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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **IN AND FOR THE COUNTY OF SAN DIEGO**  
13

14 ANTHONY ALVIZ and TAMI WINSLETT,  
Individually, and On Behalf of All Others  
15 Similarly Situated,

16 Plaintiffs,

17 v.

18 LHM CORP TSD d/b/a LARRY H. MILLER  
TOYOTA LEMON GROVE; LHM CORP  
19 CTO d/b/a LHM TOYOTA OF CORONA;  
LHM CORP NSB d/b/a LHM NISSAN OF  
20 SAN BERNARDINO; LHM CORP  
CORONA NI d/b/a LHM NISSAN OF  
21 CORONA; and DOES NOS. 1-50, Inclusive,  
22 Defendants.

CASE NO.: 37-2020-00027584-CU-OE-CTL  
[Unlimited Jurisdiction]

*Assigned for all purposes to the  
Honorable Carolyn Caietti, Dept. C-70*

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

**Date: January 7, 2022  
Time: 10:30 a.m.**

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1 **I. INTRODUCTION**

2 Plaintiffs Antonio Alviz and Tami Winslett (collectively, "Plaintiffs") respectfully submit this  
3 memorandum of points and authorities in support of their motion for preliminary approval of a class  
4 action settlement reached with Defendants LHM CORP TSD d/b/a LARRY H. MILLER TOYOTA  
5 LEMON GROVE; LHM CORP CTO d/b/a LHM TOYOTA OF CORONA; LHM CORP NSB d/b/a  
6 LHM NISSAN OF SAN BERNARDINO; LHM CORP CORONA NI d/b/a LHM NISSAN OF  
7 CORONA (collectively, "Defendants" or "LHM"), and seek entry of an order (1) preliminarily  
8 approving the proposed settlement of this class action with Defendants; (2) granting conditional  
9 certification of the proposed Class; (3) appointing Plaintiffs as Class Representatives and their  
10 attorneys as Class Counsel in this Action; (4) approving the form and method for providing class-  
11 wide notice; (5) directing notice of the proposed settlement be given to the class; and (6) scheduling  
12 a final approval hearing to consider Plaintiffs' request for final approval of the proposed settlement,  
13 entry of the Final Approval Order and Judgment, and Plaintiffs' application for attorneys' fees and  
14 reimbursement of litigation expenses. Plaintiffs and Defendants (the "Parties") have reached a full  
15 and final settlement of the above-captioned action. The full terms of the settlement are embodied in  
16 the Joint Stipulation For Class Action Settlement and Release ("Settlement"), attached as Exhibit "A"  
17 to Declaration of David C. Hawkes, filed concurrently herewith.

18 **II. SUMMARY OF LITIGATION AND SETTLEMENT**

19 **A. Plaintiff's Complaint and Procedural History**

20 This case arises out of the alleged unlawful wage and hour policies and practices of the owners  
21 and operators of Defendants automotive dealerships and service centers throughout the State of  
22 California during the period of August 6, 2016 to the present. On August 6, 2020, Named Plaintiffs  
23 Antonio Alviz and Tami Winslett filed a Class Action Complaint against Defendants in the Superior  
24 Court of California, County of San Diego., Case No. 37-2020-00027584-CU-OE-CTL against  
25 Defendants and Does 1-50, on their behalf and on behalf of an alleged class of similarly situated,  
26 current and former employees of Defendants in California (the "Action"). The Complaint alleged

1 claims against Defendants for failure to provide meal periods and rest periods, failure to compensate  
2 for all hours worked, failure to pay minimum wage and overtime wages, failure to pay wages at the  
3 time of termination, wage statement violations, and unfair business practices. On October 16, 2020,  
4 Plaintiffs filed a First Amended Complaint against Defendants and Does 1-50 (“FAC”) alleging the  
5 above-listed class claims and an additional claim for statutory penalties under the Labor Code Private  
6 Attorneys General Act (“PAGA”). LHM appeared in the case and denied the material allegations of  
7 the FAC. Defendants filed a motion to compel individual arbitration and strike class claims on  
8 December 22, 2020. LHM denied, and continues to deny, it engaged in any misconduct in connection  
9 with its wage-and-hour practices, that it has any liability, or that it has engaged in wrongdoing of any  
10 kind associated with the claims alleged in the FAC.

