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GREAT AMERICAN CHICKEN CORP, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)**

CARINA CAMBEROS, on behalf of herself
and others similarly situated,

Plaintiff(s),

vs.

GREAT AMERICAN CHICKEN CORP,
INC.; and DOES 1 thru 50, inclusive,

Defendant(s).

Case No.: 21STCV32015

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

[Filed concurrently with Notice of Motion and
Joint Motion for Preliminary Approval of Class
Settlement; Declaration of Harout Messrelian;
Declaration of Haig B. Kazandjian; and
[Proposed] Order]

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1 in this Action through December 31, 2019. [HM ¶ 23.]¹ Accordingly, the period placed at-issue
2 via this Action is a mere eight months in length – from January 1, 2020 through August 31, 2020.
3 [Id.]

4 In lieu of prolonged litigation, the Parties agreed to mediate Plaintiff's claims spanning a
5 total of eight months before experienced wage-and-hour mediator Hon. Judge Stone (Ret.). On
6 March 12, 2021, subject to a mediator's proposal, the Parties reached an agreement to resolve
7 the matter on a class-wide and representative basis, subject to the Parties entering a more
8 comprehensive written settlement agreement. The long form Settlement was fully executed on
9 or around July 21, 2021. [HM ¶ 10.]

10 On August 30, 2021, per the Settlement, Plaintiff filed a class action complaint in the Los
11 Angeles Superior Court, Case No. 21STCV32015, on behalf of herself and others similarly
12 situated, alleging claims on class-wide basis for: (1) Failure to Provide Meal Periods; (2) Failure
13 to Authorize and Permit Rest Periods; (3) Failure to Pay Minimum Wages; (4) Failure to Pay
14 Overtime Wages; (5) Failure to Pay All Wages Due to Discharge and Quitting, (6) Itemized Wage
15 Statements; (7) Failure to Maintain Required Records; (8) Failure to Indemnify Employees for
16 Necessary Business Expenses; (9) Unfair Competition; and (10) Civil Penalties Pursuant to
17 PAGA. [HM ¶ 12, Ex. 3.]

18 On September 15, 2021, the Los Angeles Superior Court entered its Order re: Complex
19 Designation and stayed all proceedings pending the Initial Status Conference on January 6, 2022
20 at 9:00 a.m. [HM ¶ 13.]

21 Pursuant to the Labor Code § 2699(1)(2), Plaintiff submitted a copy of the Settlement with
22 the LWDA at the same time the Parties' Motion is being filed with the Court. [HM ¶ 39, Ex. 7.]

23 **The Discovery Process.**

24 In advance of the mediation the Parties engaged in extensive informal discovery, during
25

26 ¹ The *King* settlement was approved by this Court and judgment was entered on February 17,
27 2022. [Id.]

1 which Defendant provided (i) various timekeeping and payroll data points, including the total
2 number of putative class members, number of shifts, length of shifts, and total number of pay
3 periods at-issue, meal premium payments made, and overtime hours incurred and corresponding
4 payments made to putative class and PAGA members; (ii) employee handbooks and other policy
5 documents that related to the claims at issue and were in effect during the PAGA and class period;
6 (iii) a 5% sample of putative class and PAGA member time records; (iv) a 5% sample putative
7 PAGA and class member wage statements; and (v) pleadings, analysis and other documents
8 utilized in the *King* Action. [HM ¶ 22.]

9 Defendant denies any liability or wrongdoing. Based on their own independent
10 investigation, review and analysis of the informal discovery, Plaintiff's Counsel believes that the
11 proposed settlement is adequate, fair, reasonable, and appropriate for Court approval; especially
12 given the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class
13 and representative action trial on the merits, and potential appellate issues. [HM ¶ 25.]

14 **III. TERMS OF THE PROPOSED SETTLEMENT.**

15 **A. Class Definition and Time Period.**

16 The Settlement defines the "Settlement Class Members" (collectively referred to as the
17 "Settlement Class") as non-exempt California employees of Defendant who worked during the
18 Class Period. The "Class Period" means January 1, 2020 through the Preliminary Approval Date.
19 The Class Period necessarily ends on August 31, 2020, the date Defendant sold its business and
20 ceased employing any Settlement Class Members. [Settlement ¶ I.E, I.HH, I.II; HM ¶ 6.]

21 **B. Monetary Terms.**

22 In consideration for settlement of the Action, Defendant agrees to pay a total gross payment
23 of One Hundred Six Thousand Dollars (\$106,000) (the "Settlement Proceeds") as full and
24 complete settlement of all claims arising from the Action. No portion of the Settlement Proceeds
25 shall revert to Defendant. [Settlement ¶ III.A.]

26 The Settlement Proceeds shall be funded by Defendant no later than five (5) business days
27
28

1 after the Effective Date² and distributed by the Settlement Administrator to Participating Class
2 Members no more than five (5) business days after being provided to the Settlement Administrator.

