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*Attorneys for Plaintiff, KATHERINE TOWNSEND*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

KATHERINE TOWNSEND, an individual, on  
behalf of herself, and on behalf of all persons  
similarly situated,

Plaintiffs,

vs.

RO-AL, INC., a California Corporation;  
PATRICK MOLLOY BASTIAN, an  
individual; ALICE BASTIAN HAHN, an  
individual; FRED HAHN, an individual; and  
DOES 1 through 50 inclusive.

Defendants.

**Case No. 20STCV18526**

Hon. Yvette M. Palazuelos, Dept. SSC-9

**CLASS ACTION**

**NOTICE OF MOTION AND MOTION  
FOR:**

- 1. PRELIMINARY APPROVAL OF  
CLASS ACTION AND PAGA  
SETTLEMENT;**
- 2. MEMORANDUM OF POINTS  
AND AUTHORITIES**

**Filed concurrently with:**

- 1. Declaration of David R. Greifinger,  
Esq.**
- 2. [Proposed] Order Granting  
Preliminary Approval of Class  
Action Settlement**

Date: October 25, 2021 [Reserved]  
Time: 10:00 a.m.  
Dept.: SSC-9

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 25, 2021, at 10:00, a.m., or as soon  
3 thereafter as counsel may be heard, in Department SSC-9 of the above-captioned court,  
4 located at 312 North Spring Street, Los Angeles, California 90012, the Honorable Yvette M.  
5 Palazuelos presiding, Plaintiffs Katherine Townsend will, and hereby does, move this Court  
6 to:

7 1. Preliminarily approve the settlement set forth in the Joint Stipulation of Class  
8 Action and PAGA Settlement and Release, attached as EXHIBIT 2 to the Declaration of  
9 David R. Greifinger;

10 2. For settlement purposes only, conditionally certify the proposed Settlement  
11 Class;

12 3. Appoint Katherine Townsend as the Settlement Class representative;

13 4. Appoint the Law Offices of David R. Greifinger as Class Counsel;

14 5. Approve distribution of the proposed Notice of Class Action Settlement to  
15 the Settlement Class;

16 6. Appoint CPT Group, Inc. as the Settlement Administrator; and

17 7. Set a hearing date for final approval of the settlement.

18 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the  
19 Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of  
20 Class Action and PAGA Settlement; (3) the Declaration of David R. Greifinger; (4) the  
21 Joint Stipulation of Class Action Settlement and Release; (5) the Notice of Class Action  
22 Settlement; (6) the [Proposed] Order Granting Preliminary Approval of Class Action and  
23 PAGA Settlement; (7) the records, pleadings, and papers filed in this action; and (8) upon  
24 such other documentary and oral evidence or argument as may be presented to the Court at  
or prior to the hearing of this Motion.

25 As this Motion is unopposed, the Parties respectfully request relief from the page  
26 limit requirement set by California Rules of Court, rule 3.1113(d). The argument in favor  
27 of approval is approximately 26 pages, with the remainder of the motion being devoted to  
28 background information necessary for the court's evaluation of the motion.

1 Dated: September 30, 2021

**LAW OFFICES OF DAVID R. GREIFINGER**

2  
3 By:   
4 DAVID R. GREIFINGER  
5 CALVIN A. MARSHALL  
6 *Attorneys for Plaintiff, Katherine*  
7 *Townsend and the putative Class*  
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## TABLE OF CONTENTS