#### 11 **B. The Parties’ Investigation, Discovery, and Settlement**

12 Throughout the litigation of this Action, the Parties engaged in extensive investigation and  
13 informal discovery concerning the alleged claims and whether the Action should proceed as a class  
14 action, including a production by LHM of information and documents relating to a large sampling  
15 of class member time records and payroll information. Class Counsel and Plaintiffs thoroughly  
16 analyzed relevant documents and information provided by LHM related to the class claims alleged  
17 in the Action. Class Counsel obtained and/or LHM provided documents and records relating to  
18 the potential damages and penalties related to the class claims, which Class Counsel and Plaintiffs  
19 thoroughly analyzed in conjunction with their evaluation of the strength of the class claims and  
20 resulting potential recovery should the matter proceed through the motion to compel arbitration,  
21 class certification, and eventually to trial. Accordingly, Class Counsel has adequately and  
22 thoroughly investigated the facts and circumstances relevant to the Action and has obtained  
23 sufficient information to accurately evaluate liability and damages, as well as LHM’s defenses and  
24 all other barriers to recovery.

25 Beginning in approximately February 2021, the Parties engaged in discussions and  
26 negotiations regarding potential settlement, as well as an informal exchange of information and  
27

documents necessary to evaluate the Parties respective positions. Plaintiffs and LHM participated in frequent discussions and communications related to negotiations and potential settlement. Throughout the course of the Parties’ discussions and negotiations, the Parties recognized the burdens and risks of continuing with the litigation and were able to reach an understanding as to a framework to resolve the Action on or about August 2021. After several additional months of subsequent extensive arms-length negotiations, including several discussions and exchanges of drafts of settlement documents, the parties reached the comprehensive Settlement presented herein to the Court for its approval.<sup>1</sup>

### **III. OVERVIEW OF THE PROPOSED SETTLEMENT**

#### **A. Settlement Payments**

The class-wide settlement is set forth in the Settlement.<sup>2</sup> In consideration for a release of class claims,<sup>3</sup> Defendant agreed to stipulate to class certification for settlement purposes only and establish a common fund of Two Hundred Fifteen Thousand (\$215,000.00) (“Total Settlement Amount” or “TSA”) to pay the claims of approximately 1,385 Class Members, Class Counsel fees and costs, class representative incentive payment, settlement administration fees, and payment to the California Labor Workforce and Development Agency (“LWDA”) for settlement of the PAGA claims during the very brief PAGA period of March 19, 2021 to settlement approval. The entire TSA shall be paid out in full and no claim process shall be required – i.e. – Class Members will not be required to submit a claim form to receive their respective distribution. Defendant will also separately pay the employer’s share of FICA and any other taxes resulting from the wage component of payments to Class Members.<sup>4</sup>

As explained in the proposed Class Notice, out of the TSA Class Counsel is seeking, and

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<sup>1</sup> Hawkes Decl., ¶ 12.

<sup>2</sup> A true and correct copy of the Settlement is attached as Exhibit “A” to Declaration of David C. Hawkes (“Hawkes Decl.”), filed concurrently herewith.

<sup>3</sup> Class claims that are included within the Settlement and released are (1) failure to provide meal periods; (2) failure to authorize and permit rest periods; (3) Failure to pay all wages, including overtime compensation; (4) failure to provide accurate itemized wage statements; (5) failure to pay compensation when due at time of separation; (6) unfair business practices pursuant to the California Business and Professions Code Sections 17200 *et. seq.*; (7) statutory penalties pursuant to PAGA; and (8) all claims that could have been asserted based on the facts alleged in the FAC.

<sup>4</sup> Settlement, ¶¶ 1.38, 3.1 (pp. 8, 10).

1 Defendant agrees not oppose or contest, attorneys' fees in an amount not to exceed \$71,667 (33  
2 1/3%), as well as reimbursement of up to \$3,500 of litigation expenses.<sup>5</sup> Plaintiffs are also seeking,  
3 and Defendant agrees not to oppose, class representative incentive awards in the amount of \$10,000  
4 each out of the TSA.<sup>6</sup> The Parties are also collectively seeking settlement administration costs  
5 estimated at approximately \$13,000 out of the TSA.<sup>7</sup> Subject to Court approval, the Parties have  
6 solicited bids and jointly selected CPT Group to act as the Settlement Administrator.<sup>8</sup> The Settlement  
7 Administrator is to provide direct, mailed notice of the Settlement and to administer the distribution  
8 of all settlement payments.<sup>9</sup> Finally, out of the TSA common fund, \$5,000 is to be allocated to  
9 penalties under Plaintiffs' PAGA claim, of which \$3,750 is to be paid to the LWDA and the remaining  
10 \$1,250 to the aggrieved employees.<sup>10</sup>

