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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DAVID MARTINELLO, on behalf of himself,
and others similarly situated,

Plaintiff,

v.

CENTURY WILSHIRE, INC., a California
Corporation, and DOES 1-50, inclusive,

Defendants.

Case No: 20STCV32613

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT**

Hearing Date: October 26, 2021
Hearing Time: 10:30 AM

Honorable Carolyn Kuhl
Department 12

Trial Date: Not Set
Action Filed: August 24, 2020

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1 **I. INTRODUCTION**

2 Plaintiff David Martinello (“Plaintiff”) respectfully submits this memorandum in support of
3 the motion for preliminary approval of the proposed class and Private Attorneys General Act
4 (“PAGA”) action settlement with Defendant Century Wilshire, Inc. (dba The Culver Hotel)
5 (“Defendant”), and seeks entry of an order: (1) preliminarily approving the proposed settlement of
6 this class and PAGA action; (2) approving the form and method for providing class-wide notice;
7 (3) directing that notice of the proposed settlement be given to the class; and (4) scheduling a final
8 approval hearing date to consider Plaintiff’s motion for final approval of the settlement and entry
9 of Judgment, and Plaintiff’s motion for approval of attorneys’ fees and litigation expenses.

10 On August 24, 2020, Plaintiff filed this Class Action/PAGA Complaint on behalf of a
11 putative class defined as “all individuals who are or previously were employed by Defendant in
12 California and classified as non-exempt employees” alleging the following claims against
13 Defendant: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code § 17200, *et seq.*; (2)
14 Failure to Pay Minimum Wages in Violation of CA. Lav. Code §§ 1194, 1197 & 1197.1; (3) Failure
15 to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide
16 Required Meal Periods in Violation of Ca. Lab. Code §§ 226.7 & 512 and the Applicable IWC
17 Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7
18 & 512 and the Applicable Wage Order; (6) Failure to Provide Accurate Itemized Statements in
19 Violation of Cal. Lab. Code § 226; (7) Failure to Provide Wages When Due in Violation of Cal. Lab.
20 Code §§ 201, 202 and 203; (8) Failure to Reimburse Employees for Required Expenses in Violation
21 of Cal. Lab. Code § 2802; (9) Failure to Provide Gratuities in Violation of Cal. Lab. Code § 451;
22 and (10) Violation of the Private Attorneys General Act [Labor Code §§ 2698 *et seq.*].

23 On April 27, 2021, the parties participated in a mediation before Tripper Ortman, Esq., a
24 respected mediator of wage and hour class and representative actions. (Agreement at ¶ II(C)). At
25 the conclusion of the mediation, the Parties reached an agreement for settlement. The basic terms
26 were set forth in a signed Memorandum of Understanding. Plaintiff and Defendant have reached a
27 full settlement of the above-captioned action, which is embodied in the Joint Stipulation of
28 Settlement of Class Action Claims and Release of Claims (“Agreement”). A copy of the fully

1 executed Agreement is attached as Exhibit #1 to the Declaration of Shani O. Zakay (“Decl. Zakay”),
2 served and filed herewith.

3 As consideration for this Settlement, the total amount to be paid by Defendant is Three
4 Hundred Twenty-Five Thousand Dollars and Zero Cents (\$325,000) (the “Total Settlement
5 Amount”). (Agreement at ¶ III(A)(1)). The Total Settlement Amount will settle all issues pending
6 in this litigation between the Plaintiff and the California Class (the “Class”), on the one hand, and
7 the Defendant and the Released Parties, on the other hand, including: payment of all Individual
8 Settlement Payments, the Class Representative Service Payment Awards, the Class Counsel Award,
9 Class Counsel Litigation Expenses Payment, the payment to the Aggrieved Employees and the
10 California Labor Workforce Development Agency (“PAGA Payment”), and the expenses of the
11 Settlement Administrator. (*Id.*). The Total Settlement Amount does not include Defendant’s share
12 of employer payroll taxes, which it shall pay separately. (*Id.*) The Settlement is all-in with no
13 reversion to Defendant and no need to submit a claim form. (*Id.*). (Decl. Zakay at ¶ 3).

14 The Settlement is fair, reasonable, and adequate, and should be preliminarily approved.
15 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the
16 Agreement and enter the proposed order submitted herewith.

17 **II. DESCRIPTION OF THE SETTLEMENT**

18 The Total Settlement Amount to be paid by Defendant is Three Hundred Twenty-Five
19 Thousand Dollars (\$325,000.00). Under the Settlement, the Total Settlement Amount consists of
20 the following elements: (1) Individual Settlement Payments to Participating Class Members, (2)
21 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, (3) Settlement
22 Administration Costs, the PAGA Payment, and the Class Representative Service Award to the
23 Plaintiff. The Total Settlement Amount does not include Defendant’s share of employer payroll
24 taxes, which Defendant shall pay to the Administrator separately. The Total Settlement Amount
25 shall be all-in with no reversion to Defendant. (Decl. Zakay at ¶ 12).

26 After the Effective Date of the Agreement, the Defendant will fund the Total Settlement
27 Amount. The Settlement Administrator will establish and administer this settlement, and shall pay
28 from the Total Settlement Amount: the Participating Class Members their Individual Settlement

1 Payments from the Net Settlement Amount; Class Counsel their Class Counsel Fees Payment and
2 the Class Counsel Litigation Expenses Payment; the Aggrieved Employees their portion of the
3 PAGA Payment; the LWDA its portion of the PAGA Payment; and the Settlement Administrator
4 its Settlement Administration Costs, all in the amounts approved by the Court. (Agreement at ¶
5 I(L).).

6 The Net Settlement Amount shall equal the net amount available for Settlement shares to
7 Participating Class Members from the Total Settlement Amount after deducting the Court-approved
8 amounts for the Class Award, Class Representative Service Award, PAGA Settlement, and
9 Settlement Administration Costs. The Settlement Administrator will pay the Individual Settlement
10 Payments to the Class Members. (Agreement at ¶ III(K)). The Settlement Administrator will pay
11 an Individual Settlement Payment from the Net Settlement Amount. (Agreement at ¶ I(N). (Decl.
12 Zakay at ¶14).

13 The Individual Settlement Payments will be calculated based on the number of workweeks
14 worked during the Class Period. (Agreement at ¶ III(M)(1)(a)). The Settlement Share for each
15 Participating Class Member will be calculated as follows: (1) from the Net Settlement Amount the
16 Settlement Share for each Participating Class Member will be calculated by (a) dividing the
17 workweeks for each Settlement Class Member by the total number of workweeks to determine a
18 payment ratio (“Payment Ratio”), and (b) multiplying the Payment Ratio by the Net Settlement
19 Amount to determine the estimated Individual Settlement Payment. (Agreement at ¶ III (M)(1)(a)).
20 The entire Net Settlement Fund shall be distributed. (Decl. Zakay at ¶14).

