counsel also recognize

1 and acknowledge the uncertainty of litigation through trial and appeals, the question of certification,
2 and the possible defenses. (*Id.* at ¶¶ 43-44.) These were contentious issues because of the factual
3 and legal complexity of the case (*i.e.*, purported on-duty meal break waivers, evidentiary difficulty
4 of proving off-the-clock claims, and the post-litigation implementation of an arbitration policy for
5 new hires and re-hires) as well as the legal uncertainty regarding many of the central issues of the
6 litigation (*i.e.*, certification, liability, and devising a theory that properly measures monetary
7 recovery, especially given overlap of penalties and arguments against stacking). (*Id.* at ¶ 45.)

8 **2. Investigation Was Sufficient to Allow Counsel to Act Intelligently**

9 Prior to filing the lawsuit, Class Counsel investigated the claims by interviewing Plaintiff at
10 length and on repeated occasions, researching California law, and upon finding it suitable for class
11 treatment, filing a wage and hour putative class and representative action. (Connor Decl. ¶ 26.) Class
12 Counsel thereafter devoted a considerable amount of time to the prosecution of this case, including,
13 but not limited to, interviewing Plaintiff, preparing and submitting notice to the LWDA, drafting
14 the pleadings; propounding formal and informal written discovery (including 172 document
15 requests and 74 special interrogatories), reviewing Defendants' written policies concerning the
16 claims set forth in the lawsuit, including Southside Pizza's and Prima Pizza's timekeeping protocol,
17 policies and procedures regarding the payment of wages, the provision of meal and rest breaks,
18 reimbursement of business expenses, issuance of wage statements, and providing all wages at
19 separation; reviewing and analyzing Class Members' time and pay records, meeting and conferring
20 regarding the information and documents produced; researching California law, especially as
21 pertains to wage and hour laws in the context of franchises, preparing for and attending mediation;
22 and negotiating and finalizing the settlement and related documents. (*Id.* at ¶¶ 33-34.) Class Counsel
23 reviewed over 1,752 pages of pre-mediation materials and examined an 18.7% random sample
24 employees' time and pay records.⁷ (Settlement Agreement ¶ 55; Connor Decl. ¶¶ 34-36.)

25
26 ⁷ Such constitutes a statistically significant sample as courts have found the use of similar percentage
27 samples appropriate. (*See e.g.*, *Brum v. MarketSource, Inc.* (E.D.Cal. 2018) 2018 WL 3861558, at
28 *5 [10% sample]; *Talavera v. Sun Maid Growers of California* (E.D.Cal. 2017) 2017 WL 495635,
at *4 [10% sample]; *Kaminske v. JP Morgan Chase Bank N.A.* (C.D.Cal. 2010) 2010 WL 5782995,
at *5 [10% sample].)

3. Class Counsel are Experienced in Similar Litigation

Class Counsel believe that the Settlement is fair and reasonable and serves the best interests of the Class Members. (Connor Decl. ¶ 100.) Although the recommendations of counsel proposing the class settlement are not conclusive, the Court can properly take the recommendations into account, particularly if counsel have been involved in litigation for some period of time, appear to be competent, have experience with this type of litigation, and significant discovery has been completed. (See 4 Conte & Newberg, *Newberg on Class Actions* (4th Ed. 2002) § 11.47.) Here, Plaintiff is represented by competent and experienced counsel who possess extensive experience litigating wage and hour class actions and have been appointed as class counsel in numerous cases alleging similar claims. (Connor Decl. ¶¶ 96-100.)

B. The Settlement is Fair, Reasonable, and Adequate

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

1. The Strength of Plaintiff’s Case

Class Counsel carefully vetted the claims at issue to arrive at a comprehensive damages model for Defendants’ liability. (Connor Decl. ¶ 43.) Although Plaintiff steadfastly maintains that his claims are meritorious, he acknowledges that there are substantial risks and uncertainty in proceeding with class certification and trial. (*Ibid.*) As explained in further detail in section VI.B.4, *infra*, Defendants presented numerous defenses to Plaintiff’s claims, both on the merits and with respect to class certification. For example, Defendants defended against the minimum and overtime wage claims by relying on written policies that explicitly required Class Members to certify the accuracy of time recorded and further required pre-authorization for overtime work. (Connor Decl.