|                                                                                                                                                                                                                  |    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| INTRODUCTION.....                                                                                                                                                                                                | 9  |
| FACTS AND PROCEDURE .....                                                                                                                                                                                        | 11 |
| A. Brief Overview of the Litigation.....                                                                                                                                                                         | 11 |
| B. Plaintiffs’ counsel conducted a thorough investigation of the factual and<br>legal issues and were thus able to objectively assess the Settlement’s<br>reasonableness.....                                    | 13 |
| C. The settlement negotiations .....                                                                                                                                                                             | 15 |
| D. The proposed settlement fully resolves Plaintiff’s claims.....                                                                                                                                                | 15 |
| 1. <i>Composition of the Settlement Class</i> .....                                                                                                                                                              | 15 |
| 2. <i>Settlement Consideration</i> .....                                                                                                                                                                         | 15 |
| 3. <i>Formula for Calculating Payments from the Net Settlement Amount<br/>            to Participating Class Members</i> .....                                                                                   | 16 |
| 4. <i>Release by the Settlement Class</i> .....                                                                                                                                                                  | 18 |
| 5. <i>Release by Plaintiff</i> .....                                                                                                                                                                             | 19 |
| ARGUMENT.....                                                                                                                                                                                                    | 20 |
| I. The court should preliminarily approve the proposed Class Action<br>Settlement .....                                                                                                                          | 20 |
| A. Courts review class action settlements to ensure that the terms are fair,<br>adequate, and reasonable.....                                                                                                    | 20 |
| 1. <i>Plaintiffs’ counsel conducted a thorough investigation of the factual<br/>            and legal issues and were thus able to objectively assess the<br/>            Settlement’s reasonableness.</i> ..... | 21 |
| 2. <i>The Settlement was reached through arm’s length bargaining during<br/>            which all parties were represented by experienced counsel.</i> .....                                                     | 22 |
| B. The consideration provided for the class claims is fair and reasonable in                                                                                                                                     |    |

|    |                                                                                        |    |
|----|----------------------------------------------------------------------------------------|----|
| 1  | light of Defendants’ potential exposure and the risks of continued                     |    |
| 2  | litigation .....                                                                       | 23 |
| 3  | II. The consideration provided for the PAGA claim is fair and reasonable after         |    |
| 4  | discounting the potential recovery for the risks of continued litigation.....          | 26 |
| 5  | A. The court should preliminarily approve the negotiated attorneys’ fees and           |    |
| 6  | costs. ....                                                                            | 29 |
| 7  | B. The court should preliminarily approve the negotiated class                         |    |
| 8  | representatives’ enhancement payments. ....                                            | 29 |
| 9  | III. California Law authorizes provisional certification for settlement purposes. .... | 31 |
| 10 | A. The California standard for class certification.....                                | 31 |
| 11 | B. The proposed settlement class is sufficiently numerous. ....                        | 32 |
| 12 | C. The proposed settlement class is ascertainable.....                                 | 32 |
| 13 | D. There is a well-defined community of interest among settlement class                |    |
| 14 | members. ....                                                                          | 32 |
| 15 | E. The proposed notice properly informs class members about the case and               |    |
| 16 | the settlement. ....                                                                   | 34 |

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## TABLE OF AUTHORITIES

### STATE CASES

|                                                                                       |        |
|---------------------------------------------------------------------------------------|--------|
| <i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th     |        |
| 1135 (2000) .....                                                                     | 21     |
| <i>Aguirre v. Amscan Holdings, Inc.</i> , 234 Cal.App.4th 1290 (2015).....            | 32     |
| <i>Bowles v. Superior Court</i> , 44 Cal.2d 574 (1955).....                           | 32     |
| <i>Brinker Rest. Corp. v. Super. Ct.</i> , 53 Cal. 4th 1004 (2012).....               | 32     |
| <i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018).....               | 27     |
| <i>Cellphone Termination Fee Cases</i> , 180 Cal. App. 4th 1110 (2010).....           | 20, 21 |
| <i>Cellphone Termination Fee Cases</i> , 186 Cal. App. 4th 1380 (2010).....           | 28     |
| <i>Clark v. American Residential Services LLC</i> , 175 Cal. App. 4th 785 (2009)..... | 29     |
| <i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996).....                     | 21, 31 |
| <i>Hebbard v. Colgrove</i> , 28 Cal.App.3d 1017 (1972) .....                          | 32     |
| <i>Hernandez v. Restoration Hardware, Inc.</i> , 4 Cal.5th 260 (2018) .....           | 34     |
| <i>Kass v. Young</i> , 67 Cal. App. 3d 100 (1977) .....                               | 34     |
| <i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008) .....        | 23, 24 |
| <i>Laffitte v. Robert Half, Inc.</i> , 1 Cal. 5th 480 (2016).....                     | 29     |
| <i>Lee v. Dynamex, Inc.</i> , 166 Cal. App. 4th 1325 (2008).....                      | 31     |
| <i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal. App. 4th 399 (2010).....        | 24     |
| <i>Nordstrom Com. Cases</i> , 186 Cal. App. 4th 576 (2010).....                       | 28     |
| <i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i> , 27 Cal.    |        |
| App. 4th 1085 (1994) .....                                                            | 21     |
| <i>Sav-On Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004) .....      | 31     |
| <i>Skulnick v. Roberts Express, Inc.</i> , 2 Cal. App. 4th 884 (1992) .....           | 21     |
| <i>Stambaugh v. Super. Ct.</i> , 62 Cal. App. 3d 231 (1976).....                      | 21     |
| <i>State of Cal. v. Levi Strauss</i> , 41 Cal. 3d 460 (1986).....                     | 22, 34 |
| <i>Thurman v. Bayshore Transit Mgmt.</i> , 203 Cal. App. 4th 1112 (2012).....         | 28     |
| <i>Trotsky v. Los Angeles Fed. Savings &amp; Loan Assn.</i> , 48 Cal. App. 3d 143     |        |