21 Class Members will have forty-five (45) days after the mailing of the Class Notice to exclude
22 themselves or submit written objections. (Agreement at ¶ I(BB)). Class Members may choose to
23 exclude themselves and opt-out of the Settlement by following the directions set forth in the Class
24 Notice. (Agreement at ¶ III(L)(7)). All Class Members who do not “opt-out” will be deemed
25 Settlement Class Members who will be bound by the Settlement and will be entitled to receive an
26 Individual Settlement Payment. (Agreement at ¶ I(GG)). Finally, the Class Notice will advise the
27 Class Members of their right to object to the Settlement. (Agreement at ¶ III(L)(8).)

1 If a check is returned to the Settlement Administrator, the Settlement Administrator shall
2 re-mail the check to any forwarding address provided by the Class Member. (Agreement at ¶
3 III(L)(4)). If no forwarding address is provided, the Settlement Administrator will use reasonable
4 efforts to attempt to determine a correct address. (*Id.*). If a Participating Class Member does not
5 cash their Individual Settlement Payment within ninety (90) days after the Settlement
6 Administrator's last mailing to the Participating Class Member, the Settlement Administrator will
7 send the affected Participating Class Member a notice informing him or her that unless the check is
8 cashed in the next ninety (90) days, the check will expire and become non-negotiable, and offer to
9 replace the check if it was lost or misplaced but not cashed. (Agreement at ¶ III(M)(1)(f)). If a
10 Class Member's Individual Settlement Payment check is not cashed within one hundred eighty
11 (180) days after its mailing to the Class Member, the funds from such uncashed check will be paid
12 to the Children's Advocacy Institute ("CAI") in accordance with California Code of Civil Procedure
13 section 384 in the name of the Class Member and the Class Member will remain bound by the
14 Settlement. (*Id.*). None of the Parties or counsel has any interest, pecuniary or otherwise, in CAI.
15 (Decl. Zakay at ¶16).

16 The Parties have agreed to use ILYM Group as the Settlement Administrator for the
17 Settlement. (Agreement at ¶ I(DD)). Payment of the expenses of the Settlement Administrator
18 from the Total Settlement Administrator shall be made for the expenses of effectuating and
19 administering the Settlement. ILYM Group shall receive payment for services in an amount not to
20 exceed \$15,000. (Agreement at ¶ III(M)(5)).

21 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum
22 not to exceed one-third of the Total Settlement Amount currently estimated to be \$108,333.00, as
23 their Class Counsel Fees Payment. (Agreement at ¶ III(M)(3)). Class Counsel's award for
24 attorneys' fees will be divided equally between Class Counsel (50% to JCL Law Firm, APC and
25 50% to Zakay Law Group, ALPC). (Agreement at ¶ I(E)). Class Counsel will also be allowed to
26 apply separately for an award of litigation expenses incurred in the prosecution and settlement of
27 the Action currently not exceeding \$20,000. (*Id.*). In support of this request, Class Counsel will
28 provide evidentiary support, including lodestar.

1 Subject to Court approval, the Agreement provides for the payment of a Class
2 Representative Service Payment of no more than \$7,500 for Plaintiff, or any lesser amount as may
3 be approved by the Court. (Agreement at ¶ III(M)(2)).

4 Subject to Court approval, \$15,000 will be allocated from the Total Settlement Amount for
5 settlement of civil penalties under PAGA. (Agreement at ¶ III(M)(4)). Pursuant to the requirements
6 of Labor Code §2699(i) the PAGA Payment shall be allocated \$11,250 (75%) to the LWDA (the
7 “LWDA Payment”) as the LWDA’s share of the settlement of civil penalties and \$3,750 (25%) will
8 be distributed to the Aggrieved Employees (the “Aggrieved Employee Payment”). (*Id.*).

9 The Settlement is fair, reasonable, and adequate, and should be preliminarily approved.
10 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the
11 Agreement and enter the proposed order submitted herewith.

12 **III. CASE BACKGROUND**

13 On June 11, 2020, Plaintiff filed a Notice of Violations with the LWDA and served the same
14 on Defendant. The Notice to the LWDA included a proposed Complaint which Plaintiff planned
15 on filing with the Court, which asserted the Defendant: (1) Violated California Business and
16 Professions Code § 17200 et seq.; (2) Failed to pay minimum wages in violation of California Labor
17 Code §§ 1194, 1197, and 1997.1; (3) Failed to pay overtime wages in violation of California Labor
18 Code §§ 510, et seq.; (4) Failed to provide meal periods in violation of California Labor Code §§
19 226.7 & 512, and IWC Wage Order; (5) Failed to provide rest periods in violation of California
20 Labor Code §§ 226.7 & 512, and IWC Wage Order; (6) Failed to provide accurate and complete
21 itemized wage statements in violation of California Labor Code §226; (7) Failed to provide wages
22 when due in violation of California Labor Code §§ 201, 202, and 203; (8) Failed to reimburse
23 employees for required expenses in violation of California Labor Code §2802; and (9) Failed to
24 provide gratuities in violation of California Labor Code §351.

25 On August 24, 2020, Plaintiff filed a class action and PAGA Complaint against Defendant
26 in the Superior Court of the State of California, County of Los Angeles. In addition to the causes of
27 action asserted in the Notice to the LWDA, Plaintiff’s complaint included a tenth cause of action
28 for Defendant’s violation of the Private Attorneys General Act in violation of California Labor Code

1 §2698. (Decl. Zakay at ¶7). Plaintiff sought to represent a putative class of all individuals who
2 worked for Defendant as non-exempt employees in California during the California Class Period
3 (the “California Class”). The Class Period is defined as the period between April 6, 2016, and July
4 27, 2021. The Action seeks unpaid wages, unpaid gratuities, penalties, attorneys’ fees and costs,
5 and any other equitable or legal relief allegedly due and owing to Plaintiff and other Class Members
6 and aggrieved employees by virtue of the foregoing claims. (Decl. Zakay at ¶8).

7 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
8 information in connection with the Action. As part of this process, Defendant provided a significant
9 sample of time records and payroll records, as well as other documents and information, including
10 Plaintiff’s complete personnel, time and pay records during the relevant time, relevant data points
11 pertaining to the number of workers, workweeks, and pay periods, and applicable employment
12 policies and procedures in effect during the relevant time, to Class Counsel to review and analyze.
13 On April 27, 2021, the Parties participated in a full-day mediation presided over by Tripper Ortman,
14 Esq., a respected mediator of wage and hour class and representative actions. The Parties were able
15 to reach an agreement to settle the Action at the conclusion of the mediation pursuant to a mediator’s
16 proposal. The Parties documented the agreement in the form of a Memorandum of Understanding.
17 The Parties then prepared the Joint Stipulation of Settlement of Class Action Claims and Release
18 of Claims (“Agreement”), which was signed by the Parties and is now presented to this Court for
19 preliminary approval. (Decl. Zakay at ¶9).