¶ 44.) Defendants argued that any alleged off-the-clock hours, to the extent such work was performed, are unquantifiable and de minimis. (*Ibid.*) Defendants further contended that as of 2017 employees were required to sign a “Meal Break Waiver Form,” which would significantly ameliorate any meal period liability. (*Ibid.*) Moreover, after Plaintiff initiated this lawsuit, Defendants allege they have rolled out an arbitration agreement policy for new hire and rehire employees. (*Ibid.*) Finally, Defendants argued that Class Members worked in different store locations and had different job positions and duties, and that, as a result, Defendants contended there was a variation in circumstances raising highly individualized questions of fact. (*Ibid.*)

Although Plaintiff was prepared to litigate these claims through class certification and, ultimately, through trial, given the substantial amount offered in settlement, Class Counsel predicted that it was far from certain that Plaintiff would be able to recover a greater amount at trial, particularly after considering the increased litigation costs that would accrue. (Connor Decl. ¶ 49.) Thus, this factor supports preliminary approval of the Settlement.

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

While Plaintiff conducted extensive investigation and formal and informal discovery prior to mediation, the Parties agreed to explore early settlement efforts before launching into full-fledged and hotly contested litigation. (Connor Decl. ¶ 46) Therefore, absent settlement, the Parties would have needed to conduct substantial discovery, such as the production of voluminous records and numerous depositions of experts and percipient witnesses, and prepare the case for class certification and trial. (*Ibid.*) The Parties would have had to depose a number of people, such as store managers, supervisors, human resource representatives, and employees, in order to establish liability. (*Ibid.*) Discovery disputes would have been in the offing and liability likely would have entailed a battle of experts. This settlement avoids the considerable time, attorneys’ fees and costs, and party resources associated with conducting additional discovery, moving for class certification and potentially summary judgment or adjudication, and ultimately, trial, as well as the risks and the accompanying burden of continued litigation on the Court. (*Ibid.*) Thus, this factor supports preliminary approval of the Settlement.

3. Risk of Maintaining Class Action Status

1 Here, settlement was reached prior to class certification and the result was a successful
2 outcome for the Class. (Connor Decl. ¶ 47.) Yet, class certification was by no means a foregone
3 conclusion. (*Ibid.*) For example, Class Members worked in different job positions across nine (9)
4 store locations and had different supervisors, and that, as a result, Defendants contended there was
5 variation to the circumstances that could allegedly cause employees to work off-the-clock and/or be
6 deprived of the opportunity to take legally compliant, duty-free meal and rest periods, and this
7 variation in circumstances raised highly individualized questions of fact. (*Ibid.*) Defendants further
8 disputed Plaintiff’s characterization of working conditions, liability, and damages, and possessed
9 documentary and testimonial evidence rebutting Plaintiff’s allegations. If the Court either denied
10 class certification or later decertified it, the Class would recover nothing and Class Members would
11 be forced to retain their own counsel and proceed on the basis of individual claims only. (*Id.* at ¶
12 48.) Here, Class Members may avoid each of the risks described and receive substantial monetary
13 benefits, which also weighs in favor of preliminary approval.

14 **4. Amount Offered in Settlement Given Realistic Value of Claims**

15 A settlement is not judged against what might have been recovered had a plaintiff prevailed
16 at trial, nor does the settlement have to provide 100% of the damages to be fair and reasonable.
17 (*Wershba, supra*, 91 Cal.App.4th at pp. 246, 250 [acknowledging that “[c]ompromise is inherent
18 and necessary in the settlement process...even if the relief afforded by the proposed settlement is
19 substantially narrower than it would be if the suits were successfully litigated, this is no bar to a
20 class settlement because the public interest may indeed be served by a voluntary settlement in which
21 each side gives in the interest of avoiding litigation.”].) The proposed Settlement provides a fair and
22 reasonable monetary recovery for the Class in the face of disputed claims.

23 Plaintiff carefully estimated the settlement recovery as a reasonable percentage of possible
24 damages recoverable at trial. Based on data received in mediation efforts, Plaintiff’s damages
25 analysis shows that the Settlement reflects an estimated **15% to 25%** of the maximum-to-realistic
26 possible damages recoverable at trial. (Connor Decl. ¶ 50.) Utilizing a class-wide damages study to
27 assess the nature and magnitude of the claims in question (*see Kullar v. Foot Locker Retail, Inc.*
28 (2008) 168 Cal.App.4th 116, 123), this case clearly meets the requirement that a class settlement be

1 within the “ballpark” of reasonableness.