3 [Settlement ¶ III.K.6-8.] The Settlement Proceeds will be allocated as follows:

- 4 i. Class Counsel Attorneys' Fees in the amount of \$35,333.33 (one-third of the
5 Settlement Proceeds) and Litigation Costs not to exceed \$7,000.
- 6 ii. Incentive Award to Plaintiff in the amount of \$1,000.
- 7 iii. Settlement Administration Costs not to exceed \$13,600 to the Settlement
8 Administrator.
- 9 iv. PAGA Payment of \$5,000, of which \$3,750 (75%) shall be paid to the LWDA and
10 \$1,250 (25%) shall be allocated to the Settlement Class and paid to Participating
11 Class Members according to total number of Pay Periods worked during the Class
12 Period.
- 13 v. Settlement Payments to Participating Class Members according to the total number
14 of Pay Periods worked during the Class Period.

15 [Settlement ¶¶ I.T, III.A.]

16 Based on the above deduction, it is estimated that the "Net Settlement Amount" will total
17 \$44,066.67,³ which will be divided among all Participating Settlement Class Members (those who
18 do not request to be excluded from the Settlement Class) as follows: First, Defendant will use its
19 payroll records to calculate the total number of Pay Periods worked by each Participating Class
20 Member during the Class Period. Second, the total Pay Periods for each Participating Class
21 Member will then be divided by the total of all Participating Class Pay Periods during the Class

23 ²"Effective Date" means the later of: (1) sixty-one (61) calendar days after service of the Final
24 Approval Order and Judgment if no notice is filed within that time seeking appeal of the Final
25 Approval Order or Judgment; or (2) if a notice of appeal is filed, the date upon which all appellate
and/or other proceedings resulting from the notice of appeal have been finally terminated in such
a manner as to permit the Final Approval Order and Judgment to take effect. [Settlement ¶ I.H.]

26 ³ Employer's Share of Payroll Taxes will be paid separately from the Settlement Proceeds.
27 [Settlement ¶ I.P.]

1 Period to create a “Final Percentage” for each Participating Class Member. Third, that Final
2 Percentage will then be multiplied by the Net Settlement Amount to determine the final amount of
3 each Participating Class Member’s pro rata recovery under the Settlement. [Settlement ¶ III.C.]
4 Ten percent (10%) of each individual Settlement Payment will be allocated to wages, reported on
5 Form W-2 and ninety percent (90%) shall be allocated to penalties, interest, and damages and
6 reported on Form 1099. [*Id.* ¶ III.K.3.]

7 **C. Class Notice and Settlement Administration.**

8 Within seven (7) business days of the Preliminary Approval Date, Defendant will provide
9 the Settlement Administrator with each Settlement Class Member’s full name, last known address,
10 Social Security or other identifying number and Pay Periods (“Class Information”) for purposes
11 of mailing the Notice to Settlement Class Members (the “Notice”). [Settlement ¶¶ I.D, III.B.2.]
12 Upon receipt of the Class Information, the Settlement Administrator will perform a search based
13 on the National Change of Address Database maintained by the United States Postal Service to
14 update and correct any known or identifiable address changes. [*Id.*, at ¶¶ III.B.1, III.E.1.]

15 Within ten (10) business days after receiving the Class Information from Defendant, the
16 Settlement Administrator shall mail copies of the Notice, in both English and Spanish, to all
17 Settlement Class Members via regular First-Class U.S. Mail. [*Id.*, at ¶ III.E.1.] The Notice will
18 provide Settlement Class Members with an estimate of their individual Settlement Payment based
19 on their Pay Periods as set forth in Defendant’s records. [*Id.* at ¶ III.F.; Ex. A, sub-exhibit 1.]
20 Settlement Class Members will have the opportunity, should they disagree with the number of Pay
21 Periods stated on the Notice, to provide documentation and/or an explanation to show contrary
22 information within forty-five (45) days after the Settlement Administrator mails the Notice to
23 Settlement Class Members (“Response Deadline”). [*Id.*]

24 Settlement Class Members who wish to exclude themselves from the Settlement must
25 submit a Request for Exclusion to the Settlement Administrator by the Response Deadline.

1 [Settlement ¶¶ I.BB, I.CC, III.G.1.]⁴ Settlement Class Members who wish to object to the
2 Settlement must submit to the Settlement Administrator a Notice of Objection by the Response
3 Deadline. [Settlement ¶ III.G.2.]⁵

4 **D. Uncashed Checks.**

5 Participating Class Members will have one hundred and eighty (180) days from the date of
6 the check's issuance to cash their individual Settlement Payment checks. [Settlement ¶ III.L.3.]
7 After the expiration of the 180-day period, the Settlement Administrator shall remit any settlement
8 checks that remain uncashed and otherwise unclaimed, to the non-profit Bet Tzedek Legal Services
9 pursuant to California Code of Civil Procedure section 384(b). [*Id.*, HM ¶ 38.]