#### 11 **B. Distribution Plan**

12 The Court-approved amount of Class Counsel attorneys' fees and litigation expenses, Class  
13 Representative Incentive Award, Claims Administration Expenses, and LWDA Payment shall be  
14 deducted from the TSA to determine the balance of the settlement fund, which is called the Net  
15 Settlement Amount ("NSA").<sup>11</sup> The NSA (approximately \$101,833 or an average estimated \$74 per  
16 class member) is to be distributed directly to all Class Members who do not timely submit a request  
17 to be excluded from the Settlement.<sup>12</sup> Each Class Member will also receive a pro-rata share of the  
18 aggrieved employees' portion of the amount allocated to PAGA penalties (aggrieved employees  
19 receive 25% of the PAGA Payment).<sup>13</sup>

20 Each individual settlement amount shall be considered twenty percent (20%) wages and eighty  
21 percent (80%) penalties and interest for tax purposes. Distributions shall be made within forty-five  
22 (45) days after the Court grants final approval of the Settlement. Any settlement checks issued to

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23 <sup>5</sup> Settlement, ¶ 3.5 (p. 16).

24 <sup>6</sup> Settlement, ¶ 3.4 (p. 13).

24 <sup>7</sup> Settlement, ¶ 3.6 (pp. 16-17); Hawkes Decl., ¶17.

25 <sup>8</sup> Id.

25 <sup>9</sup> Settlement, ¶ 7.2 (pp. 22-23).

26 <sup>10</sup> Settlement, ¶ 3.7 (p.17).

26 <sup>11</sup> Settlement, ¶¶ 1.21, 3.32 (pp. 4, 11).

27 <sup>12</sup> Settlement, ¶ 3.31, 3.32 (p. 11).

27 <sup>13</sup> Settlement, ¶ 3.32 (p. 11).

1 Class Members that are not cashed within 180 days after issuance will have the amount of their check  
2 distributed pro-rata to all participating class members who did cash their checks. Any settlement  
3 check funds remaining after this second distribution will be paid consistent with Code of Civil  
4 Procedure Section 384 to the San Diego Volunteer Lawyer Program.<sup>14</sup>

### 5 **C. The Release**

6 Pursuant to Paragraphs 1.30, 1.32, and 4.1, of the Settlement [pages 6-7, 18], each member of  
7 the Class who does not timely opt-out of the Settlement will be deemed to have released Defendant  
8 and the “Released Parties” from the “Released Claims”, as defined in the Settlement, which only  
9 apply to the limited universe of facts and/or claims alleged in the First Amended Complaint or the  
10 Action, or claims that could have been asserted based on the facts alleged in the FAC.<sup>15</sup> The Release  
11 does not cover any other claims, including a wide variety of unrelated employment (or other) claims  
12 that may exist as to individual members of the Class. As a result, the Settlement's release is limited  
13 in scope and should be granted preliminary approval.

## 14 **IV. PROPOSED CLASS NOTICE IS ACCURATE AND INFORMATIVE AND IS THE 15 BEST NOTICE PRACTICABLE**

### 16 **A. The Class Notice Is Adequate and Satisfies Due Process**

17 Pursuant to the Settlement, the Class Notice will be sent to the last known address of all Class  
18 Members and reasonable efforts, including skip-tracing efforts by the Settlement Administrator, will be  
19 made to locate a correct address for any undeliverable notices. The proposed method of providing  
20 Class Notice in the Settlement is the best notice practicable and is likely to reach most, if not all,  
21 Class Members.<sup>16</sup> See *Cartt v. Superior Court* (1975) 50 Cal. App. 3d 960, 974.

22  
23 <sup>14</sup> Settlement, ¶¶ 9.3-9.4(p. 24).