|    |                                                                                             |        |
|----|---------------------------------------------------------------------------------------------|--------|
| 1  | (1975).....                                                                                 | 34     |
| 2  |                                                                                             |        |
| 3  | <b>FEDERAL CASES</b>                                                                        |        |
| 4  | <i>Aguirre v. Genesis Logistics</i> , No. SACV 12-00687 JVS (ANx), 2013 WL                  |        |
| 5  | 10936035 (C.D. Cal. Dec. 30, 2013) .....                                                    | 28     |
| 6  | <i>Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit</i>                     |        |
| 7  | <i>Services, Inc.</i> , No. 05cv1199–IEG–CAB, 2009 WL 2448430 (S.D. Cal.                    |        |
| 8  | 2009).....                                                                                  | 27     |
| 9  | <i>Balderas v. Massage Envy Franchising, LLP</i> , 2014 WL 3610945. (N.D. Cal.              |        |
| 10 | July 21, 2014) .....                                                                        | 25     |
| 11 | <i>Chu v. Wells Fargo Invst., LLC</i> , No. C 05–4526 MHP, 2011 WL 672645                   |        |
| 12 | (N.D. Cal Feb. 16, 2011).....                                                               | 28     |
| 13 | <i>Cotter v. Lyft, Inc.</i> , 193 F. Supp. 3d 1030 (N.D. Cal. 2016) .....                   | 27     |
| 14 | <i>Dearaujo v. Regis Corp.</i> , No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473                  |        |
| 15 | (E.D. Cal. June 29, 2016).....                                                              | 28, 31 |
| 16 | <i>Fleming v. Covidien Inc.</i> , No. ED CV 10-01487 RGK (OPx) (OPX), 2011 WL               |        |
| 17 | 7563047 (C.D. Cal. Aug. 12, 2011) .....                                                     | 27     |
| 18 | <i>Garcia v. Gordon Trucking, Inc.</i> , No. 1:10–CV–0324 AWI SKO, 2012 WL                  |        |
| 19 | 5364575 (E.D. Cal. Oct. 31, 2012).....                                                      | 28     |
| 20 | <i>Hopson v. Hanesbrands Inc.</i> , Case No. 08-00844, 2009 U.S. Dist. LEXIS                |        |
| 21 | 33900 (N.D. Cal. Apr. 3, 2009).....                                                         | 28     |
| 22 | <i>In re Amtrak Train Derailment in Philadelphia, Pennsylvania</i> , No. 15-MD-             |        |
| 23 | 2654, 2016 WL 1359725 (E.D. Pa. Apr. 6, 2016) .....                                         | 31     |
| 24 | <i>In Re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979) .....         | 25     |
| 25 | <i>In re Cendant Corp. Litigation</i> , 264 F.3d 201 (3d Cir. 2001).....                    | 25     |
| 26 | <i>In re Global Crossing Sec. and ERISA Litig.</i> , 225 F.R.D. 436 (S.D.N.Y. 2004).....    | 23     |
| 27 | <i>In re IKON Office Solutions, Inc. Sec. Litig.</i> , 194 F.R.D. 166 (E.D. Pa. 2000) ..... | 23     |
| 28 | <i>In re Omnivision Technolgies, Inc.</i> , 559 F.Supp.2d 1036 (N.D.Cal. 2008).....         | 25     |