10 **E. Release of Claims.**

11 As of the Effective Date, Plaintiff and Participating Class Members shall be deemed to
12 have released the Released Parties from any and all claims, demands, rights, liabilities, and/or
13 causes of action of any nature and description whatsoever, known or unknown, in law or in equity,
14 whether concealed or hidden, which arose at any time during the Class Period based on the facts
15 or claims asserted by Plaintiff in any pleading in the Action on her own behalf or on behalf of a
16 putative class member or similarly situated employee, or based on any facts, transactions, events,
17 occurrences, acts, disclosures, statements, omissions, or failures that arise out of, in any way, the
18 claims made and facts alleged in the Action, including without limitation violations of any state or
19 federal statutes, rules, or regulations (including the Fair Labor Standards Act), or for PAGA
20 penalties based on an assertion that Released Parties (1) failed to provide meal periods under Labor
21 Code §§ 226.7 and 512; (2) failed to provide rest periods under Labor Code § 226.7; (3) failed to
22 pay for overtime worked under Labor Code § 510; (4) willfully failed to pay wages and minimum

23 ⁴ To be valid, the Request for Exclusion must: (1) contain the name, address, and telephone
24 number of the person requesting exclusion; (2) be signed by the Settlement Class Member; and
25 (3) be postmarked by the Response Deadline and delivered to the Settlement Administrator at the
26 specified address. [*Id.* at ¶ III.G.1.]

27 ⁵ To be valid, the Notice of Objection must: (1) state with particularity the basis therefor; (2)
28 state the full name, address, and telephone number of the person objecting; (3) be signed by the
Settlement Class Member; and (4) be postmarked by the Response Deadline and delivered to the
Settlement Administrator at the specified address. [*Id.*]

1 wages under Labor Code §§ 204, 216, 221, and 1194; (5) failed to provide itemized and accurate
2 wage statements under Labor Code §§ 226 and 1174; (6) failed to pay waiting time penalties under
3 Labor Code §§ 201-203; (7) failed to reimburse for necessary business expenditures under Labor
4 Code § 2802; and (8) failed to provide a suitable rest area and seating for employees pursuant to
5 IWC Wage Orders #5, sections 13(b) and 14. [Settlement ¶ I.Y., V.A.]

6 “Released Parties” means Defendant together with its past and present parents,
7 subsidiaries, divisions, partners and affiliates, and their respective past and present stockholders,
8 officers, directors, employees including managers, attorneys and insurers, as well as any other
9 persons or entities who are alleged or could have been alleged to have been involved in the conduct
10 alleged, or sought to be alleged, at any time in the Action. [Settlement ¶ I.Z.]

11 **IV. THIS COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE**
12 **PROPOSED SETTLEMENT.**

13 A settlement is presumptively fair where it is reached through arms’ length bargaining,
14 based on sufficient discovery and investigation to allow counsel and the Court to act intelligently,
15 counsel is experienced in similar litigation, and the percentage of objectors is small. *Dunk v. Ford*
16 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. In deciding whether to approve a proposed
17 settlement, a trial court has broad powers to determine if the proposed settlement is fair under the
18 circumstances of the case. *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438. In exercising
19 these powers, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and
20 reasonable.” *Dunk*, 48 Cal.App.4th at p. 1801 (internal quotations omitted).

21 Relevant factors for that determination, include, but are not limited to:

22 [T]he complexity and likely duration of further litigation, the risk of maintaining
23 class action status through trial, the amount offered in settlement, the extent of
24 discovery completed and the state of the proceedings, the experience and views of
25 counsel, the presence of a governmental participant, and the reaction of the class
26 members to the proposed settlement.

1 *Id.* These factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the
2 factors considered to each case and give due regard to “what is otherwise a private consensual
3 agreement between the Parties.” *Id.*

4 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs
5 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under
6 all of the circumstances.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.
7 Because settlements inherently involve compromise, even settlements providing for substantially
8 narrower relief than likely would be obtained if the suit were successfully litigated can be
9 reasonable because “the public interest may indeed be served by a voluntary settlement in which
10 each side gives ground in the interest of avoiding litigation.” *Id.* (quoting *Air Line Stewards, etc.,*
11 *Local 550 v. Am. Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109). In addition, courts review the
12 discovery process and information received through it to aid them in assessing whether the Parties
13 sufficiently developed the claims and their supporting factual bases before reaching settlement.
14 *See Kullar v. Foot Locker Retail Inc.* (2008) 168 Cal.App.4th 116, 129-131. Information is
15 sufficient where it allows the Parties and the court to form “an understanding of the amount that is
16 in controversy and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential Servs.*
17 *LLC* (2009) 175 Cal.App.4th 785, 801. This requirement exists so that the Parties can provide the
18 court with “a meaningful and substantiated explanation of the manner in which the factual and
19 legal issues have been evaluated.” *Kullar*, 168 Cal.App.4th at p. 118.

20 Here, Settlement was reached (i) after substantial exchanges of data, information, and
21 documents before and during the mediation that allowed Plaintiff’s counsel to act intelligently
22 and in consideration of the strength of Defendant’s defenses and risks of litigation; (ii) is the result
23 of extensive arms-length negotiations with the aid of a respected mediator and in response to a
24 mediator’s proposal; and (iii) Plaintiff’s counsel is experienced in wage-and-hour class actions.