24 <sup>15</sup> The “Released Claims” include the following - (1) failure to provide meal periods; (2) failure to authorize and permit  
25 rest periods; (3) Failure to pay all wages, including overtime compensation; (4) failure to provide accurate itemized wage  
26 statements; (5) failure to pay compensation when due at time of separation; (6) unfair business practices pursuant to the  
27 California Business and Professions Code Sections 17200 *et. seq.*; (7) statutory penalties pursuant to PAGA; and (8) all  
28 claims that could have been asserted based on the facts alleged in the FAC. No other claims are released by Class  
Members.

<sup>16</sup> Settlement, ¶¶ 6.1-6.7 (pp.19-22).

1                   **B.       The Proposed Class Notice is Accurate and Informative**

2           The Class Notice satisfies all requirements of Cal. R. Ct. 3.766(d). Specifically, it sets forth  
3 (1) the definition of the Class; (2) a description of the substantive issues and proceedings to date; (3)  
4 a neutral description of the terms and provisions of the Settlement; (4) the amount of attorneys' fees  
5 and costs sought; (5) the date, time and place of the Final Approval Hearing; (6) the procedure and  
6 deadline and instructions for submitting a request to be excluded from the Settlement and/or  
7 submitting an objection to the Settlement; (7) the consequences of remaining a member of the Class,  
8 including being bound by the judgment; and (8) the identity of Plaintiffs, Plaintiffs' counsel,  
9 Defendants' counsel, and the Settlement Administrator, as well as contact information for each.<sup>17</sup>  
10 The proposed Class Notice is neutral in its language. Further, each Class Member's individual Class  
11 Notice will state an estimate of each Class Member's Individual Settlement Payment and the basis  
12 for its calculation, which will be presumed to be correct but can be challenged by Class Members.<sup>18</sup>  
13 In sum, the form of proposed Class Notice should be approved because it will adequately inform  
14 Class Members regarding the Settlement and their rights, options, and responsibilities. *Wershba v.*  
15 *Apple Computer* (2001) 91 Cal.App.4<sup>th</sup> 224, 251.

16                   **V.       THE SETTLEMENT IS FAIR AND REASONABLE AND SHOULD BE GRANTED  
17       PRELIMINARY APPROVAL**

18           California courts favor settlement. *Stambaugh v. Superior Court*, (1976) 62 Cal. App. 3d 231.  
19 This is particularly true in class actions and other complex cases where substantial resources can be  
20 conserved by avoiding time, expense, and rigors of protracted litigation. *See Neary v. Regents of*  
*Univ. of Cal.* (1992) 3 Cal.4<sup>th</sup> 273, 277-81.

21                   **A.   The Settlement Is Entitled To A Presumption Of Fairness**

22           The Court should begin its analysis with a presumption that the proposed settlement is fair  
23 because the following requirements are satisfied: (1) the settlement is reached through arm's-length  
24 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act  
25 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is

26 \_\_\_\_\_  
<sup>17</sup> See proposed Class Notice at Exhibit "A" to Settlement.

27 <sup>18</sup> Settlement, ¶ 3.3.3 (pp. 11-12).

1 small. *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4<sup>th</sup> 116, 127-128 (“*Kullar*”) ((citing  
2 *Dunk v. Ford Motor Co.* (1996) 8 Cal.App.4<sup>th</sup> 1794, 1802 (“*Dunk*”)).

3 The proposed Settlement is the result of extensive, hard fought, arm’s length negotiations.<sup>19</sup>  
4 Only after significant and thorough informal discovery, analysis, research, investigation, and  
5 litigation, were the Parties able to reach the Settlement.<sup>20</sup> As more thoroughly discussed in Sections  
6 V.B.5 and V.B.6, below, counsel for both parties have significant experience in similar litigation and  
7 the investigation and discovery conducted by the Parties in this matter is sufficient to allow counsel  
8 and the court to act intelligently.<sup>21</sup>

### 9 **B. The Settlement Is Fair, Reasonable and Adequate**

10 In a class action, the trial court has "broad discretion" to determine whether a settlement is  
11 fair and reasonable.<sup>22</sup> Factors that the trial court should consider in evaluating the reasonableness of  
12 a class action settlement agreement include the following: (1) strength of plaintiffs’ case; (2) risk,  
13 expense, complexity, and likely duration of further litigation; (3) risk of maintaining class action  
14 status through trial; (4) amount offered in settlement; (5) extent of discovery completed and the state  
15 of the proceedings; (6) experience and views of counsel; (7) presence of a governmental entity; and  
16 (8) reaction of class members to the proposed settlement. *Kullar*, 168 Cal.App.4<sup>th</sup> at 128 (citing  
17 *Dunk*, 91 Cal.App.4<sup>th</sup> at 1801). In assessing these factors, the Court is not to try the case but, rather,  
18 consider and weigh the nature of the claims, the possible defenses, the situation of the parties, and  
19 the exercise of business judgment in determining whether the class settlement is within the “ballpark  
20 of reasonableness”.<sup>23</sup>

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24 <sup>19</sup> Hawkes Decl., ¶¶ 6, 12, 32.