20 For purposes of this Settlement, the “Class” is defined as “all of Defendant’s current and
21 former non-exempt employees employed in California between April 6, 2016 and the earliest of
22 July 27, 2021 or the date of preliminary approval.” (Agreement at ¶ I(E)). The Class Period is the
23 period from April 6, 2016, to July 27, 2021. (See Agreement at ¶ I(G)).

24 Although a resolution has been reached, Defendant denies any and all liability or
25 wrongdoing of any kind associated with the claims alleged in the Action as to Plaintiff or any Class
26 Members and/or Aggrieved Employees and further denies that, for any purpose other than
27 Settlement, the Action is appropriate for class or representative treatment. Defendant contends,
28 among other things, that it has correctly and fully compensated Plaintiff, the Class Members and

1 Aggrieved Employees for all wages and gratuities, provided compliant meal and rest periods to the
2 Class Members, provided complete and accurate itemized wage statements, provided
3 reimbursement of all reasonable and necessary business expenses in accordance with the law, and
4 complied at all times with the California Labor Code, and the applicable Wage Orders. ”The Parties
5 agree to certification of the Class for purposes of this Settlement only.” (Agreement at ¶ II(D)).
6 (Decl. Zakay at ¶10).

7 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
8 Counsel has diligently evaluated the Class Members’ claims against Defendant. Class Counsel
9 reviewed the production of documents from the Defendant. Prior to mediation, counsel for
10 Defendant provided Class Counsel with access to the necessary data and information for Class
11 Counsel to evaluate the claims by the Class. Class Counsel conducted extensive review of a
12 significant sample of time and pay records and data with the assistance of an expert. Based on the
13 foregoing data and their own independent investigation, evaluation, and experience, Class Counsel
14 believes that the terms of the Settlement set forth in the Agreement are fair, reasonable, and adequate
15 and are in the best interest of the Class in light of all known facts and circumstances, including the
16 risk of significant delay, the defenses asserted by Defendant, and potential appellate issues. (Decl.
17 Zakay at ¶11).

18 IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS 19 COURT TO GRANT PRELIMINARY APPROVAL

20 When a proposed class-wide settlement is reached, the settlement must be submitted to the
21 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,
22 p.11-87). California “[p]ublic policy generally favors the compromise of complex class action
23 litigation.” (*Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 581 (2010) (quoting *Cellphone*
24 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009).) Class action settlements are
25 approved where the proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor*
26 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d
27 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983)).
28

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

8 The primary question presented on an application for preliminary approval of a proposed
9 class action settlement is whether the proposed settlement is “within the range of possible approval.”
10 (*Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3
11 (7th Cir. 1982)).¹ Preliminary approval is merely the prerequisite to giving notice so that “the
12 proposed settlement... may be submitted to members of the prospective Class for their acceptance
13 or rejection.” (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*,
14 323 F. Supp. 364, 372 (E.D. Pa. 1970); *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist.
15 LEXIS 151997, *3 (C.D. Cal. 2010)). There is an initial presumption of fairness when a proposed
16 settlement, which was negotiated at arm’s length by counsel for the Class, is presented for court
17 approval. (*Newberg*, 3d Ed., §11.41, p.11-88; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
18 224, 245 (2001) [citation omitted]; see also *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th
19 734, 742-45 (2009) (upholding trial court’s determination that settlement was “fair, reasonable and
20 adequate” where the settlement “provided valuable benefits to the class ... that were ‘particularly
21 valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.’”).
22 However, the ultimate question of whether the proposed settlement is fair, reasonable, and adequate
23 is made after notice of the settlement is given to the Class Members and a final settlement hearing
24 is held by the Court.

25
26 ¹ California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). “It is well established that in the absence of relevant state precedents trial courts
28 are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure
for conducting class actions.” *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986),
citing *Green v. Obledo*, 29 Cal.3d 126, 145-146 (1981).

1 **A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement**

2 The approval of a proposed settlement of a class action suit is a matter within the broad
3 discretion of the trial court. (*Wershba*, 91 Cal. App. 4th at 234-235; *Dunk*, 48 Cal. App. 4th at
4 1794). Preliminary approval does not require the trial court to answer the ultimate question of
5 whether a proposed settlement is fair, reasonable, and adequate. That final determination is made
6 only after notice of the settlement has been given to the class members and after they have been
7 given an opportunity to voice their views of the settlement or to be excluded from the settlement.
8 (*3B J. Moore, Moore's Federal Practice* §§23.80 - 23.85 (2003)).

9 In considering a potential settlement for preliminary approval purposes, the trial court does
10 not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits
11 of the dispute, and need not engage in a trial on the merits. (*Wershba, supra*, 91 Cal. App. 4th at
12 239-40; *Dunk, supra*, 48 Cal. App. 4th at 1807). The Ninth Circuit explains, “the very essence of a
13 settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” (*Officers*
14 *for Justice v. Civil Service Com’n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982).
15 The question whether a proposed settlement is fair, reasonable, and adequate necessarily requires a
16 judgment and evaluation by the attorneys for the parties based upon a comparison of “the terms of
17 the compromise with the likely rewards of litigation.” (*Weinberger v. Kendrick*, 698 F.2d 61, 73
18 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
19 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968))). Thus, when analyzing the
20 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what
21 might have been achieved by the negotiators.” (*Officers for Justice*, 688 F.2d at 625, 628).

22 With regard to class action settlements, the opinions of counsel should be given considerable
23 weight both because of counsel’s familiarity with this litigation and previous experience with cases
24 such as these. (*Officers for Justice*, 688 F.2d 615, 625 (9th Cir. 1982); *In re Wash. Public Power*
25 *Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F.
26 Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*, 698 F.2d at 74). For example, in *Lyons v. Marrud,*
27 *Inc.*, [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 93,525 (S.D.N.Y. 1972), the
28 court noted that “[e]xperienced and competent counsel have assessed these problems and the

1 probability of success on the merits... The parties' decision regarding the respective merits of their
2 position has an important bearing." (*Id.* at ¶ 92,520). "The recommendations of plaintiffs' counsel
3 should be given a presumption of reasonableness." (*Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622
4 (N.D. Cal. 1979)). As a result, courts hold that the recommendation of counsel is entitled to
5 significant weight. (*Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D.
6 Cal. 2004)).