25 **A. Plaintiff Conducted Sufficient Investigation and Discovery and Considered**
26 **the Strength of Her Case and Risks of Litigation.**

27 In advance of the mediation the Parties engaged in extensive informal discovery, during
28

1 which Defendant provided (i) various timekeeping and payroll data points, including the total
2 number of putative class members, number of shifts, length of shifts, and total number of pay
3 periods at-issue, meal premium payments made, and overtime hours incurred and corresponding
4 payments made to putative class and PAGA members; (ii) employee handbooks and other policy
5 documents that related to the claims at issue and were in effect during the PAGA and class period;
6 (iii) a 5% sample of putative class and PAGA member time records; (iv) a 5% sample putative
7 PAGA and class member wage statements; and (v) pleadings, analysis and other documents
8 utilized in the *King* Action. Plaintiff's counsel retained a professional data analyst, James Toney,
9 to assess the data and determine if there were any discrepancies therein, including payments that
10 did not equate to hours worked, potential meal violations, and/or rounding/time shaving issues.
11 Notably, the time and payroll records did not prove any per se violations and Defendant's written
12 policies were compliant with California law.

13 Plaintiff's counsel calculated maximum potential damages of \$549,339.53 for meal period
14 violations, \$458,897.55 for rest period violations, \$382,149.24 for minimum wage violations, and
15 \$107,719.92 for unreimbursed expenses violations – approximately \$1,498,106.24 (exclusive of
16 penalties and interest). [HM ¶ 24.] Plaintiff's counsel also calculated maximum damages for
17 derivative claims of \$3,012,650.00 for wage statement penalties and \$6,270,576.365 for waiting
18 time penalties. [*Id.*]⁶ The estimates are in essence “home run” projections that do not factor in any
19 of the risks involved in litigating this Action and are not in line with reality, especially when
20 considering Defendant's policies and its position on the issues. [*Id.*] The Settlement obviates the
21 significant risk that this Court may deny certification of some or all of Plaintiff's claims. [HM ¶
22 25.] Even if Plaintiff obtained certification of some or all of the claims, continued litigation would
23 be expensive, involving a trial and possible appeals, and would substantially delay and reduce any
24 recovery by the Settlement Class Members. [*Id.*] While Plaintiff is confident in the merits of her

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26 ⁶ This does not include potential PAGA penalties, which are subject to Court discretion; and
27 Defendant argues would be duplicative of the class settlement and would not be subject to
28 subsequent violation penalties nor “stacking.”

case, a legitimate controversy exists as to each cause of action. [*Id.*] To illustrate this consideration, below is brief summary of some of Defendant's arguments, all of which Plaintiff disputes, but nevertheless acknowledges as potential threats to the Settlement Class' claims.

- Defendant argues that individualized proof will be needed to establish liability on Plaintiff's meal period claims. At issue is what actually happens between each manager and employee in relation to the authorization of meal periods within each shift and how Defendant's policies were actually implemented at the local level each day as to its approximately 70 different restaurants. On top of all this, Defendant argues that dozens of Settlement Class Members will testify that they were plainly advised by their manager, and fully understood, that they were authorized to take meal periods within each five-hour period worked and, in fact, took such breaks. Moreover, Defendant's timekeeping data cannot show why a meal break does not appear in the time records. For example, a meal period may have been authorized and taken, but simply not punched in and out.
- Defendant argues that its time records undermine Plaintiff's claims. For example, Defendant claims that many of its employees never *approached* a daily overtime opportunity, a weekly overtime opportunity, or a failure to pay minimum wage, and rarely approached a rest/meal break opportunity. As such, Defendant argues, to even approach an opportunity for an overtime, meal or rest period claim, *each* Settlement Class Member would have to explain (and add) many hours to his/her work day that he/she had not previously recorded.
- Defendant argues that it automatically paid a meal period premium in any shift where a fully compliant meal period was not shown in the time records. Moreover, Defendant had a system that required employees to verify if a meal period had or had not been properly authorized. And, GACC employees were required to report any unauthorized meal periods.
- Defendant argues that there is no common proof for Plaintiff's claim that she was required

1 to work off-the clock (“OTC”) and that some of that OTC work, if properly accounted for,
2 would have resulted in work to be compensated at overtime rates. In fact, Defendant
3 argues, time records do not provide common proof because, by definition, they do not
4 show such time. Defendant argues that one would have to examine, and cross-examine for
5 credibility, each individual's separate claims of supposed OTC work. Further, Defendant
6 argues, each Settlement Class Member would need to overcome this credibility hurdle in
7 the face of his/her own time records, which show no OTC work and further would have to
8 prove that his/her individual manager knowingly suffered or permitted the work.

- 9 • Defendant contends that Plaintiff cannot recover waiting time or wage statement penalties
10 based upon the failure to pay Labor Code section 226.7 premium wages for meal and rest
11 period violations. *See Naranjo v. Spectrum Sec. Servs., Inc.* (2019) 40 Cal. App. 5th 444
12 (review granted Jan. 20, 2020) (actions for violations of Labor Code’s meal break
13 provisions do not entitle employees to pursue derivative waiting time and itemized wage
14 statement penalties).
- 15 • Most, if not all, of the Settlement Class Members that Plaintiff could even seek to represent
16 signed a valid agreement to arbitrate all claims on an individual, non-class basis.
- 17 • Defendant contends that, if the Court did eventually certify a class, trial of a case involving
18 thousands of persons require the retention of expensive expert witnesses, the accrual of
19 litigation costs, and a significant time investment by the parties. Moreover, given the
20 complexity and unsettled nature of the issues in this case it is likely that any outcome at
21 trial would have resulted in a lengthy and costly appeal would result in further delay for
22 the Settlement Class Members who are waiting for a resolution in this matter.
- 23 • While Plaintiff believes there is strong evidence to support certification of several possible
24 classes, certification is always hard fought and subject to judicial discretion and
25 decertification is always a possibility.