25 <sup>20</sup> Hawkes Decl., ¶¶ 6, 12, 29-32.

26 <sup>21</sup> Hawkes Decl., ¶¶ 9-12; 29-32, 38-39.

27 <sup>22</sup> *Kullar*, 168 Cal.App.4<sup>th</sup> at 127-128; *Wershba v. Apple Computer*, (2001) 91 Cal.App.4<sup>th</sup> 224, 234-235 (“*Wershba*”);  
28 *Dunk*, 8 Cal.App.4<sup>th</sup> 1794; *Cellphone Termination Fee Cases* (2010) 186 Cal. App. 4th 1380, 1389.

<sup>23</sup> *Id.* at 133 (citing *Tech-Built, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500 and *City of Detroit v. Grinnell Corporation* (2<sup>nd</sup> Cir. 1974) 495 F.2d 448, 462).

## 1. The Strength of Plaintiffs' Case, Value of Claims, and Barriers to Recovery

The proposed Settlement considers and properly balances the strengths and weaknesses of the parties' legal and factual arguments, as well as all other barriers to recovery and the significant uncertainty, risk, and delay of further litigation. Once past Defendants' motion to compel arbitration, Class Counsel believes Plaintiffs could successfully achieve class certification, establish liability, and prove damages for at least a portion of the settlement class, and for one or more of the alleged claims against one or more of the defendants.<sup>24</sup> However, the barriers to recovery and risks and uncertainties of further litigation are very significant and achieving class certification and proving liability and damages is by no means a certainty, particularly on behalf of the entire class, for all claims, and/or against all defendants. In fact, doing so would very likely prove difficult and Plaintiff would face very significant obstacles and barriers to any recovery at all, let alone one that exceeds the Settlement amount.<sup>25</sup>

Class Counsel discounted maximum possible damages in light of the likely obstacles to avoiding being compelled to individual arbitration, achieving class certification, and establishing liability on class claims and proving damages, and other hazards of litigation.<sup>26</sup> As a result, Class Counsel and Plaintiffs believe the Settlement is fair, reasonable and within the ballpark of approval.

## 2. Risk and Expense of Litigating Through Trial

Plaintiff and Class Counsel have considered the expense and length of continued proceedings necessary to continue the action against Defendant through motion to compel arbitration, class certification, trial and any possible appeals. Plaintiff has concluded that further litigation would be very risky, protracted and complex and, accordingly, very expensive. If litigation proceeded through trial, Plaintiff conservatively estimates additional attorneys' fees and costs could exceed \$650,000 just for Plaintiffs (and Defendant would likely incur a similar amount).<sup>27</sup> Thus, in reaching the Settlement, the Parties avoided considerable additional attorneys' fees and costs (as well as the

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<sup>24</sup> Hawkes Decl., ¶37.

<sup>25</sup> Hawkes Decl., ¶¶ 26-27; 34-38.

<sup>26</sup> Hawkes Decl., ¶ 37; Specific barriers to recovery evaluated and considered by class counsel in arriving at determination that Settlement is within the range of approval are detailed at Hawkes Decl., ¶¶ 24-28; 34-37.

<sup>27</sup> Hawkes Decl., ¶ 28, 38-39.

significant risk of an adverse result and/or significant delay).