|    |                                                                                                         |    |
|----|---------------------------------------------------------------------------------------------------------|----|
| 1  | <i>In re Processed Egg Prod. Antitrust Litig.</i> , No. 08-MD-2002, 2014 WL                             |    |
| 2  | 828083 (E.D. Pa. Feb. 28, 2014).....                                                                    | 31 |
| 3  | <i>In re Toys R Us-Delaware, Inc.-- Faire &amp; Accurate Credit Transactions Act (FACTA) Litigation</i> |    |
| 4  | 295 F.R.D. 438 (C.D. Cal. 2014) .....                                                                   | 23 |
| 5  | <i>Li v. A Perfect Day Franchise, Inc.</i> , No. 5:10-CV-01189-LHK, 2012 WL                             |    |
| 6  | 2236752 (N.D. Cal. June 15, 2012).....                                                                  | 28 |
| 7  | <i>Nat'l Rural Telecomm. Coop. v. Directv, Inc.</i> , 221 F.R.D. 523 (C.D. Cal.                         |    |
| 8  | 2004).....                                                                                              | 23 |
| 9  | <i>Newman v. Stein</i> , 464 F. 2d 6893 (2d Cir.) .....                                                 | 23 |
| 10 | <i>Officers for Justice v. Civil Serv. Comm.</i> , 688 F. 2d 615 (C.A. Cal. 1982).....                  | 23 |
| 11 | <i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2009) .....                          | 29 |
| 12 | <i>See In re Omnivision Tech., Inc.</i> , 559 F. Supp. 2d 1036 (N.D. Cal. 2008).....                    | 25 |

## RULES

|    |                                          |        |
|----|------------------------------------------|--------|
| 15 | Cal. Civ. Proc. Code § 382 .....         | 31     |
| 16 | Cal. Lab. Code § 2699 .....              | 26, 27 |
| 17 | Cal. Rules of Court, rule 3.769 .....    | 20, 21 |
| 18 | Cal. Rules of Court, rule 3.769(c) ..... | 20     |
| 19 | Cal. Rules of Court, rule 3.769(d).....  | 20     |
| 20 | Cal. Rules of Court, rule 3.769(e) ..... | 20     |
| 21 | Cal. Rules of Court, rule 3.769(f).....  | 20, 21 |
| 22 | Cal. Rules of Court, rule 3.769(g).....  | 20, 21 |

## TREATISES

|    |                                                                                       |                |
|----|---------------------------------------------------------------------------------------|----------------|
| 25 | Conte & Newberg, <i>Newberg on Class Actions</i> (4th ed. 2002).....                  | 21, 22, 29, 31 |
| 26 | Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> (2d ed. 1986)..... | 34             |

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Representative Enhancement Payment. The Net Settlement Amount will be apportioned to all Class Members on a proportional basis according to the number of weeks each Class Member worked during the Class Period.

- (b) Reasonable Attorneys' fees totaling one-third of the Class Settlement Amount (or \$75,000.00), and litigation costs and expenses not exceeding \$10,000.00, to the Law Offices of David R. Greifinger ("Plaintiffs' Counsel").
- (c) Settlement administration costs of approximately \$15,000.00.
- (d) A total amount of \$10,000.00 to resolve Plaintiffs' claims pursuant to the California Labor Code's Private Attorneys General Act of 2004 ("PAGA"), of which 75% (\$7,500.00) will be paid to the LWDA and 25% (\$2,500.00) will be included in the Net Settlement Amount to Participating Class Members.
- (e) A Class Representative Enhancement Payment of \$7,500.00 to Katherine Townsend in recognition of her effort and work in prosecuting the Action on behalf of the Settlement Class, the risks she took in bringing the action on behalf of the class, and for the release of all of her substantial individual claims arising out of her employment with Defendants.