7 **B. Factors To Be Considered In Granting Preliminary Approval**

8 A number of factors are to be considered in evaluating a settlement for purposes of
9 preliminary approval. In determining whether to grant preliminary approval, the court considers
10 whether the "(1) the proposed settlement appears to be the product of serious, informed, non-
11 collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential
12 treatment to class representatives or segments of the class, and (4) falls within the range of possible
13 approval." (*In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)). No
14 one factor should be determinative, but rather all factors should be considered. The analysis has
15 been summarized as follows:

16 If the proposed settlement appears to be the product of serious, informed,
17 noncollusive negotiations, has no obvious deficiencies, does not improperly grant
18 preferential treatment to class representatives or segments of the class, and falls
19 within the range of possible approval, then the court should direct that notice be
20 presented in support of and in opposition to the settlement. (*Manual of Complex
Litigation, Second* §30.44, at 229).

21 Here, the Settlement meets all of these criteria for preliminary approval.

22 **1. The Settlement is the Product of Serious, Informed and Arm's Length**
23 **Negotiations by Experienced Counsel**

24 This settlement is the result of extensive and hard-fought litigation and negotiations before
25 an experienced and well-respected mediator. Defendant has expressly denied and continues to deny
26 any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
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1 Class Counsel have determined that it is desirable and beneficial to the Class Members to
2 put to rest the Released Class Claims.²

3 On April 27, 2021, the Parties attended an arm's-length private mediation before Tripper
4 Ortman, Esq., a respected mediator of wage and hour class and representative actions. In
5 preparation for the mediation, Defendant provided Class Counsel with necessary records and
6 information for the members of the Class, including the total workers, workweeks and pay periods
7 during the relevant time. Defendant produced a significant sample consisting of pay records and
8 time records. Defendant also produced Defendant's relevant employment policies, including
9 compensation policies and timekeeping policies. Plaintiff analyzed the data with the help of an
10 expert, the Berger Consulting Group ("Berger"). At the conclusion of the mediation, the Parties
11 were able to reach an agreement to settle the Action based on Mr. Ortman's informed mediator's
12 proposal. The basic terms were set forth in a signed Memorandum of Understanding. The Parties
13 then prepared the full Agreement, which was signed by all counsel and the Parties. Plaintiff and
14 his Counsel believe that this Settlement is fair, reasonable, and adequate. (Decl. Zakay at ¶5).

16 ² Upon the entry of Final Judgment and funding in full of the Total Settlement Amount by
17 Defendant, any person who is a Participating Class Member of the California Class who does not
18 timely and validly opt out shall be deemed to have fully and finally released all claims, charges,
19 complaints, liens, demands, causes of action, obligations, damages and liabilities, against the
20 Released Parties that were asserted in the Complaint, or that could have been asserted in the
21 Complaint based on any of the facts, alleged in Plaintiff's Complaint, regardless of whether such
22 claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or
23 other source of law. The Release Claims specifically include claims for: (1) Failure to Pay
24 Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (2) Failure to
25 Pay Overtime Wages in Violation of California Labor Code §§ 510, *et seq.*; (3) Failure to Provide
26 Required Meal Periods in Violation of California Labor Code §§ 226.7 and 512 and the Applicable
27 IWC Wage Order; (4) Failure to Provide Required Rest Periods in Violation of California Labor
28 Code §§ 226.7 and 512 and the Applicable IWC Wage Order; (5) Failure to Provide Accurate
Itemized Wage Statements in Violation of California Labor Code § 226; (6) Failure to Provide
Wage When Due in Violation of California Labor Code §§ 201, 202, and 203; (7) Failure to
Reimburse Employees for Required Expenses in Violation of California Labor Code § 2802; (8)
Failure to Provide Gratuities in Violation of California Labor Code § 351; and (9) Unfair
Competition in Violation of California Business and Professions Code § 17200, *et seq.* arising from
the claims listed above at (1)-(8), and expressly excluding all other claims, including claims for
vested benefits, wrongful termination, unemployment insurance, disability, social security,
workers' compensation, and class claims outside of the Class Period.

This release shall be referred to here is the "Released Claims." (See Agreement at ¶ I(Y).)

1 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
2 Counsel has diligently evaluated the Class Members' claims against Defendant. Class Counsel
3 reviewed the production of documents from the Defendant. Prior to mediation, counsel for
4 Defendant provided Class Counsel with access to the necessary data and information for Class
5 Counsel to evaluate the claims by the Class. Class Counsel conducted extensive review of a
6 significant sample of time records and data with the assistance of an expert. Based on the foregoing
7 data and their own independent investigation, evaluation, and experience, Class Counsel believe
8 that the Settlement is fair, reasonable, and adequate and are in the best interest of the Class in light
9 of all known facts and circumstances, including the risk of significant delay, the defenses asserted
10 by Defendant, and potential appellate issues. (Decl. Zakay at ¶11).

11 Plaintiff and Class Counsel recognize the expense and delay of continuing to litigate and
12 trying the Action against Defendant through possible appeals, which could take several years,
13 particularly in light of the ongoing pandemic and its impact on the courts and litigants, generally.
14 Class Counsel have also considered the uncertain outcome and risk of litigation, especially in
15 complex actions such as the one here. Class Counsel are also mindful of, and recognize, the inherent
16 problems of proof under, and asserted defenses to, the claims asserted in the Action. Based upon
17 their evaluation, Plaintiff and Class Counsel have determined that the settlement set forth in the
18 Agreement is in the best interest of the Class Members. (Decl. Zakay at ¶21).

19 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
20 capable advocacy on both sides. The Parties were represented by experienced and capable counsel
21 who zealously advocated their respective positions with the assistance of an experienced mediator.
22 Accordingly, "[t]here is likewise every reason to conclude that settlement negotiations were
23 vigorously conducted at arms' length and without any suggestion of undue influence." (*In re Wash.*
24 *Public Power*, 720 F. Supp. at 1392).

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1 **2. The Settlement Has No “Obvious Deficiencies” and Falls Within the Range of**
2 **Approval**

3 **a. The Settlement is Fair, Reasonable, and Adequate**

4 The proposed Settlement here has no “obvious deficiencies” and is well within the range of
5 possible approval. All Class Members will receive an opportunity to participate in the Settlement
6 and receive payment according to the same formula if they do not opt out. (Agreement at ¶
7 III(L)(7)).