### **3. Risk of Achieving and/or Maintaining Class Action Status Through Trial**

Defendants have maintained a position in this matter that individual arbitration would be compelled, class certification is not warranted, and the merits of the case would lead to the denial of liability and/or significantly reduced damages. Defendants have consistently and steadfastly asserted that Plaintiffs would be unable to avoid their claims being compelled to individual arbitration and the class claims stricken and, in any case, Plaintiffs could not achieve class certification on any of the class claims thereafter. If litigation continued and Plaintiffs were able to avoid individual arbitration, Defendants would contest class certification by arguing that Plaintiffs were “outliers” in that the circumstances that applied to them at LHM were unique, and that for other reasons individualized inquiries predominate over common issues regarding whether a particular Class Member could establish liability for any particular claim, thus precluding certification. Defendant would also argue that there exists no common unlawful policy and/or Plaintiff could not prove that class treatment would be manageable. Defendant would also argue that Plaintiffs signed and were subject to arbitration agreements that preclude class actions and required individual arbitration of their claims. These viable arguments present a very serious threat to Plaintiffs’ chances of achieving class certification in this litigation and are well-supported by applicable authority.<sup>28</sup> In settling this matter, Plaintiffs and Class Counsel evaluated and considered Defendants’ viable and well-supported arguments, the resulting very considerable risks of avoiding individual arbitration, achieving class certification, and maintaining certification through trial.

### **4. Amount Offered In Settlement**

The Settlement establishes a common fund TSA of \$215,000.00. After deducting the Court-approved amount of Class Counsel attorneys’ fees and litigation expenses, Class Representative Incentive Awards, Settlement Administration Expenses, and LWDA Payment, the NSA is estimated at \$101,833, which would result in an average estimated payment of \$74 per Class Member.

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<sup>28</sup> Hawkes Decl., ¶ 37.

1                                   **5.       Extent of Discovery Completed and State Of Proceedings Are Sufficiently**  
2                                   **Advanced To Permit Preliminary Approval of the Settlement**

3           As discussed in Section II.B, above, the Parties have conducted significant and sufficient  
4 investigation, discovery, research, and analysis of the facts and law during the prosecution of the  
5 present action. Specifically, after filing of Plaintiff's initial Complaint, and throughout a period of  
6 approximately one year, the Parties engaged in contentious litigation and thoroughly investigated and  
7 engaged in informal discovery concerning each other's claims and defenses, including whether the  
8 claims should be certified for class treatment.<sup>29</sup>

9           Therefore, counsel for the Parties have fully investigated the law, conducted sufficient  
10 discovery to ascertain the facts relevant to Class claims and certification of the claims for class  
11 treatment, applied the law to the facts discovered regarding the Class claims and potential defenses  
12 thereto, and reasonably calculated potential damages on behalf of the Class.

13                                   **6.       Experience and Views of Counsel**

14           Courts recognize that the opinion of experienced counsel supporting the settlement is entitled  
15 to considerable weight. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.  
16 App. 4th 1135, 1152. Proposed Class Counsel Blanchard Krasner & French and Matcha Law have  
17 extensive experience litigating wage and hour, employment, and class action matters, including  
18 certification of many classes and approval of many class settlements. Defendants' counsel, Fisher &  
19 Phillips is a well-respected firm that is well-known in the industry for defense litigation of  
20 employment and class action matters.<sup>30</sup>

21           Class Counsel believes the terms set forth in the Settlement are fair, reasonable, and adequate  
22 and are in the best interest of the Class in light of all known facts and circumstances, including the  
23 risk of significant delay, expense of further litigation, defenses and legal and factual arguments  
24 asserted by Defendant, uncertainty of avoiding individual arbitration and dismissal of class claims,  
25 of achieving and maintaining class certification, obstacles to proving liability on class claims and  
26 damages at trial, and numerous potential appellate issues. Defendant's counsel also believes the

27 <sup>29</sup> See Hawkes Decl., ¶¶ 9-12; 29-32.

28 <sup>30</sup> Hawkes Decl., ¶40.

Settlement is fair, reasonable, and adequate, and is in the best interest of the Class Members.<sup>31</sup>

### 7. The Settlement Is Within the “Ballpark of Approval”

“In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91 Cal.App.4<sup>th</sup> at 250. The foregoing clearly establishes that not only does a presumption of fairness exist (Section V.A, above), but that the *Kullar* factors are satisfied and the Settlement is within the “ballpark of approval”. Specifically, when considering the very real potential of Plaintiffs being compelled to individual arbitration and class claims dismissed, all burdens of proof and obstacles to proving class claims and damages at trial, the likelihood of achieving and maintaining class certification for at least one or some claims, and other barriers to recovery and hazards of litigation, Class Counsel believes that the settlement value of this case of \$215,000 is “within the ballpark” of reasonableness.