2 Unpaid Minimum and Overtime Wages

3 Plaintiff alleges that he and other employees were subjected to uncompensated time arising
4 from pre- and post- shift duties, along with interrupted meal periods, worked off-the-clock. For
5 example, Plaintiff contends that he and other employees were engaged in off-the-clock pre-shift
6 work activities (*e.g.*, disarming the store alarm, booting up the computer, taking telephone calls,
7 bussing dishes, etc.), experienced interruptions during lunches (*e.g.*, co-worker questions or needs,
8 helping dissatisfied customers), and post-shift tasks (*e.g.*, following a post-clock out checklist
9 inventory, shutting down computer systems, setting the alarm, etc.) As such, Plaintiff argues that
10 these claims are susceptible to “substantial evidence of systematic company policy to pressure or
11 require employees to work off-the-clock.” (*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004;
12 Connor Decl. ¶ 52.) Defendants also maintained a practice of sending shift work schedules via
13 emails to be checked by employees outside of business hours. Finally, given that 16.4% of the shifts
14 are greater than 8 hours in length, it is inevitable that some of portion of the off-the-clock hours will
15 result in unpaid overtime under Labor Code sections 510, 1198. (Connor Decl. ¶ 53.)

16 Class Counsel analyzed the documents and data produced by Defendants and, in consultation
17 with Plaintiff, determined Defendants’ degree of liability and amounts due in damages—
18 specifically, the incidence and amount of purported off-the-clock activity. (Connor Decl. ¶ 54.)
19 Notwithstanding the evidentiary challenge of quantifying off-the-clock unrecorded hours, Plaintiff
20 estimates that Defendants are liable for an aggregate of approximately ten (10) minutes of unpaid
21 straight and overtime pay per shift (or, fifty (50) minutes per workweek) attributed to
22 uncompensated time. (*Id.* at ¶ 55.) At the average hourly rate of \$15.25, the \$2.54 straight-time plus
23 the additional \$1.27 overtime premium across the respective number of shifts, yields an estimated
24 damages amount of \$922,160. (*Ibid.*) Thus, the estimated total of owed minimum and overtime
25 wages is \$922,160, without discounting for risks associated with certification or merits. (*Ibid.*)

26 In opposition, however, Defendants contended that Plaintiff’s claim for off-the-clock work
27 is not amenable to class treatment, because employees worked in a variety of job positions with
28 different requirements, across nine store locations, and it would require an unmanageable series of

1 mini-trials to determine how much time was worked without pay. (Connor Decl. ¶ 56.) Further, in
2 terms of merit defenses, Defendants vigorously disagreed with Plaintiff’s theories regarding how
3 much off-the-clock work occurred in reality, and the credibility of those claimed hours, given
4 Defendants’ express written policies to the contrary. (*Id.* at ¶ 57.) Here, the failure to track all hours
5 poses evidentiary difficulties, because it is hotly contested how much off-the-clock work actually
6 occurred. (*Id.* at ¶ 58.) For Plaintiff to establish the quantity of specific disputed and unrecorded
7 work activities—especially over multiple job titles, at different stores—would have been costly,
8 time-consuming, and daunting. (*Ibid.*)

9 Defendants further responded that the incidence of any off-the-clock time is de minimis.
10 Plaintiff countered that such defense lacks viability in light of *Troester v. Starbucks Corp.* (2018) 5
11 Cal.5th 829, given that the California Supreme Court refused to allow the de minimis defense to
12 insulate Starbucks from having to pay employees for small amounts of work regularly performed
13 off-the-clock. What is not clear, however, is to what extent the de minimis defense applies to
14 uncaptured hours associated with an occasionally recurring activity. (Connor Decl. ¶ 59.)

15 In light of these considerations—especially the evidentiary difficulties of demonstrating off-
16 the-clock work on a class wide basis—Class Counsel acknowledged a fifty percent discount,
17 yielding \$461,080 in unpaid minimum and overtime wages, to account for the risks of non-
18 certification and being unsuccessful on the merits. (Connor Decl. ¶ 60.)

19 Meal and Rest Period Violations

20 Although the Defendants’ meal period policies were theoretically compliant, the Parties
21 diverged on one significant issue: the validity—or invalidity—of Defendants’ meal break waiver
22 form. (Connor Decl. ¶ 61.) Plaintiff contends that the meal break waiver form does not actually say
23 that an employee is waiving his or her 30-minute meal break, only that said options exists. (*Ibid.*)
24 Without the express waiver by mutual consent of the employee, the document does nothing to alter
25 employees’ meal break rights. Further, in actual practice, Plaintiff’s review of the data of employee
26 time-punches demonstrates Defendants’ non-compliance. Records indicate that meal periods were
27 often “missed,” “short,” or “late,” and that second meal periods for shifts in excess of ten (10) hours
28 were nearly non-existent. (*Id.* at ¶ 62.) Significantly, there is no indication that Defendants made

1 anywhere close to a corresponding equivalent of meal period premiums for “missed,” “short,” or
2 “late” meal periods. (*C.f.* Wage Order No. 5-2001, § 11(b).) Consequently, Plaintiff alleges that
3 Defendants violated Labor Code sections 226.7 and 512, and applicable Wage Orders, by failing to
4 compensate Plaintiff and Class Members for non-compliant meal periods. (Connor Decl. ¶ 63.)