An objective assessment of the Settlement affirms that the relief negotiated on the Settlement Class' behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to more than 323 Class Members, who worked mostly for minimum wage. This compensation—averaging approximately \$333.00 per Class Member—is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial.

1 As discussed *infra*, the proposed Settlement fulfills all criteria for preliminary  
2 settlement approval under California law and is reasonable. Thus, for settlement purposes  
3 only, Plaintiffs respectfully request that this Court grant preliminary approval of the  
4 Settlement Agreement.

## 5 **FACTS AND PROCEDURE**

### 6 **A. Brief Overview of the Litigation**

7 Defendants operate a bar and restaurant called Patrick Molloy's, which serves food and  
8 alcohol in Los Angeles, California. Defendants' business requires the employment of hourly paid  
9 employees designated as cooks, hosts, hostesses, bartenders, and a wait staff.

10 Plaintiff alleges that during her employment, Defendants continually failed to pay  
11 Plaintiff and other hourly paid employees for overtime hours worked at a rate of 1.5 times each  
12 employee's regular rate of pay for all hours worked in excess of 8 hours and two times the  
13 regular rate of pay for all hours worked in excess of 12 hours. Plaintiff also alleges that she and  
14 other hourly paid employees were required to work over 8 hours in a given day or over 40 hours  
15 in a given week. In addition to overtime compensation owed and interest thereon, Labor Code  
16 section 1194.2 establishes an employee's right to recover liquidated damages in an amount equal  
17 to the wages unlawfully unpaid and interest thereon.

18 Plaintiff further alleges that Defendants did not provide Plaintiff and other hourly paid  
19 employees with a premium payment of one additional hour of pay at the employee's regular rate  
20 for each time that a code-complaint meal period was not provided; that Plaintiff and other hourly  
21 paid employees were not provided with code-complaint thirty-minute, uninterrupted, meal  
22 periods when they worked more than five hours in a day; that Plaintiff and other hourly paid  
23 employees were not provided with second compliant thirty-minute, uninterrupted meal periods  
24 when they worked more than ten hours in a day; that Defendants did not provide Plaintiff and  
25 other hourly paid employees with a premium payment of one additional hour of pay at the  
26 employee's regular rate for each workday that a code compliant rest period was not provided;  
27 and that Plaintiff and other hourly paid employees were not provided with code-complaint 10  
28 minute paid rest periods per every four hours, or major fraction thereof, of work.

1 Plaintiff also alleges that Plaintiff and other hourly paid employees received payroll  
2 checks that did not accurately compensate them for all hours of work and missed meal and rest  
3 periods. As a result, Plaintiff alleges that when wage statements were provided, or when final  
4 wages were paid, the statements did not comply with the requirements of Labor Code section  
5 226, and employees were not paid the entirety of the amounts owed at termination.

6 Plaintiff additionally alleges that Defendants did not properly reimburse Plaintiff and  
7 other hourly paid employees for all necessary expenses incurred in each hourly paid employee's  
8 course and scope of employment, as required by Labor Code sections 2800 and 2802. Plaintiff  
9 contends those necessary business-related expenses include but were not limited to the purchase  
10 of a uniform required by Defendants.

11 Plaintiff also alleges that Defendants did not provide Plaintiff and other hourly paid  
12 employees with an adequate number of suitable seats in reasonable proximity to the work area  
13 that could be used when the seats would not interfere with the performance of the duties. As a  
14 result, Plaintiff contends that Plaintiff and other hourly paid employees are entitled to recover all  
15 remedies available for violations of Labor Code section 1198 and California Code of  
16 Regulations, title 8, section 11050, subdivision (14).