8 The amounts to compensate the Class Members for the alleged violations at the time this
9 Settlement was negotiated were calculated by Berger Consulting Group (“Berger”), Plaintiff’s
10 damage expert. Plaintiff used Berger to analyze the data and determine the potential damages for
11 the employees. For the Class, Plaintiff estimates that Defendant was subject to maximum liability
12 for damages in the amount of \$1,996,949, consisting of \$359,354 for unpaid wages, including
13 unpaid gratuities, and \$1,637,595 for non-compliant meal and rest break periods. In addition,
14 Plaintiff calculated that Defendant could be liable for \$1,201,151, for waiting time penalties and
15 \$256,300 for wage statement penalties.³ Finally, Plaintiff’s expert calculated that Defendant could

17
18 ³ While Plaintiff’s alleged claims for statutory penalties, they recognize that this claim is subject to
19 various defenses asserted by Defendant, including, but not limited to, a good faith dispute defense
20 as to whether Defendant, as a hotel who provides banquet services, is governed by Labor Code
21 Section 201.3, instead of Section 203, which, if proven, would significantly limit the amount of
22 damages owed to the California Class. Moreover, Plaintiff’s claims pursuant to Labor Code Section
23 226 and various PAGA penalties are also subject to a good faith defense as to whether any premium
24 wages for meal or rest periods or other wages were owed given Defendant’s position that Plaintiff
25 and the Class were properly compensated. *See Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008 WL
26 4384147, at *9 (C.D. Cal. Aug. 25, 2008) (granting defendant’s motion for summary judgment on
27 claim for failure to provide accurate itemized wage statements “because a good faith dispute exists...
28 [therefore, defendant] was not ‘knowing and intentional’ in failing to provide [Section 226]
statements”); *see also Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) (“There is
no willful failure to pay wages if the employer and employee have a good faith dispute as to whether
and when the wages were due.”). Additionally, there is serious doubt as to whether violations of
the meal/rest period regulations, which require payment of a “premium wage” for each improper
meal period, give rise to claims under sections 203 and 226. *See Ling v. P.F. Chang’s China Bistro,*
Inc., 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App.
5th 1308, 1336 (2018). This issue was decided in *Naranjo v. Spectrum Sec. Servs., Inc.*, 40 Cal.
App. 5th 444, 474, (Ct. App. 2019), which held that actions for meal break and rest break premiums
“do not entitle employees to pursue the derivative penalties in sections 203 and 226.”

1 be liable for PAGA penalties in an amount of \$3,219,800.⁴ Consequently, the Settlement of
2 approximately \$325,000 represents almost 16.3% of the value of the maximum actual damages at
3 issue. Furthermore, the Settlement represents almost 9.4% of the maximum combination of
4 damages and penalties to the Class, assuming all of these amounts could be proved at trial. Given
5 the amount of the Settlement as compared to the potential value of claims in this case, the Settlement
6 is fair and reasonable. Clearly, the goal of this litigation to provide compensation to Class Members
7 for unpaid time, for allegedly missed meal and rest breaks, and unreimbursed expenses has been
8 met.

9 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal.
10 2015) the court approved a settlement of an action claiming unpaid wages where the settlement
11 amount constituted roughly 10% of the estimated actual damages to the class. Here, the settlement
12 consideration far exceeds the percentage approved in *Stovall-Gusman*. In *Stovall-Gusman*, the court
13 ruled that the settlement which represented approximately 10% of the estimated loss to the class
14 was fair, reasonable, and adequate. As a result, this settlement, which exceeds the percentage
15 approved in *Stovall-Gusman*, is entitled to preliminary approval.

16 Further supporting the fairness and reasonableness of the settlement is Defendant's financial
17 condition. Defendant is a family-owned and operated boutique luxury hotel that provides lodging
18 as well as banquet and event services to its clientele. More broadly, the hospitality industry is widely
19 known to have suffered disproportionately in terms of financial and operational losses due to the
20 ongoing global pandemic, COVID-19 variants, and the associated state and federal orders relating
21 to same. Defendant's niche business is located within a hub, Los Angeles County, which has

22 ⁴ Plaintiff recognizes that the PAGA penalties claim is also subject to various defenses by
23 Defendant, including that Class Members may not be able to recover subsequent penalties until, at
24 a minimum, Plaintiff provided PAGA notice. See *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157,
25 1209 (2008) ("Until the employer has been notified that it is violating a Labor Code provision
26 (whether or not the commissioner or court chooses to impose penalties), the employer cannot be
27 presumed to be aware that its continuing underpayment of employees is a "violation" subject to
28 penalties."). In addition, Plaintiff recognizes that PAGA claims bear some risk. See *Carrington v.*
Starbucks Corp., 30 Cal. App. 5th 504 (2018). In *Carrington*, while the plaintiff prevailed on his
PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing
the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of
Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after
Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

suffered even more significantly as a result of the effects of the COVID-19 virus and the Governor's order closing restaurants and prohibiting large events and gatherings. As a result of the pandemic, Defendant's entire hotel, event and banquet operations were completely shut down for more than two years. The hospitality industry is not projected to make any significant fiscal recovery for several years, minimum.⁵ Considering Defendant's significant financial hardship, and anticipated prolonged hardship throughout the next several years of recovery, the settlement provides great value for the Class Members, while also allowing Defendant to stay in business. Simply put, Defendant could not have afforded to defend the instant action while staying in business considering the ongoing economic effects of COVID-19 on its operations and uncertainty regarding future impacts of the pandemic, to wit. The settlement also takes into consideration the fact that during the time that Defendant's operations were mandated closed by state and local authorities during the COVID-19 pandemic, for a period of more than two years within the Class Period, the alleged violations could not have occurred.

As such, the risk of further litigation is substantial. After arm's-length negotiations between experienced and informed counsel, and with the assistance of an experienced and well-reputed mediator in this space, the Parties recognized the potential risks and agreed on the settlement.

b. The Strengths and Weaknesses in Plaintiff's Case and Defendant's Defenses
Warrant the Settlement

Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). Here, several defenses asserted by Defendant presented serious threats to the claims of the Plaintiff and the other Class Members. Defendant asserted that the employment practices complied with all applicable Labor Laws.

⁵ (See STR, Inc., 2020 U.S. hotel forecast slightly upgraded; full recovery still unlikely until 2024, available at <https://www.hospitalitynet.org/news/4101633.html>; see also AHLA's State of the Hotel Industry 2021, available at *State of the Hotel Industry 2021 report*; Krishnan, Vik, et al., New research indicates an extended and variable return for one of the hardest-hit industries (Jun. 10, 2020), available at <https://www.mckinsey.com/industries/travel-logistics-and-infrastructure/our-insights/hospitality-and-covid-19-how-long-until-no-vacancy-for-us-hotels>; see also additional reports available at, <http://cbre.vo.llnwd.net/qrgservices/secure/Q4%202020%20US%20Hotel%20Figures.pdf?e=1619032429&h=7d642be31ca8e118523e822335596f8f>; <https://www.cbre.us/research-and-reports/2021-US-Real-Estate-Market-Outlook-Hotels>; https://www.ahla.com/sites/default/files/2021_state_of_the_industry_0.pdf.)