5 Defendants, however, contended that they had practices, policies, and procedures to provide
6 meal and rest breaks every workday to their employees that fully complied with the law. (Connor
7 Decl. ¶ 64.) Foremost, Defendants raised the affirmative defense of reliance on a valid meal break
8 waiver. If credited, that meal break waiver would substantially reduce the alleged meal break
9 violation rate and undercut Plaintiff’s meal break theory of liability. (*Id.* at ¶ 65.) For shifts
10 exceeding six hours and outside the reach of the meal break waivers, Defendants vehemently
11 argued that they complied with the requirements articulated by the California Supreme Court in
12 *Brinker Rest. Corp., supra*. (Connor Decl. ¶ 65.) Specifically, Defendants maintained that they
13 provided employees with a reasonable opportunity to take timely meal periods of at least 30
14 minutes, relieved employees of all duties during meal periods, and relinquished control over
15 employees’ activities, including the ability to leave the premises to take meal periods. (*Ibid.*)

16 Plaintiff faced significant challenges to his Labor Code section 226.7 meal period liability
17 claim for two reasons. First, Plaintiff must acknowledge his legal and factual vulnerability around
18 the purported meal break waiver forms. Although Plaintiff contends that the waivers are invalid, if
19 credited, the meal break violation rate would substantially drop, and coupled with the meal period
20 premiums that were already paid, Defendants’ exposure is rendered minimal. Thus, the existence
21 of signed meal break waivers poses a serious risk in terms of the legal obligations imposed and
22 evidence that may be used to prove liability and damages. (Connor Decl. ¶ 66.) Second, like most
23 employers facing meal period litigation, Defendants argued that where time records otherwise show
24 a deficiency, employees were apprised of their right to take meal periods but chose to voluntarily
25 waive them. (*Id.* at ¶ 67.) Defendants contended that the issue of voluntary waiver would
26 necessarily devolve into a series of individualized mini-trials, precluding class certification. (*See*
27 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25 [holding that the defendant must
28 be provided an opportunity to litigate affirmative defenses, even when they turn on individual

1 questions].) Thus, although Plaintiff argues that Defendants had an impermissible top-down
2 practice of requiring Class Members to work during meal breaks to meet workflow demands and
3 customer quotas, in light of its written policies and other evidence suggesting an intent to follow
4 those policies, establishing the alleged unlawful business practice as a rule rather than exception
5 might prove daunting. (Connor Decl. ¶ 68.)

6 Based upon analysis of Class Member time and payroll records, 44.5 percent of eligible
7 shifts (or, 118,339 shifts) were the subject of unique violations for missed, short, or late meal
8 periods. Plaintiff calculated the maximum exposure of this claim to be \$1,804,669. But Defendants
9 are entitled to credit for those meal period premiums that were paid, in the estimated amount of
10 \$294,054; thereby resulting in an approximate net exposure amount of \$1,510,615. However, to
11 account for the above-described certification and liability risks—including the near all-or-nothing
12 gamble as to the validity (or invalidity) of the meal period waivers—Plaintiff took a sixty percent
13 discount for associated risks, to yield \$604,246 as a realistic exposure value. (Connor Decl. ¶ 69.)

14 Plaintiff also alleged that employees did not receive authorized rest breaks as required
15 whereby employers “relinquish control over how employees spend their time and relieve employees
16 of all duties.” (*Augustus v. ABM Security Service, Inc.* (2016) 2 Cal.5th 257, 260.) Here, employees
17 did not receive timely and compliant rest breaks, nor did Defendants relinquish control over how
18 employees spent their 10-minute rest breaks. (Connor Decl. ¶ 70.) Specifically, Defendants
19 conditioned the scheduling of rest breaks on workflow and operational demands. (*Ibid.*) As both a
20 driver and assistant manager, Plaintiff explained that he frequently missed rest breaks due to
21 understaffing and job pressures. For instance, workloads were especially daunting during the
22 evening dinner rush when the store was understaffed relative to orders and delivery demands. (*Id.*
23 at ¶ 71.) Significantly, in contrast to Defendants’ payment of some meal premiums, Defendants
24 never made a single premium payment for a non-compliant rest break to any Class Members. (*Id.* at
25 ¶ 72.) Thus, Plaintiff alleges that Defendants did not provide premium pay for each non-compliant
26 rest break as required under Labor Code section 226.7.