### VI. THE SETTLEMENT DOES NOT GRANT PREFERENTIAL TREATMENT TO CLASS REPRESENTATIVES OR ANY SEGMENT OF THE CLASS

The relief provided in the Settlement will benefit all Class Members equally. The Settlement does not improperly grant preferential treatment to the Class Representatives or any individual segment of the Class. Each Class Member, including the Plaintiffs, will be entitled to payment based upon the same plan of allocation.<sup>32</sup>

Plaintiffs will apply to the Court for service awards in the amount of \$10,000 each, in consideration for their services rendered on behalf of the Class. The Class Representatives invested a significant amount of their time and effort into this class action, both prior to filing of their Complaint and over the past more than one year of litigation. Plaintiffs performed their duties admirably and incurred a significant amount of risk in pursuing this class litigation.<sup>33</sup> The requested

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<sup>31</sup> Hawkes decl., ¶¶ 24-28; 34-38; Settlement, ¶ 22.

<sup>32</sup> Hawkes Decl., ¶ 15, 21.

<sup>33</sup> Hawkes Decl., ¶ 45.

1 service award for the Class Representative is justified and well within the accepted range of awards.<sup>34</sup>  
2 35

### 3 **VII. PROPOSED PAYMENT FOR ATTORNEYS FEES AND COSTS IS REASONABLE**

4 At the final approval hearing, Class Counsel will seek attorneys' fees in an amount not to exceed  
5 \$71,667. This figure equals one-third (33 1/3%) of the value of the TSA. This percentage has been  
6 approved on numerous occasions in California and federal courts.<sup>36</sup> In any case, Class Counsel's fees  
7 incurred on this litigation greatly exceed the \$71,667 sought.

8 To ensure that this case was properly prosecuted, Class Counsel was precluded from taking  
9 on other cases and had to turn away other meritorious fee-generating cases. This case was accepted  
10 on a contingency fee basis, and Class Counsel advanced litigation expenses. In addition to significant  
11 costs and lost opportunities on other matters, and the risks taken by accepting this case on a  
12 contingency basis, this case involved approximately two hundred forty five (245) hours of Class  
13 Counsel's time to properly prosecute the claims on behalf of the Class (amounting to more than  
14 \$135,000). Additionally, Class Counsel estimates it will take at least an additional 25 hours of time  
15 (approximately \$13,000) to complete all other work necessary to achieve final approval, respond to  
16 Class Member inquiries, and ensure the terms of the Settlement are performed.<sup>37</sup>

### 17 **VIII. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE**

18 The Court has broad discretion to certify a class for purposes of a class action settlement.  
19 *Dunk*, 48 Cal.App.4<sup>th</sup> at 1807. For purposes of settlement-only class certification, all requirements  
20 of class certification must be met except for manageability at trial, because the settlement obviates  
21 the need for trial. See *Amchem Products v. Windsor* (1997) 521 U.S. 591, 620. Here, each required

22  
23 <sup>34</sup> See e.g. *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183,\*6 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 to each of six plaintiffs); *Glass v. UBS Fin. Servs.* (N.D. Cal. 2007) 2007 WL 160948 at \*52 (awarding \$25,000); *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (awarding \$50,000).

24 <sup>35</sup> Service awards are routinely awarded to class representatives to compensate the employees for the time and effort  
25 expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation therefrom, and to serve  
26 as an incentive to vindicate the statutory rights of all employees. See *Glass*, *supra*, 2007 WL 160948 at \*18.

26 <sup>36</sup> Empirical studies have shown that whether the percentage method or the lodestar method is used, fee awards in class  
27 actions average around one-third of the recovery. *Chavez v. Netflix, Inc.*, 162 Cal.App.4<sup>th</sup> 43, 66, fn. 11 [quoting *Shaw*  
28 *v. Toshiba America Information Systems, Inc.* (E.D.Tex. 2000) 91 F. Supp. 2d 942, 972.]

<sup>37</sup> Hawkes Decl., ¶ 43.

1 element of class certification is met.<sup>38</sup> Cal. Code Civ. Proc. §382.