1 Plaintiff also recognizes that proving the amount of wages due to each individual
2 Settlement Class Member would be an expensive and time consuming proposition. [HM ¶ 26.]
3 Moreover, the *King* Action resulted in a broad release through December 31, 2019 and Defendant
4 sold its business to a third party on or about September 1, 2020 and ceased employing all members
5 of the would-be class at that time. [*Id.*] Thus, *at best*, the period that could be covered by Plaintiff's
6 class/PAGA claim would be eight months in length – from January 1, 2020 through August 31,
7 2020. Because of the proposed Settlement, Settlement Class Members will receive timely relief
8 and avoid the risk of an unfavorable judgment. [*Id.*] And, the *King* Action settlement equates to
9 \$93.92 for each settlement class member and covers a period of 84 months, whereas the Settlement
10 in this Action provides more than \$23.28 for each Participating Class Member for a period of just
11 eight months. [*Id.*]

12 **B. Plaintiff's Counsel Has Extensive Experience in Class Action Litigation and**
Negotiations Were Conducted at Arms'-Length.

13 The settlement negotiations were conducted by highly skilled, capable, and experienced
14 counsel. Plaintiff's counsel asserts that it is highly experienced in litigating complex wage and
15 hour class action litigation and has been appointed class counsel in numerous wage and hour and
16 employment-related class actions. [HM ¶ 2, Declaration of Haig B. Kazandjian ("HB"), ¶¶ 5-6.]
17 Utilizing this experience, Plaintiff's counsel has vigorously prosecuted this Action. [HM ¶¶ 8-11.]
18 Although Plaintiff and her counsel were prepared to litigate the claims asserted in the Action, they
19 support the proposed Settlement as being in the best interests of the Settlement Class Members.
20 [HM ¶ 27.]

21 Further, this Settlement was reached after substantial exchanges of data, information, and
22 documents before and during the mediation, and is a result of extensive arms-length negotiations
23 with the aid of a respected mediator. The Parties entered into the mediation session willing to
24 explore the potential for a settlement of the dispute but were prepared to litigate their position
25 through trial and appeal if settlement had not been reached. [HM ¶ 10.] Only upon receipt and
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1 consideration of a mediator's proposal from experienced wage-and-hour mediator Hon. Judge
2 Stone (Ret.) did the Parties come to agreement.

3 **C. Plaintiff Asserts That the Proposed Class Counsel Award of Attorneys' Fees**
4 **and Litigation Costs Is Fair, Adequate, and Reasonable.**

5 California state and federal courts have recognized that an appropriate method for
6 determining award of attorneys' fees is based on a percentage of the total value of benefits to class
7 members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001);
8 *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) [*Serrano III*]; *Boeing Co. v. Van Gemert*, 444 U.S. 472,
9 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of
10 this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs
11 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
12 burden alone." *Vincent*, 557 F.2d at 769.

13 Indeed, most recently, the California Supreme Court has also now held that the award of
14 attorneys' fees in common fund wage and hour class action settlements should start with the
15 percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the
16 overwhelming majority of federal and state courts in holding that when class action litigation
17 establishes a monetary fund for the benefit of the class members, and the trial court in its equitable
18 powers awards class counsel a fee out of that fund, the court may determine the amount of a
19 reasonable fee by choosing an appropriate percentage of the fund created").

20 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent
21 of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that required a
22 multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is "extraordinarily high
23 or low [should] the trial court [] consider whether the percentage method should be adjusted so as
24 to bring the imputed multiplier within a justifiable range." *Id.* at 505.

25 Here, Class Counsel intends to request Attorneys' Fees of \$35,333.33 (1/3 of the
26 Settlement Proceeds). [HM ¶ 29.] Plaintiff contends that the requested fees are reasonable under
27 the common fund theory. Further, the Parties have agreed to reimbursement of Class Counsel's
28 litigation costs incurred which Class Counsel currently estimates is approximately \$6,507.40 and
will be no more than \$7,000.00 at the conclusion of matters related to the Settlement. [*Id.*]. In view

1 of Class Counsel's efforts and risks in pursuing this case, the Court should preliminarily approve
2 the Attorneys' Fees and Litigation Costs requested by the Parties. [HM ¶ 30-31], Declaration of
3 Haig B. Kazandjian ¶ 3.