1 First, Defendant strongly argued that Plaintiff and the Class Members did not forfeit any
2 gratuities because service charge is a separately designated amount collected by a hotel from patrons
3 that is part of the amount due the hotel for services rendered, rather than something “over and above
4 the actual amount due.” (See LAMC, § 184.01, subd. F.) Thus, a service charge by definition is not
5 a gratuity. Defendant contends that the Legislature has made clear that amounts due for services
6 (which include service charges) are not gratuities, which is evidenced by recent amendments to the
7 definition of gratuity carving out an exception for dancing services. (§ 350, subd. (e).)” (*See Garcia*
8 *v. Four Points Sheraton LAX*, 188 Cal. App. 4th 364, 377 (2010).) Defendant therefore argued that
9 the portion of the service charge, which was added to the banquet bills but allegedly not paid to
10 employees in the chain of service, constituted only a charge for the actual amount due for
11 managerial and planning services of the banquet, and not any sum over and above the actual amount
12 due for food and drink sold to its patrons. Defendant further argued that it specifically suggested
13 to its banquet customers to pay gratuities separately and additionally to the service staff, and that
14 its customers regularly paid such additional gratuities. Defendant argued, therefore, that California
15 Labor Code § 351 did not apply to Plaintiff and the Class Members. This defense could
16 substantially reduce any recovery to the class. While Plaintiff believes that this defense, and others,
17 could be overcome, Defendant maintains these defenses have merit and therefore present a serious
18 risk to recovery for the Class. (Decl. Zakay at ¶23).

19 Second, Defendant argued that the Supreme Court decision in *Brinker v. Superior Court*, 53
20 Cal. 4th 1004 (2012) weakened, if not eliminated, Plaintiff’s claims, on liability, value, and class
21 certifiability as to the meal and rest period claims. A major component of the damages alleged to
22 have been suffered by the Class Members are attributed to missed meal and rest breaks. Before and
23 during the mediation, Defendant aggressively argued that Defendant’s policies and culture afforded
24 the Class Members an opportunity to take timely meal and rest breaks, and that if non-compliant
25 breaks occurred, employees like the Plaintiff *voluntarily chose* not to take compliant breaks
26 notwithstanding the fact that Defendant afforded all employees the full opportunity to take
27 compliant, uninterrupted meal and rest periods. Defendant argued, therefore, that under the *Brinker*
28 decision it has no liability for the missed breaks whatsoever. Defendant argued further that it

1 adopted and strictly enforced lawful policies, afforded Plaintiff and the Class Members compliant
2 meal and rest breaks, and had a system in place to pay premiums when breaks were missed, short
3 or untimely, regardless of the reason. Finally, Defendant argued that certain of the Class Members
4 executed meal period waivers and provided evidence of voluntarily waived meal periods, as
5 permitted by California law, which would require a unique and individualized assessment of each
6 and every employee. Plaintiff and Class Counsel appreciate that the court may find
7 remitter/reduction of the statutory damages appropriate. See e.g. *Klingensmith v. Max & Erma's*
8 *Restaurants, Inc.*, 2007 U.S. Dist. LEXIS 81029, 2007 WL 3118505, at *5 (E.D. Pa. 2007). If
9 successful, these defenses could eliminate or substantially reduce any recovery to the Class. While
10 Plaintiff believes that these defenses, and others, could be overcome, Defendant maintains these
11 defenses have merit and therefore present a serious risk to recovery for the Class. (Decl. Zakay at
12 ¶24).

13 Third, regarding reimbursement claims, Defendant argued *inter alia* that neither Plaintiff
14 nor any Class Member was required to use a personal device for work. Defendant has available
15 telephone and walkie-talkies/radios on-site for employees to carryout their work duties. Defendant
16 maintains and enforces a strict policy prohibiting employees from carrying their mobile devices on
17 them while on-the-clock. Moreover, for any management level personnel who elected to use their
18 personal devices, Defendant required them to execute a “Bring Your Own Device Policy” and
19 provided a monthly stipend to account for business use of such approved devices. (Decl. Zakay at
20 ¶25).

21 Finally, Defendant argued that most clothing worn by hotel employees does not qualify as
22 a “uniform” under California law. See *Bright v. Dennis Garberg & Assocs.* (C.D. Cal. May 4, 2011)
23 2011 WL 13147441, at *3–6 (basic articles of clothing —such as a white shirt and black pants—
24 arguably do not fall within the definition of “uniform” as used in the Wage Orders). Basic wash
25 and wear does not have to be reimbursed by the employers, only if something more than “minimal
26 care” is required does the employer have a duty to reimburse. See *Myles v. Securitas Critical*
27 *Infrastructure Servs., Inc.* (Cal. Ct. App. Nov. 29, 2018) 2018 WL 6241488, at *4–7 (“whether a
28 Securitas employee must be compensated for maintaining a uniform depends on whether it is ‘wash

1 and wear’ or requires special treatment.”); *O’Connor v. Starbucks Corp.* (2008) 2008 WL 2761586
2 *5 (California law states employers owe duty to maintain uniform if it requires special laundering
3 or care). (Decl. Zakay at ¶26).

4 **c. The Risk of Obtaining and Maintaining a Class Action and the Risk, Duration**
5 **and Complexity of Further Litigation Weight in Favor of the Settlement**

6 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
7 to obtain class certification and thereby not recover on behalf of any employee other than himself.
8 Defendant argued that the individual experience of each employee varied with respect to the alleged
9 claims, including based on the Class Members’ job position, schedule, department and reporting
10 structure, among other variables. While other cases have approved class certification of wage and
11 hour claims, class certification in this action would have been hotly disputed and was by no means
12 a foregone conclusion. Finally, even if class certification was successful, as demonstrated by the
13 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014),
14 there are significant hurdles to overcome for a class-wide recovery. (Decl. Zakay at ¶27).

15 This Settlement is therefore entitled to preliminary approval. Assuming certification, were
16 this case to go to trial, the Plaintiff and other Class Members would need to prove to the satisfaction
17 of the Court, among other things, that wages, premiums, reimbursements and other damages were
18 owed on a class-wide basis. This was and is a substantial risk, and the Parties, after arm’s-length
19 negotiations between experienced and informed counsel, recognized the potential risks and agreed
20 on the settlement. The “risk, expense, complexity, and likely duration of further litigation” in this
21 case “favors the settlement.” *Glass v. UBS Fin. Servs.*, 2007 WL 221862 at *4 (N.D. Cal. Jan. 27,
22 2007) (“Regardless of how this Court might have ruled on the merits of the legal issues, the losing
23 party likely would have appealed, and the parties would have faced the expense and uncertainty of
24 litigating an appeal. ‘The expense and possible duration of the litigation should be considered in
25 evaluating the reasonableness of [a] settlement.’”) (citing *In re Mego Financial Corp. Securities*
26 *Litigation*, 213 F.3d 454, 458 (9th Cir. 2000)).