2 **A. The Proposed Class is Sufficiently Ascertainable and Numerous**

3 For certification purposes, a class is ascertainable if it is sufficiently defined and its members  
4 are identifiable. *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263,  
5 1274. The proposed Class describes objective characteristics that would permit class members to  
6 identify themselves. Here, Class Members are readily identifiable by reference to Defendant's  
7 employment records. Since the Class consists of approximately 1,385 Class Members, numerosity is  
8 clearly satisfied.<sup>39</sup>

9 **B. Common Questions of Law and Fact Predominate**

10 As the California Supreme Court has frequently held, the certification question is essentially  
11 a procedural one that does not ask whether an action is legally or factually meritorious but, rather,  
12 whether the operative legal principles, as applied to the facts of the case, render the claims susceptible  
13 to resolution on a common basis.<sup>40</sup> The trial court must evaluate whether the theory of recovery  
14 advanced by the plaintiff is likely to prove amenable to class treatment. *Brinker*, 53 Cal.4th at 1021;  
15 *Sav-On*, 34 Cal.4th at 327. Additionally, the California Supreme Court recently held that "[c]laims  
16 alleging that a uniform policy consistently applied to a group of employees is in violation of the wage  
17 and hour laws are of the sort routinely, and properly, found suitable for class treatment." *Brinker*, 53  
18 Cal.4th at 1033; *Bradley v. Networkers Int'l, LLC* (2012) 211 Cal.App.4th 1129, 1143; *Ghazaryan v.*  
19 *Diva Limousine, Ltd.* (2009) 169 Cal.App.4th 1524, 1536 ("*Ghazaryan*").

20 Here, many predominant common questions of law and fact are present and, based upon  
21 Plaintiffs' theories of recovery, include (without limitation): (1) whether Defendant's uniform policy  
22 failed to properly authorize and permit rest breaks and/or provide meal periods; (2) whether  
23 Defendant's uniform policies failed to compensate for all hours worked and at proper rates; and (3)

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25 <sup>38</sup> The Parties have stipulated to certification of the proposed Class for settlement purposes only. See Settlement, ¶ 2.1 (p. 8).

26 <sup>39</sup> Hawkes Decl., ¶ 3.

27 <sup>40</sup> *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 ("*Sav-On*"), *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1023-25 ("*Brinker*"); and *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 530 ("*Ayala*").

1 whether Defendant's uniform policies resulted in unpaid wages; (4) whether Defendant's uniform  
2 payroll policies resulted in inaccurate wage statements. These common questions predominate and  
3 allow conditional certification of the Class for settlement purposes.

4 **C. Plaintiff's Claims are Typical of the Claims of the Class Members**

5 When the same underlying conduct affects the named plaintiff in the class sought to be  
6 represented, the typicality requirement is met irrespective of any varying fact patterns, which may  
7 underlie individual claims. *Rosack v. Volvo of Am. Corp.* (1982) 131 Cal. App. 3d 741, 762. Here,  
8 Plaintiffs' interests in this litigation are co-extensive with the interests of the Class they seek to  
9 represent. Plaintiffs' claims arise from the same set of factual and legal questions as the claims of the  
10 members of the Class. It is alleged that Plaintiffs have been injured in the same manner and by the  
11 same practices and policies as the other Class Members. Plaintiffs also seek the same relief as the  
12 other Class Members. In asserting their own claims, Plaintiffs will necessarily establish the elements  
13 of the claims of Class Members. Thus, typicality is established. *Wershba*, 91 Cal.App.4<sup>th</sup> at 238-39.

14 **D. The Adequacy Requirement is Met**

15 Adequacy for purposes of class certification is met if neither the class representative nor class  
16 counsel have interests adverse to the interests of the Class Members and they are committed to  
17 vigorously prosecuting the case on behalf of the class. *McGhee v. Bank of Am.* (1976) 60 Cal. App.  
18 3d 442, 450. These requirements are met here. Neither Plaintiffs nor Class Counsel have any conflict  
19 with the Class. Plaintiffs are well aware of their duties as the class representative, actively  
20 participated in the prosecution of this case to date, and at all times served unselfishly for the benefit  
21 of the Class. Plaintiffs also retained competent counsel who have extensive experience in  
22 employment, wage and hour, and class actions. Plaintiffs' counsel are very experienced law firms,  
23 Blanchard Krasner & French and Matcha Law. The attorneys working on this case have been  
24 appointed class counsel through both certification and settlement of numerous wage and hour class  
25 actions.<sup>41</sup>

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27 <sup>41</sup> Hawkes Decl., ¶¶ 43-45.

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