4 **D. The Proposed Incentive Award Is Fair, Adequate, and Reasonable.**

5 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as
6 compensation "for the expense or risk they have incurred in conferring a benefit on other
7 members of the class." *Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186
8 Cal.App.4th 399, 412. Here, the Settlement provides that Plaintiff may seek an Incentive Award
9 of \$1,000. This amount is entirely reasonable given Plaintiff's efforts in this action and the risks
10 she undertook on behalf of the Settlement Class Members. [HM ¶ 33.] Here, Plaintiff has devoted
11 many hours advancing the interests of the Settlement Class. [*Id.*] Plaintiff has done this by, among
12 other things, retaining experienced counsel, providing them with information about her work
13 history with Defendant and Defendant's policies and practices with respect to the wage and hour
14 claims at issue, and being actively involved in the settlement process to ensure a fair result for
15 the Settlement Class as a whole. [*Id.*] In doing this, Plaintiff has been exposed to significant risks,
16 including the risk of an order to pay Defendant's attorneys' fees and costs if this action had been
17 unsuccessful (*see* Lab. Code §§ 218.5-218.6). [*Id.*] Finally, Courts routinely approve incentive
18 awards in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*
19 (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for their
20 efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal.1995) 901 F.Supp.
21 294 (approving \$50,000 enhancement award).

22 **E. The Proposed PAGA Allocation Is Fair, Adequate, and Reasonable.**

23 The settlement amount allocated for penalties under PAGA is fair and reasonable. [HM ¶
24 28.] As a preliminary matter, courts have discretion to greatly reduce the amount awarded under
25 PAGA. Lab. Code § 2699(2); *Thurgood v. Bayshore Transit Management, Inc.* (2012) 203
26 Cal.App.4th 1112, 1135. This is particularly true where a plaintiff alleges both class claims and a
27
28

1 representative action for civil penalties. *Visceral v. Mistral Grp., Inc.* (N.D. Cal. Oct. 11, 2016)
2 No. 15-cv-02198-EMC, 2016 WL 5907869, at *9.

3 Where, as here, the parties reach a substantial settlement providing employees with
4 monetary compensation for underlying Labor Code violations, many of PAGA's underlying policy
5 objectives are satisfied. [HM ¶ 28.] Accordingly, there exists a substantial likelihood that the Court
6 would exercise its discretion and reduce the amount awarded for PAGA penalties even if Plaintiff
7 proved successful at trial. Additionally, PAGA's shorter statute of limitations justifies a limited
8 allocation when compared to the amount allocated for Labor Code violations. Here, the \$5,000
9 PAGA Payment is well within the range approved by California courts and therefore should be
10 approved. *See Nordstrom Comm. Cases* (2010) 186 Cal.App.4th 576, 589 (finding no abuse of
11 discretion in the trial court's approval of a release that included PAGA claims, but allocated \$0 to
12 PAGA penalties). [HM ¶ 28.]

13 **F. The Proposed Settlement Administration Costs Are Fair and Reasonable.**

14 With regard to the settlement administration costs provision, it is reasonable. Before
15 agreeing to Simpluris, Inc., the Parties sought and reviewed bids from other reputable third- party
16 administrators and mutually decided to go with Simpluris, Inc., which provided the lowest bid.
17 [HM ¶¶ 36-37, Exs. 4-6.] Thus, the settlement administration costs provision should be given
18 preliminary approval.

19 **G. The Proposed Class Notice Is An Appropriate Form Of Giving Notice To The**
20 **Settlement Class And Satisfies Due Process.**

21 "The principal purpose of notice to the class is the protection of the integrity of the class
22 action process." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 970. The notice "must fairly
23 apprise the class members of the terms of the proposed compromise and of the options open to
24 the dissenting class members." *Wershba*, 91 Cal.App.4th at 251. The standard for determining
25 the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial
26 percentage of the class members." *Cartt*, 50 Cal.App.3d at 974.

27 Here, the Notice process includes multiple measures to ensure that as many Settlement
28 Class Members as practicable receive actual notice of the Settlement and have enough time to

1 exercise their rights. Prior to mailing the Notice, the Settlement Administrator will perform a
2 search using the National Change of Address Database to update and correct any known or
3 identifiable address changes for the Settlement Class Members. [Settlement ¶ III.E.1.] The
4 Settlement Administrator will then send the Notice to the last known address of the Settlement
5 Class Members by First Class U.S. mail in both English and Spanish. [*Id.* ¶ III.B, III.E.1.] It is
6 uncertain whether Defendant's records of the employees' contact information include email
7 addresses and Settlement Class Members may not be in a position to check their emails on
8 electronic device. [*Id.*] As such, notice by mail alone is fair, adequate, and reasonable, and is the
9 best possible notice under the circumstances. *See Mullane v. Central Hanover Bank & Trust Co.*
10 (1950) 339 U.S. 306, 319; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173-176.

11 The Notice also comports with the requirements of California Rules of Court, Rules 3.769
12 and 3.766. Pursuant to Rule 3.769(f), the class notice must contain an explanation of the proposed
13 settlement and procedures for class members to follow in filing written objections to it and
14 arranging to appear at the hearing and state objections to the proposed settlement. Cal. R. Ct.
15 3.769(f). Rule 3.766 further requires that the class notice include (1) a brief explanation of the
16 case, including the basic contentions and denials of the parties; (2) a procedure for the class
17 member to follow in requesting exclusion, and a statement that the Court will exclude the class
18 member from the class if he or she so requests by the specified deadline; (3) a statement that the
19 judgment, whether favorable or not, will bind all class members who do not request exclusion;
20 (4) a statement that any class member who does not request exclusion may, if the class member
21 so desires, object and enter an appearance through counsel. The proposed Notice satisfies each
22 of these requirements. *See Settlement*. [HM ¶¶ 34-35.]