17 Plaintiff further alleges that Defendants instituted a tip-pooling policy that allowed for  
18 managers to take gratuities left by Defendants' customers for Plaintiff and other hourly paid  
19 employees. Labor Code section 351 provides that no employer or agent shall collect, take, or  
20 receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron,  
21 or deduct any amount from wages due an employee on account of a gratuity, or require an  
22 employee to credit the amount, or any part thereof, of a gratuity against and as a part of the  
23 wages due the employee from the employer. Every gratuity is declared to be the sole property of  
24 the employee or employees to whom it was paid, given, or left for.

25 Plaintiff filed her First Amended Complaint on December 14, 2020, alleging causes of  
26 action for (1) Failure to Pay Overtime Compensation and Liquidated Damages (Lab. Code, §§  
27 510, 1194, 1194.2, & 1198); (2) Failure to Pay Minimum Wages and Liquidated Damages (Lab.  
28 Code, §§ 1182.12, 1194, 1194.2, 1197.1, & 1198, and Cal. Code Regs., tit. 8, § 11050); (3)  
Failure to Provide Meal Periods (Lab. Code, §§ 226.7 & 512, and Cal. Code Regs., tit. 8, §

1 11050); (4) Failure to Provide Rest Periods (Lab. Code, §§ 226.7 & 512, and Cal. Code Regs.,  
2 tit. 8, § 11050); (5) Failure to Provide Itemized Wage Statements (Lab. Code, § 226); (6) Failure  
3 to Reimburse Business Expenses (Lab. Code, §§ 2800 & 2802); (7) Failure to Provide Adequate  
4 Seating (Lab. Code, § 1198 and Cal. Code Regs., tit. 8, § 11050, subd. (14)); (8) Improper  
5 Receipt and Distribution of Gratuities (Lab. Code, § 351); (9) Failure to Pay Wages Upon  
6 Termination of Employment (Lab. Code, § 203); (10) Civil Penalties under Labor Code section  
7 558; (11) Unfair Competition (Bus. & Prof. Code, § 17200, et. seq.); and (12) Penalties Under  
8 the Private Attorneys General Act (Lab. Code, § 2698, et. seq.). On October 7, 2020, prior to  
9 filing the FAC, Plaintiff served a letter on the LWDA and on Defendants alleging the same  
10 violations and seeking penalties under PAGA.<sup>1</sup>

11 Defendants deny any wrongdoing or liability whatsoever and deny that any of Plaintiff's  
12 claims are suitable for class or representative treatment.

13 **B. Plaintiffs' counsel conducted a thorough investigation of the factual and legal**  
14 **issues and were thus able to objectively assess the Settlement's reasonableness.**

15 Plaintiffs' Counsel conducted a thorough year-long investigation of the factual and  
16 legal issues, starting shortly after Ms. Townsend retained them and continuing until the  
17 parties reached a settlement in principle.<sup>2</sup> At the outset of the litigation, Ms. Townsend  
18 provided Plaintiffs' Counsel with a detailed summary of her experiences working for  
19 Defendants, and the circumstances that gave rise to the alleged Labor Code violations.<sup>3</sup> Ms.  
20 Townsend was able to share with Plaintiffs' Counsel her intimate knowledge of  
21 Defendants' policies and practices, and how these policies and practices were implemented  
22 on a daily basis.<sup>4</sup> In addition to establishing Plaintiffs' Counsel's initial evaluation of the  
23 lawsuit, the information that Ms. Townsend provided also influenced Plaintiffs' Counsels'  
24 discovery efforts.<sup>5</sup>

25 On December 17, 2020, the parties agreed on a scope of informal discovery while

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26 <sup>1</sup>Greifinger Decl., ¶ 7.

27 <sup>2</sup>Greifinger Decl., ¶ 8.

28 <sup>3</sup>Greifinger Decl., ¶ 9.

<sup>4</sup>Greifinger Decl., ¶ 9.

<sup>5</sup>Greifinger Decl., ¶ 9.