27 Here again, Defendants dispute liability and damages. Defendants maintain that they
28 authorized and permitted duty-free rest breaks of not less than ten minutes for every major fraction

1 of four hours worked as required by Labor Code section 226.7. (Connor Decl. ¶ 73.) Defendants
2 explained that Class Members had ample opportunity to take, and did take, regular rest breaks.
3 (*Ibid.*) As with meal breaks, Defendants argued that any Class Member who failed to take a rest
4 break, or took a short or late rest period, did so voluntarily and that all applicable rest periods were
5 still authorized and provided. (*Ibid.*) Thus, Defendants argued that they did not act unlawfully to
6 deprive Class Members of rest breaks. (*Ibid.*)

7 Class Counsel recognizes that, unlike meal periods, rest breaks need not be recorded and
8 thus establishing Defendants' exertion of pressure, control, and resulting violations is likely to be
9 more difficult. (Connor Decl. ¶ 74.) Hence, Class Counsel applied a violation rate for Class that is
10 roughly half of the 44.5% violation rate of meal breaks, yielding a rest break maximum exposure of
11 \$1,129,977. (*Ibid.*) For settlement purposes and to account for the difficulties of certifying and
12 proving unrecorded rest break violations, however, a fifty percent reduction from the maximum
13 exposure was and is warranted for a realistic recovery of \$564,989. (*Ibid.*)

14 Unreimbursed Business Expenses

15 Plaintiff alleges a cause of action under Labor Code section 2802, subdivision (a), which
16 states that an employer must reimburse employees for all necessary expenditures that employees
17 incur in discharging their duties. (Connor Decl. ¶ 75.) Here, Plaintiff alleges Defendants' failure to
18 reimburse non-exempt employees for necessary business expenses incurred: to wit, Plaintiff and
19 Class Members incurred costs for dress-code compliant attire, as well as costs associated with use
20 of a personal vehicle for business purposes, and personal cell phone use for business purposes.
21 (*Ibid.*) With recognition that this claim is difficult to certify class-wide and quantify in terms of
22 damages, Plaintiff simply assigns a relatively nominal flat \$50 rate per Class Member; which results
23 in \$72,550 attributed to this claim. (*Id.* at ¶ 76.)

24 Wage Statement Violations

25 Plaintiff alleges a cause of action under Labor Code section 226, subdivision (a), for
26 Defendants' failure to provide accurate itemized wage statements. (Connor Decl. ¶ 77.) Failure to
27 comply with the statute entitles employees to recover the greater of all actual damages or fifty dollars
28 (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each

1 violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
2 (\$4,000). (*See* Lab. Code, § 226, subd. (e).) This cause of action is derivative of the foregoing causes
3 of action because if Defendants did not provide minimum and overtime wages for all hours worked,
4 or owed premiums for non-compliant meal and rest breaks, unreimbursed business expenses, and
5 so forth, then the wage statements were inevitably inaccurate.

6 Defendants contended, however, that Labor Code section 226, subdivision (e), penalties are
7 not automatic; instead, employees must show that Defendants’ noncompliance was “knowing and
8 intentional.” (Connor Decl. ¶ 78.) Defendants suggested that any noncompliance was not knowing
9 and intentional. (*Ibid.*) For example, Defendants argued that any wage statement penalties derivative
10 of non-compliant meal and rest breaks are not appropriate because entitlement to such penalties was
11 not established law until the May 2022 California Supreme Court decision in *Naranjo v. Spectrum*
12 *Security Services, Inc.* (2022) 15 Cal.5th 93.⁸ Thus, the fluctuating legal landscape engendered a
13 good-faith dispute and potential safe harbor defense precluding penalties. (Connor Decl. ¶ 78.)

14 Because the damages for this cause of action are penalties, the statute of limitations is one
15 year prior to the filing of the original complaint. (*See* Code Civ. Proc., § 340.) The Parties discussed
16 these issues, and based on the more conservative \$50 initial violation penalty rate across the
17 qualifying 20,370 pay periods, Plaintiff estimates the total maximum wage statement exposure to
18 be \$1,018,500. (Connor Decl. ¶ 79.) However, if Plaintiff deducts for risks such as loss on the merits
19 of the underlying derivative claim(s) and safe harbor defense under *Naranjo, supra*, then a thirty
20 percent reduction yields a realistic recovery amount of \$712,950. (Connor Decl. ¶ 79.)