23 **V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES.**

24 Code of Civil Procedure § 382 provides that three basic requirements must be met in order
25 to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined
26 community of interest in the question of law or fact affecting the parties to be represented; and (3)
27

1 certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class
2 is superior to other methods. *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089; *see*
3 *also Sav-On Drug Stores, Inc.*, 34 Cal.4th 319, 326. Courts utilize a less stringent standard for
4 class certification during settlement. *Global Minerals & Metals Corp. v. Superior Court* (2003)
5 113 Cal.App.4th 836, 859. The reason: “no trial is anticipated in a settlement class case, so the
6 case management issues inherent in the ascertainable class determination need not be confronted.”
7 *Id.* Class certification for settlement purposes is proper in this case as the proposed Settlement
8 Class satisfies each of the requirements under Code of Civil Procedure § 382. Accordingly, this
9 Court should certify the putative settlement class.

10 **A. The Class Is Objectively Ascertainable.**

11 To determine whether a class is ascertainable, courts look at (1) the class definition; (2) the
12 size of the class; and (3) the means available for identifying class members. *Reyes v. Board of*
13 *Supervisors* (1987) 196 Cal.App.3d 1263, 1271. Here, for settlement purposes only, the class is
14 objectively defined, is sufficiently numerous, and can be identified through Defendant’s personnel
15 records. Thus, the ascertainability requirement is satisfied.

16 A class is ascertainable when “it is defined ‘in terms of objective characteristics and common
17 transactional facts’ that make ‘the ultimate identification of class members possible when that
18 identification becomes necessary.’” *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019). No set
19 number of class members is required to maintain a class action. *Hebbard v. Colgrove*, 28 Cal. App. 3d
20 1017, 1030 (1972). In fact, the California Supreme Court has upheld a class of as few as ten members.
21 *Bowles v. Superior Court*, 44 Cal. 2d 574 (1955). The class definition is sufficiently specific to enable
22 Parties, Class Members, and the Court to determine the parameters of the class. *See Clothesrigger,*
23 *Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 617 (1987) (class defined as all persons nationwide
24 subscribing to telephone service since January 1, 1981, who were charged for one or more unanswered
25 long distance calls, deemed “plainly” ascertainable).

26 The question of whether class members are easily identifiable turns on whether a plaintiff can
27 establish “the existence of an ascertainable class,” not whether the plaintiff can “identify the individual
28 members of such class as prerequisite to the class suit.” *Daar*, 67 Cal.2d at 706; *see also, Reyes v. San*

1 *Diego County Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1275 (1987).

2 In this case, there are approximately 1,947 Class Members, all of whom may be identified by
3 reference to Defendant's records. In addition, to facilitate the administration of the Settlement,
4 Defendant has agreed to share the information from its records and has already demonstrated that it
5 can do so when providing informal discovery to Plaintiffs to facilitate settlement discussions.
6 Accordingly, the Class is not only ascertainable, but also sufficiently numerous. [HM ¶¶ 7, 16.]

7 **B. The Proposed Class Shares A Well-Defined Community of Interest.**

8 The community of interest requirement embodies three factors: (1) predominant questions
9 of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
10 representatives who can adequately represent the class. *Dunk v. Ford Motor Co.* (1996) 48
11 Cal.App.4th 1794, 1806; *Richmond v. Dart Indus. Inc.* (1981) 29 Cal.3d 462, 473-475. Here, all
12 three factors are satisfied. Each of these factors is met for settlement purposes.

13 First, and given the more lenient standard for certification of a settlement class, the Parties
14 agree that for the purposes of the Settlement only, the claims of the Settlement Class Members all
15 stem from the same sources and common questions predominate. [HM ¶ 17.] Plaintiff asserts all
16 Settlement Class Members were subject to the same or similar operations and employment
17 policies, practices, and procedures. [*Id.*] Plaintiff contends the claims arise from Defendant's
18 alleged uniform policy of failing to properly account for all time worked and failing to, among
19 other things, properly pay overtime wages, provide off-duty meal and rest periods, indemnify the
20 Settlement Class Members for all business expenses, timely pay wages upon termination, and
21 provide compliant wage statements, all of which Plaintiff claims constitute unfair business
22 practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are
23 not limited to: (1) Whether Defendant failed to provide the Settlement Class Members with all
24 meal and rest periods, and failed to pay the required premiums for workdays with unprovided meal
25 and rest periods; (2) Whether Defendant failed to pay all wages earned to Settlement Class
26 Members for all hours worked at the correct rates of pay; (3) Whether Defendant failed to
27 indemnify the Settlement Class Members for all business expenses; (4) Whether Defendant

1 willfully failed to provide the Settlement Class Members with timely final wages; (5) Whether
2 Defendant engaged in unfair competition within the meaning of Business and Professions Code
3 §§ 17200, et seq., with respect to the Settlement Class Members; (6) Whether Defendant
4 knowingly and intentionally failed to provide the Settlement Class Members with accurate wage
5 statements. Therefore, Plaintiff contends that common questions predominate. [*Id.*]