1 staying formal discovery. The informal discovery required Defendants to produce the following  
2 information and documents: a putative class list; all applicable policies provided to putative  
3 class members (during the class period) related to allegations in the complaint including,  
4 Overtime, Meal Breaks [e.g. policies, waiver forms, waiver revocation forms, requests for  
5 premiums/notification of missed meal], Rest Breaks, Timekeeping/Clocking In and  
6 Out/Attendance, Reimbursement of Business Expenses, Provision of Adequate Seating,  
7 Distribution of Gratuities, and any job descriptions for hourly employees; Statistically valid  
8 sample data for putative class members, including timekeeping data and information, including  
9 time audits and adjustment reports, and payroll data; paystubs for Plaintiff; and financial data  
10 for 2018 through 2020.<sup>6</sup> Plaintiffs' Counsel received the requested documentation, which  
11 included approximately 6000 pages of documents and 39 extensive spreadsheets.<sup>7</sup> The  
12 document and data exchange enabled Jarett Gorlick, CFP of Berger Consulting Group to  
13 perform a detailed, comprehensive, and statistically significant damages analysis for the  
14 Settlement Class (the "Damages Analysis").<sup>8</sup> The documents and Damages Analysis  
15 enabled Plaintiffs' Counsel to fully assess the nature and scale of the claims being settled,  
16 as well as the obstacles to recovery, and to make an independent assessment of the  
17 reasonableness of the terms to which the parties have agreed.<sup>9</sup>

18 In summary, Plaintiff's Counsel performed a thorough investigation into the claims  
19 at issue, which included: (1) determining Plaintiff's suitability as putative class  
20 representatives and as private attorneys general through interviews and analyses of  
21 employment files and related records; (2) drafting the PAGA Notice Letter; (3) evaluating  
22 all of Plaintiff's potential representative claims; (4) researching similar wage-and-hour  
23 class actions as to the claims brought, the nature of the positions, and the type of employer;  
24 (5) drafting the Complaint and First Amended Complaint; (6) propounding informal  
25 discovery requests; (7) analyzing a sample of the Settlement Class' time and wage records;  
26 (8) analyzing Defendants' employment policies and practices applicable to the Settlement

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27 <sup>6</sup> Greifinger Decl., ¶ 10.

28 <sup>7</sup> Greifinger Decl., ¶ 10.

<sup>8</sup> Greifinger Decl., ¶ 10.

<sup>9</sup> Greifinger Decl., ¶ 10.

1 Class; (9) researching settlements in similar cases; (10) evaluating Plaintiff's claims and  
2 estimating Defendants' liability for purposes of settlement; and (12) negotiating a  
3 settlement with Defendants' counsel.<sup>10</sup>

4 By engaging in such a thorough investigation and evaluation of Plaintiff's claims,  
5 Plaintiff's Counsel can opine that the Settlement, for the consideration and on the terms set  
6 forth in the Settlement Agreement, is fair, reasonable, an adequate, and is in the best  
7 interests of Class Members in light of all known facts and circumstances, including the risk  
8 of significant delay and uncertainty associated with litigation, and various defenses asserted  
9 by Defendants.<sup>11</sup>

10 **C. The settlement negotiations**

11 Counsel engaged in a protracted exchange of settlement offers and counteroffers  
12 over a two-month period before agreeing on terms of settlement.<sup>12</sup> The terms of the  
13 Settlement are now set forth in the Joint Stipulation of Class Action Settlement and  
14 Release.<sup>13</sup> At all times, the Parties' negotiations were adversarial and non-collusive.<sup>14</sup> The  
15 Settlement therefore constitutes a fair, adequate, and reasonable compromise of the claims  
16 at issue.

17 **D. The proposed settlement fully resolves Plaintiff's claims.**

18 **1. Composition of the Settlement Class**

19 The proposed Settlement Class consists of all persons who are or were employed by  
20 Defendants at Patrick Molloy's Sports Pub in California in hourly paid and/or non-exempt  
21 positions at any time during the period from May 12, 2016, to the date of Preliminary  
22 Approval.<sup>15</sup> There are approximately 323 Class Members.<sup>16</sup>

23 **2. Settlement Consideration**

24 Plaintiff and Defendants have agreed to settle the underlying class claims in

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25 <sup>10</sup>Greifinger Decl. ¶ 11.