21 Waiting Time Violations

22 Plaintiff further asserts a cause of action against Defendants for failure to timely pay all
23 wages due employees at separation. (*See* Lab. Code, §§ 201-203.) As with other claims, Defendants
24 vigorously disagree that they engaged in any conduct giving rise to liability or entitlement to
25 recovery of penalties. (Connor Decl. ¶ 80.)

26
27 ⁸ Post-mediation and earlier this year, the appellate court, re-visiting *Naranjo* on remand,
28 substantiated such arguments. (*See Naranjo v. Spectrum Security Services, Inc.* (2023) 88
Cal.App.5th 937, review granted May 31, 2023, No. S279397.)

1 Defendants argued that waiting time penalties are not appropriate because they attempted to
2 pay employees all final wages owed in good faith upon their separation, thereby precluding a finding
3 of willfulness necessary to obtain waiting time penalties. (Connor Decl. ¶ 81.) Moreover,
4 Defendants maintained that no waiting time penalties were recoverable from alleged meal or rest
5 period violations. (*Id.* at ¶ 82.) Again, Defendants argued that payment of waiting-time penalties are
6 not appropriate here because such penalties for missed meal breaks and rest periods was not clearly
7 established law until the May 2022 California Supreme Court decision in *Naranjo, supra*. As with
8 wage statements, the fluctuating legal landscape arguably engendered a good-faith dispute and
9 potential safe harbor defense precluding penalties. (Connor Decl. ¶ 82.)

10 Based on the count of 1,009 former employees at the time of mediation, Class Counsel
11 appraised the maximum value of the waiting time claim as \$2,811,407. (Connor Decl. ¶ 83.) But
12 after the Parties discussed the above risks, Class Counsel factored in a reduction of thirty percent—
13 Plaintiff believes that the combined potential derivative liability makes the claim relatively
14 recoverable—and posits \$1,967,985 as a more realistic exposure value. (*Ibid.*)

15 Derivative PAGA Penalties

16 Plaintiff notified Defendants and the LWDA of the alleged violations on August 24, 2020,
17 and having waited the requisite administrative exhaustion timeframe, Plaintiff included a
18 representative PAGA claim in the operative Complaint. The success of Plaintiff's PAGA claim is
19 heavily dependent upon the success of the underlying claims occurring within the one-year statute
20 of limitations applicable to the PAGA. (Connor Decl. ¶ 84.) In response, Defendants contended
21 that these penalties are derived from the underlying wage and hour violations discussed above,
22 which Defendants dispute. (*Ibid.*)

23 Defendants maintained, and continue to maintain, that they had compliant employment
24 policies and practices throughout the statutory period. (Connor Decl. ¶ 85.) Defendants denied, and
25 continue to deny, that they ever violated any provision of the Labor Code and argued that, even
26 assuming such violations occurred, Defendants will not be treated as having engaged in subsequent
27 violations giving rise to heightened penalties. (*Ibid.*) In other words, Defendants argued that
28 heightened civil penalties for subsequent violations would not be assessed unless it could be shown

1 that Defendants had notice that they were violating the law, *e.g.*, having been cited by a labor agency
2 or adjudged by a court to have done so. (*Ibid.*; *see, e.g., Amaral v. Cintas Corp.* (2008) 163 Cal.4th
3 1157, 1209.) Thus, Defendants contended that, at best, even if a violation giving rise to a penalty
4 was shown for each pay period, only the civil penalty associated with the initial violations would
5 apply. (Connor Decl. ¶ 85.) Defendants further postured that because since March 15, 2021, new
6 hire and rehire employees were required to sign arbitration agreements, that further risk should be
7 factored in in light of the United States Supreme Court’s decision in *Viking River Cruises, Inc. v.*
8 *Moriana* (2022) ___ U.S. ___ [142 S.Ct. 1906].⁹ (Connor Decl. ¶ 86.)

9 Under Labor Code section 2699, subdivision (f)(2), Defendants are subject to civil penalties
10 of \$100 for the initial violation of the underlying Labor Code sections, and \$200 for each subsequent
11 pay period where the violation occurred. Extrapolating the one-year statutory PAGA period from
12 the date of filing through mediation, Plaintiff estimated 20,370 pay periods at issue. (Connor Decl.
13 ¶ 87). Although, strictly speaking, class certification requirements are not required to be satisfied in
14 order to adjudicate a PAGA claim, the state of the law with respect to the adjudication and valuation
15 of a PAGA claim is uncertain.¹⁰ (*Id.* at ¶ 88.) Thus, Class Counsel applied discounts for the risks
16 involved with establishing manageability and possible bifurcation of discovery and/or trial, the risks
17 involved with regard to success on the merits and in establishing liability, and the risks related to

19 ⁹ The Parties’ mediation and settlement predated the California Supreme Court’s ruling in *Adolph*
20 *v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104.