6 Second, to satisfy the typicality requirement, California law does not require that plaintiffs
7 have claims identical to the other class members. Rather, the test of typicality for a class
8 representative is whether other members have the same or similar injury, whether the action is
9 based on conduct which is not unique to the named plaintiffs, and whether other class members
10 have been injured by the same course of conduct. *See Seastrom v. Neways, Inc.* (2007) 149
11 Cal.App.4th 1496, 1502; *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating “it has never
12 been the law in California that the class representative must have identical interests with the class
13 members. The only requirements are ... that the class representative be *similarly* situated”)
14 (emphasis in original); *see also* Newberg, § 3:29 (typicality “focuses on whether there exists a
15 relationship between the Plaintiffs claims and the claims alleged on behalf of the class”). The
16 typicality requirement for a class representative refers to the nature of the claim or defense of the
17 representative, and not to the specific facts from which it arose or the relief sought. *Seastrom*, 149
18 Cal.App.4th at 1502. Here, Plaintiff contends that her claims are typical for the purposes of
19 certifying the Settlement Class. [HM ¶ 18.] Plaintiff asserts that, like absent Settlement Class
20 Members, she was subject to the same relevant policies and procedures governing her
21 compensation, hours of work, meal and rest periods, and reimbursement of expenses. [*Id.*] Because
22 Plaintiff contends that she was subject to the same general course of conduct as absent Settlement
23 Class Members, resolving the common questions as they apply to the Plaintiff will determine
24 Defendant’s *prima facie* liability to all the Settlement Class Members. [*Id.*] Moreover, Plaintiff’s
25 claims could potentially be subject to the same primary affirmative defenses as those of absent
26 Settlement Class Members. Accordingly, Plaintiff contends that her claims are typical of the

1 Settlement Class. [*Id.*]

2 Third, Plaintiff and her counsel are qualified to conduct the litigation and Plaintiff's interest
3 in the litigation is not antagonistic to the class's interests. *McGhee v. Bank of America* (1976) 60
4 Cal.App.3d 442, 451. Specifically, Plaintiff's counsel have supplied the Court with declarations to
5 show that they are adequate to represent the Settlement Class and that they have significant
6 experience in employment litigation generally, and wage and hour and employment-related class
7 action and PAGA litigation specifically. [HM ¶ 2, HB, ¶¶ 5-6.] Thus, Plaintiff's counsel are
8 adequate to serve as Class Counsel for settlement purposes only.

9 Additionally, Plaintiff contends that she is an adequate class representative. [HM ¶ 20.]
10 Plaintiff and the Settlement Class Members have strong and co-extensive interests in this litigation
11 because they all worked for Defendant during the relevant time period, allegedly suffered the same
12 alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict
13 of interest between Plaintiff and the Settlement Class Members. [*Id.*] Moreover, Plaintiff has
14 demonstrated her commitment to the Class by, among other things, retaining experienced counsel,
15 providing counsel with documents and extensively speaking with them to assist in identifying the
16 claims asserted in this case, assisting them in contacting Settlement Class Members and gathering
17 information from them, meaningfully participating in the negotiations that led to the Settlement,
18 and exposing herself to the risk of attorneys' fees and costs awards against her if the complaint
19 had been unsuccessful. [*Id.*] Thus, Plaintiff is adequate to serve as a Class Representative for
20 settlement purposes only. [*Id.*]

21 Finally, adjudicating Plaintiff's claims in a single proceeding will save time, reduce waste,
22 and limit duplication of effort, making class certification superior to individual litigation. *See, e.g.,*
23 *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 816. A class action is superior to individual
24 litigation "when numerous parties suffer injury of insufficient size to warrant individual action and
25 when denial of class relief would result in unjust advantage to the wrongdoer." *Blue Chip Stamps*
26 *v. Superior Court* (1976) 18 Cal.3d 381, 385. Plaintiff contends that in cases such as this, where
27

1 individual damages may be small, the class action device is the most feasible method of recovery.
2 *See, e.g. Lockheed Martin v. Superior Court* (2003) 29 Cal.4th 1096, 1131. Further, class
3 certification would serve as the only means to deter and redress the alleged Labor Code violations.
4 *See Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434 (relevant considerations include the
5 probability that each class member will come forward ultimately to prove his or her separate claim
6 to a portion of the total recovery and whether the class approach would actually serve to deter and
7 redress the alleged wrongdoing). Furthermore, Plaintiff contends that individual actions arising
8 out of the same operative facts would unduly burden the courts and could produce inconsistent
9 results, which may be avoided by proceeding on a class basis. [HM ¶ 21.]

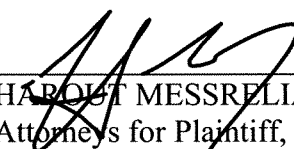
10 **VI. CONCLUSION**

11 For the reasons stated above, this Court should grant the Parties' Joint Motion in its
12 entirety and adopt the proposed order submitted concurrently herewith.

13 Respectfully submitted,

MESSRELIAN LAW INC.

14
15 Dated: March 9, 2022

16 By: 

HAROUT MESSRELIAN
Attorneys for Plaintiff, CARINA
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