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1 **3. The Settlement Does Not Improperly Grant Preferential Treatment to the**
2 **Class Representative or Segments of The Class**

3 The relief provided in the Settlement will benefit all members of the Class who do not opt
4 out. The Settlement does not improperly grant preferential treatment to the Plaintiff or segments of
5 the Class in any way. Each Participating Class Member will be entitled to a payment based on the
6 plan of allocation described herein. Each Participating Class Member's Individual Settlement
7 Payment will be determined based upon the weeks worked by that employee during the prescribed
8 Class Period. (Decl. Zakay at ¶ 4).

9 Plaintiff will apply to the Court for the Class Representative Service Award of not more
10 than \$7,500 in consideration for his service, and for the risks undertaken on behalf of the Class.
11 (Agreement at ¶ III(M)(2)). Plaintiff performed his duties admirably by working with Class
12 Counsel. The requested Plaintiff's service payment is well within the accepted range of awards for
13 purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist.
14 LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
15 \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)
16 (approving \$10,000 service award where class member recovery was \$375); *Rausch v. Hartford*
17 *Fin. Servs. Grp.*, 2007 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007) (approving award
18 of \$10,000 where class member recoveries were as little as \$150); *Louie v. Kaiser Foundation*
19 *Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000 service
20 award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862,
21 *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of
22 \$100,000.00 in enhancements). As explained in *Glass*, service awards are routinely awarded to
23 class representatives to compensate the employees for the time and effort expended on the case, for
24 the risk of litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an
25 incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17. (Decl.
26 Zakay at ¶29).

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1 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
2 **Preliminary Approval Of The Settlement**

3 The stage of the proceedings at which this Settlement was reached also militates in favor of
4 preliminary approval and ultimately, final approval of the settlement. Class Counsel has conducted
5 a thorough investigation into the facts of the class action. Class Counsel began investigating the
6 Class Members' claims before this action was filed. Class Counsel performed significant review
7 and analysis of Defendant's documents, including personnel records and employment policies, time
8 records, and pay records. Class Counsel engaged in a thorough research and analysis of the relevant
9 claims and data, including the number of workers, workweeks and pay periods affected. Class
10 Counsel were also experienced with the claims at issue here, as Class Counsel previously litigated
11 and settled similar claims in numerous other actions. Accordingly, the Settlement did not occur
12 until Class Counsel possessed sufficient information to make an informed judgment regarding the
13 likelihood of success on the merits and results that could be obtained through further litigation.
14 (Decl. Zakay at ¶30).

15 Based on the foregoing data and their own independent investigation and evaluation, Class
16 Counsel is of the opinion that the settlement with Defendant for the terms set forth in the Agreement
17 is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts
18 and circumstances, including the risk of significant delay, defenses asserted by Defendant, and
19 numerous potential appellate issues. There can be no doubt that Counsel for both Parties possessed
20 sufficient information to make an informed judgment regarding the likelihood of success on the
21 merits and the results that could be obtained through further litigation. (Decl. Zakay at ¶31).

22 The fact that an informal exchange of information (as opposed to formal discovery) was
23 agreed to by the Parties is of no consequence. In *Glass*, the Northern District of California granted
24 final approval of an unpaid wages action although in *Glass* no formal discovery had been conducted
25 prior to the settlement:

26 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
27 observed, however, '[i]n the context of class action settlements, 'formal discovery
28 information to make an informed decision about settlement.'" See *In re Mego*

1 *Financial Corp. Securities Litigation*, 213 F.3d at 459. (*Glass*, 2007 U.S. Dist.
LEXIS 8476 at *14).

2 Here, Class Counsel was in an equally strong position to evaluate the fairness of this
3 settlement because Class Counsel had the same sufficient information, as well as document
4 production, independent investigations, and due diligence, to confirm the accuracy of the
5 information supplied by Defendant.

6 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES**

7 Plaintiff contends that the proposed settlement meets all the requirements for class
8 certification under the California Code of Civil Procedure section 382 as demonstrated below, and
9 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
10 should conditionally certify the Classes for settlement purposes only, defined as follows:

11 The California Class:

12 “all of Defendant’s current and former non-exempt employees employed in California
13 between April 6, 2016 and the earlier of July 27, 2021 or the date of the preliminary approval
14 of settlement.” (Agreement at ¶I(EE)).

15 The California Class Period is the period from April 6, 2016, to July 27, 2021. The Parties estimate
16 that there are 480 California Class Members who collectively worked approximately 21,179
17 workweeks. (Decl. Zakay at ¶32).

18 **A. California Code of Civil Procedure §382**

19 Plaintiff seeks certification of this Class for settlement purposes under California Code of
20 Civil Procedure section 382. The California Supreme Court has summarized the standard for
21 determining whether class certification is appropriate as follows:

22 Code of Civil Procedure Section 382 authorizes class actions “when the question is
23 one of a common or general interest, of many persons, or when the parties are
24 numerous, and it is impracticable to bring them all before the court....” The party
25 seeking certification has the burden to establish the existence of both an
ascertainable class and a well-defined community of interest among class members.
(*citations omitted*). The “community of interest” requirement embodies three
26 factors: (1) predominant common questions of law or fact; (2) class representatives
with claims or defenses typical of the class; and (3) class representatives who can
27 adequately represent the class.

28 *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004).

1 While Defendant reserves all rights to dispute that the Plaintiff can satisfy any of these
2 requirements, Defendant will not dispute that these requirements may be satisfied in this case for
3 purposes of settlement and therefore, the proposed Class should be certified for purposes of
4 settlement only.

5 **B. The Proposed Class Is Ascertainable and Numerous**

6 Here, the approximately 480 current and former employees that comprise the California
7 Class can be identified based on Defendant's records and are sufficiently numerous for class
8 certification. All of these employees are ascertainable because the class members can readily be
9 determined through examination of Defendant's employment files. Given that the classes consist of
10 approximately 480 members, numerosity is easily satisfied. (*See Bowles v. Superior Court*, 44
11 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
12 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)). Moreover,
13 the current and former employees that comprise the Class can be identified based on Defendant's
14 records and are sufficiently numerous for class certification. (Decl. Zakay at 32(a))

15 **C. Common Issues of Law and Fact Predominate**

16 Predominance of common issues of law or fact does not require that the common issues be
17 dispositive of the entire controversy or even that they be dispositive of all liability issues. (1
18 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992)). "Predominance is a comparative
19 concept, and 'the necessity for class members to individually establish eligibility and damages does
20 not mean individual fact questions predominate.'" (*Sav-On*, 34 Cal. 4th at 334).