21 ¹⁰ Instead, what is clear is that the purpose of the PAGA is not to generate revenue for the State but
22 rather to facilitate the enforcement of the labor laws. (*See, e.g., Williams v. Superior Court* (2017)
23 3 Cal.5th 531, 546; *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986; Lab. Code, § 2699, subd.
24 (i).) In assessing the adequacy of the recovery under a PAGA claim, the focus is not the amount
25 which the LWDA and the aggrieved employees are to receive formally in the form of monetary civil
26 penalties but instead whether the total settlement amount achieves the PAGA’s objectives. When
27 PAGA claims are settled, courts “consider whether the proposed PAGA settlement is fair and
28 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, 1135.) A “[c]ourt does not review
the PAGA allocation in isolation, but rather reviews the settlement as a whole, to determine whether
it is fundamentally fair, reasonable and adequate, with primary consideration for the interests of
absent class members.” (LWDA’s Comments on Proposed PAGA Settlement, *O’Connor v. Uber*
Techs., Inc. (N.D.Cal. July 29, 2016) No. 13-CV-03826-EMC, Docket No. 736, at 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 4:14-16.)

1 proving the extent of penalties that are warranted and possible discretionary reduction of penalties
2 by the Court. (*Ibid.*) As a result, Plaintiff used the initial \$100 penalty violation rate to calculate an
3 estimated \$2,037,000 in potential PAGA penalty exposure. (*Id.* at ¶ 89.) However, to account for
4 the issues involving the post-March 2021 pay periods in light of *Viking River, supra*, Plaintiff
5 applied a fifty percent reduction to those 10,185 pay periods to arrive at an exposure of \$1,527,750—
6 of which, by statute, only 25%, or \$381,938—would be recoverable by aggrieved employees.
7 (Connor Decl. ¶ 89.)

8 Summary

9 Using the estimated figures for each of the claims described above, Plaintiff predicted that
10 approximately \$7,847,147 would be the maximum possible recovery in damages available to
11 Class Members. Without any discount for risks for certification or liability, the proposed recovery
12 to the Class of \$1,200,000 thus represents **15% of the maximum possible exposure** to Defendants.
13 (Connor Decl. ¶ 91.) “The fact that a proposed settlement may only amount to a fraction of the
14 potential recovery does not, in and of itself, mean that the proposed settlement is grossly
15 inadequate and should be disapproved.” (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998)
16 151 F.3d 1234, 1242; *see also, Altamirano v. Shaw Industries, Inc.* (N.D.Cal. 2015) 2015 WL
17 4512372, at *9 [preliminarily approving wage-and-hour class action settlement, stating
18 “[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated
19 by Plaintiff, that figure is sufficient for the Court to grant preliminary approval given the merits
20 of Plaintiff’s claims.”].)¹¹ Plaintiff reiterates that at least two highly contested issues—*i.e.*, the
21 purported meal break waiver and post-March 2021 arbitration agreements—posed risks akin to
22 all-or-nothing that if played out could drastically alter potential recoveries. (Connor Decl. ¶ 93.)

23 As described above, Plaintiff assumed multiple discounts tailored to the various claims
24 and together, Plaintiff estimates approximately \$4,765,688 would be the realistic value of Class

25
26 ¹¹ It should also be noted that \$3,635,302 of the maximum is attributable to wages, break premiums,
27 and reimbursed expenses, while the remainder is discretionary penalties. Thus, the proposed
28 settlement amount of \$1,200,000 represents 33% of the estimated potential maximum value of
unpaid wages, meal and rest break period violations, and reimbursements as opposed to
discretionary penalties. (Connor Decl. ¶ 92.)

Members' claims, for which \$1,200,000 therefore represents *25% of the realistic possible exposure* to Defendants. (Connor Decl. ¶ 94.) In sum, the data, coupled with factual and legal analysis, shows that the Settlement reflects an estimated range of *15%-25% of the potential maximum/realistic damages* recoverable at trial. (*Ibid.*) Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement, to pursue their own claims. (*Id.* at ¶ 95.) Finally, settlement awards for each participating Class Member are designed to be tailored under the Settlement Agreement to the extent to which he or she was each affected by Defendants' alleged wage-and-hour violations, by being based on his or her eligible workweeks and/or pay periods. (*Ibid.*) After analyzing the claims in this matter, Plaintiff and Class Counsel have concluded that the value of this Settlement is fair, reasonable, and adequate.

VII. PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS

This Court should order distribution of the proposed Class Notice (*see* Connor Decl. Exh. 1 [Settlement Agreement] at internal Exhibit 1), in both English and Spanish, to the Class by first class U.S. mail, postage prepaid, using the last known mailing address information provided by Defendants. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified though reasonable effort." (*Eisen v. Carlisle and Jacqueline* (1974) 417 U.S. 156, 173.) Here, the Parties propose that the settlement be administered by CPT Group, Inc. ("CPT"), an experienced class action settlement administrator. (Settlement Agreement ¶¶ 31, 52.) Class Members' addresses will be ascertainable through Defendants' personnel and payroll records, which Defendants will provide to CPT within twenty (20) calendar days after preliminary approval of the Settlement. (*Id.* at ¶ 52(b).) Under the Settlement, CPT will run all addresses through the National Change of Address database and, to the extent that any notices are returned, will conduct skip traces to obtain current address information, and re-mail those notices. (*Id.* at ¶ 52(d).) CPT shall also maintain a case-specific website for hosting relevant documents, including a copy of the Class Notice and Settlement Agreement.

The content of the proposed Class Notice satisfies California Rules of Court, rule 3.766, subdivision (d), because it advises Class Members of the nature of the claims, the basic contentions

1 and denials of the Parties, the key terms of the settlement, the uniform 45-day deadline to submit a
2 pay period dispute, request for exclusion/opt-out, or object to the settlement and the procedure by
3 which to do so, and explains the recovery formula and credited number of workweeks and pay
4 periods for each Class Member, and/or PAGA Group Member, when applicable. The proposed Class
5 Notice will also notify Class Members of the final approval hearing date, provide the contact
6 information for Class Counsel, and advise Class Members that they may enter an appearance
7 through their own counsel if they wish. This manner of giving notice satisfies California Rules of
8 Court, rule 3.766, subdivision (e), as the “best notice practicable” under the circumstances because
9 it provides “individual notice to all members who can be identified through reasonable effort.”
10 (*Eisen, supra*, 417 U.S. at p. 173.) Thus, the proposed method of notice is reasonably calculated to
11 reach Class Members by the best means practicable and should be approved.

12 **VIII. SUBMISSION OF SETTLEMENT TO THE LWDA**

13 Labor Code section 2699, subdivision (l), requires that the Court “shall review and approve
14 any settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall
15 be submitted to the agency at the same time that it is submitted to the court.” As such, on the day of
16 filing of this Motion, a copy of this Motion and the Settlement Agreement will be submitted to the
17 LWDA, in accordance with this section. (Connor Decl. ¶ 121.)

18 **IX. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

19 Finally, this Court should set a hearing for final approval of the Settlement on a date
20 appropriately scheduled to follow the deadline by which Class Members must submit any pay period
21 disputes, requests for exclusion/opt outs, or object to the Settlement. (*See* California Rules of Court,
22 rule 3.769.)¹²

23 **X. CONCLUSION**

24 Based upon the foregoing, and because the proposed Settlement is fair, reasonable, and
25 advantageous to the Class Members, Plaintiff respectfully requests that the Court enter an Order:

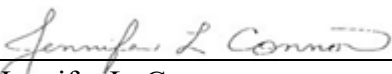
26
27 ¹² Plaintiff requests a date approximately 100 calendar days out, which would allow for 30 days for
28 the Class Notice to be mailed, plus the 45-day response period required by the Settlement
Agreement, plus 21 days in advance of hearing for preparation and filing of the Motion for Final
Approval and supporting papers, with a couple of days buffer.

1. Preliminarily approving the Settlement Agreement as fair, reasonable, and adequate;
2. Preliminarily approving the form and content of the Class Notice (attached as internal Exhibit 1 to the Settlement Agreement);
3. Provisionally certifying the Settlement Agreement's proposed Class comprised of the Class Members identified during the Class Period under Civil Code section 382, for settlement purposes only;
4. Approving and appointing Plaintiff Michael Manzo as the Class Representative;
5. Approving and appointing CounselOne, PC as Class Counsel;
6. Approving and appointing CPT Group, Inc. as the Settlement Administrator;
7. Setting a date for the Final Approval Hearing; and
8. For any further relief the Court deems just and proper.

Dated: August 14, 2022

Respectfully submitted,

COUNSELONE, PC

By: 
Jennifer L. Connor
Anthony J. Orshansky
Attorneys for Plaintiff, Class Members, and
Aggrieved Employees