21 Commonality exists if there is a predominant common legal question regarding how an
22 employer's policies impact its employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th
23 1524, 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on
24 its drivers.")). Whether Plaintiff is likely to prevail on his theory of recovery is irrelevant at the
25 certification stage since the question is "essentially a procedural one that does not ask whether an
26 action is legally or factually meritorious." (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
27 (2003)).
28

1 Here, Plaintiff contends that common questions of law and fact are present, and specifically,
2 whether Defendant's employment practices were lawful, whether Defendant failed to pay gratuities,
3 whether Defendant failed to properly provide and/or pay for meal and rest periods, whether
4 Defendant paid for all time worked, whether Defendant provided accurate wage statements, whether
5 Defendant failed to pay all wages, whether Defendant failed to pay business expense
6 reimbursements to employees, and whether the Class is entitled to compensation and related
7 penalties. (Decl. Zakay at ¶32(b)). Defendant will not oppose such a finding for purposes of this
8 settlement only.

9 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

10 The typicality requirement requires Plaintiff to demonstrate that the members of the class
11 have the same or similar claims as Plaintiff. "The typicality requirement is met when the claims of
12 the Plaintiff [] arise from the same event or are based on the same legal theories." (*Tate v.*
13 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983)). In *Hanlon v. Chrysler Co.*, 150 F.3d 1011
14 (9th Cir. 1998), the Ninth Circuit held that "[u]nder the rule's permissive standards, representative
15 claims are 'typical' if they are reasonably coextensive with those of absent class members; they
16 need not be substantially identical." (50 F.3d at 1020).

17 In the instant case, Plaintiff contends that the typicality requirement is fully satisfied. The
18 Plaintiff, like every other member of the Class was employed by Defendant as a non-exempt
19 employee and is a member of the Class. Plaintiff was subject to the same employment practices
20 concerning the banquet service charges, time rounding, expense reimbursement and grooming
21 requirements, meal and rest periods, and received similar wage statements. Thus, the claims of the
22 Plaintiff and the Class Members arise from the same course of conduct by the Defendant, involve
23 the same employment policies, and are based on the same legal theories. (Decl. Zakay at ¶32(c)).
24 For purposes of settlement, the typicality requirement is met as to the common issues presented in
25 this case. Defendant will not oppose such a finding for purposes of this settlement only.

26 **E. The Class Representative Fairly and Adequately Protected the Class**

27 The Class Members are adequately represented because Plaintiff and Class Counsel (a) do
28 not have any conflicts of interest with other class members, and (b) will prosecute the case

1 vigorously on behalf of the class. (*See Hanlon* 150 F.3d at 1020). First, Plaintiff is well aware of
2 his duties as representative of the Class and has actively participated in the prosecution of this case
3 to date. He effectively communicated with Class Counsel, provided documents to them, and
4 participated in discovery, investigation, and negotiations in the Action. Second, Plaintiff retained
5 competent counsel who are experienced in employment class actions. Third, there is no antagonism
6 between the interests of the Plaintiff and those of the Class. Both the Plaintiff and the Class
7 Members seek monetary relief under the same set of facts and legal theories. (Decl. Zakay at
8 ¶32(d)).

9 **F. The Superiority Requirement Is Met**

10 To certify a class, the Court must also determine that a class action is superior to other
11 available methods for the fair and efficient adjudication of the controversy. “Where classwide
12 litigation of common issues will reduce litigation costs and promote greater efficiency, a class action
13 may be superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227,
14 1234 (9th Cir. 1996)). As courts have previously observed:

15 Absent class treatment, each individual plaintiff would present in separate,
16 duplicative proceedings the same or essentially the same arguments and evidence,
17 including expert testimony. The result would be a multiplicity of trials conducted
18 at enormous expense to both the judicial system and the litigants. ‘It would be
neither efficient nor fair to anyone, including defendants, to force multiple trials to
hear the same evidence and decide the same issues.’

19 *Sav-On*, 34 Cal. 4th at 340.

20 Here, a class action is the superior mechanism for resolution of the claims as pled by the
21 Plaintiff. Defendant will not dispute such a finding for purposes of this settlement only.

22 **VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

23 The Court has broad discretion in approving a practical notice program. The Parties have
24 agreed upon procedures by which the Class Members will be provided with written notice of the
25 Settlement similar to that approved and utilized in hundreds of class action settlements. In
26 accordance with the Agreement, within fifteen (15) days after the Court enters its order granting
27 Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an
28 electronic database containing the Class Data. (Agreement at ¶ III(L)(1)). Within fourteen (14)

1 days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets
2 to all Class Members via regular First-Class U.S. Mail to their current addresses determined by the
3 Settlement Administrator and via electronic mail. (Agreement at ¶ III(L)(3)).

4 The Class Notice, drafted jointly and agreed upon by the Parties through their respective
5 counsel and to be approved by the Court, includes all relevant information. (See Exhibit A to the
6 Agreement). The Class Notice will include, among other information: (i) information regarding the
7 Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii) information
8 to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the
9 estimated settlement payment for each of the Class Members; (v) the amount of attorneys' fees and
10 litigation expenses to be sought; (vi) the amount of the Plaintiff's Class Representative Service
11 Payment requests; (vii) the amount being paid to the LWDA; and (viii) the Settlement
12 Administration Costs. (Decl. Zakay at ¶34).

13 The Class Notice will state that the Class Members shall have forty-five (45) days from the
14 date that the Class Notice is mailed to them to request exclusion or to submit an objection. The
15 Class Members will be given an opportunity to object to the terms of the Agreement and/or the
16 request for attorneys' fees and costs and to participate at the final approval hearing, in accordance
17 with the instructions set forth in the Class Notice. Class Members will be instructed to only contact
18 the Settlement Administrator and Class Counsel and not the Court. Class Members who do not
19 opt out will automatically receive a settlement payment. This notice program was designed to
20 meaningfully reach the Class Members and advises them of all pertinent information concerning
21 the Settlement. The mailing and distribution of the Class Notice satisfies the requirements of due
22 process, is the best notice practicable under the circumstances, and constitutes due and sufficient
23 notice to all persons entitled thereto. The Class Notice provides information on the terms and
24 provisions of the Settlement; the benefits that the Settlement provides for Class Members; the date,
25 time, and place of the final settlement approval hearing; and the procedure and deadline for
26 submitting comments, objections, requests for exclusion, and social distancing procedures for
27 attendance at hearings and review of court files. The Class Notice complies with Rules of Court
28 3.766 and 3.769(f). (Decl. Zakay at ¶34).

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VII. CONCLUSION

Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final fairness hearing for a date that is at least one hundred twenty (120) days after the date of Preliminary Approval.

DATED: September 28, 2021

ZAKAY LAW GROUP, APLC

By: 
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