26 <sup>11</sup>Greifinger Decl., ¶ 12.

27 <sup>12</sup>Greifinger Decl. ¶ 13

28 <sup>13</sup> EXH. 4 to Greifinger Decl.

<sup>14</sup> Greifinger Decl., ¶ 13.

<sup>15</sup> EXH. 4 to Greifinger Decl. at ¶¶ 6-7.

<sup>16</sup> Greifinger Decl., ¶ 15.

1 exchange for the Maximum Settlement Amount of \$225,000.00. The Maximum Settlement  
2 Amount includes: (1) **automatic payments** to all Class Members except those who submit  
3 timely and valid Requests for Exclusion (“Participating Class Members”) from the Net  
4 Settlement Amount; (2) \$75,000.00 in attorneys’ fees (one-third of the Class Settlement  
5 Amount) and up to \$10,000.00 in litigation costs to Plaintiff’s Counsel; (3) Settlement  
6 Administration Costs of approximately \$15,000.00; (4) A total amount of \$10,000.00 to  
7 resolve Plaintiffs’ claims under PAGA, of which 75 percent (\$7,500.00) will be paid to the  
8 LWDA and 25 percent (\$2,500.00) will be included in the Net Settlement Amount to  
9 Participating Class Members; and (5) a Class Representative Enhancement Payment of  
10 \$7,500.00 to Plaintiff Katherine Townsend in recognition of Plaintiff’s effort and work in  
11 prosecuting the Action on behalf of the Settlement Class, the risks she took in bringing her  
12 class claims, **and for her general release of all individual claims arising out of her  
13 employment with Defendants, both known and unknown.**<sup>17</sup>

14 Subject to the Court approving Attorneys’ Fees and Costs, Settlement  
15 Administration Costs, the PAGA Payment, and the Class Representative Enhancement  
16 Payment, the Net Settlement Amount will be distributed to Participating Class Members in  
17 full on a non-revisionary basis.<sup>18</sup>

18 **3. *Formula for Calculating Payments from the Net Settlement Amount to  
19 Participating Class Members***

20 Each Class Member’s share of the Net Settlement Amount will be proportional to  
21 the number of weeks he or she worked during the Class Period.<sup>19</sup> The Settlement  
22 Administrator will calculate Individual Settlement Payments as follows:

- 23 ○ The Settlement Administrator will first calculate the total number of Workweeks  
24 worked by each Class Member during the Class Period and the aggregate total  
25 number of Workweeks worked by all Class Members during the Class Period.
- 26 ○ To determine each Class Member’s estimated “Individual Settlement Payment,”  
the Settlement Administrator will use the following formula: The Net Settlement

27 <sup>17</sup> EXH. 4 to Greifinger Decl. at ¶ 70.

28 <sup>18</sup> EXH. 4 to Greifinger Decl. at ¶ 40.

<sup>19</sup> EXH. 4 to Greifinger Decl. at ¶ 42.

1 Amount will be divided by the aggregate total number of Workweeks, resulting in  
2 the “Workweek Value.” Each Class Member’s “Individual Settlement Payment”  
3 will be calculated by multiplying each individual Class Member’s total number of  
4 Workweeks by the Workweek Value.

- 5 ○ The Individual Settlement Payments will be reduced by any required deductions for  
6 each Participating Class Member as specifically set forth in the Agreement,  
7 including employee-side tax withholdings or deductions.
- 8 ○ The entire Net Settlement Amount will be disbursed to all Class Members who do  
9 not submit timely and valid Requests for Exclusion.
- 10 ○ Should any of the following occur, the estimated Individual Settlement Payments  
11 of each Participating Class Member will be proportionately increased to ensure that  
12 the entire Net Settlement Amount is distributed to Participating Class Members: (i)  
13 any Class Members submit timely and valid, or otherwise accepted, Requests for  
14 Exclusion; (ii) the Court approves a Class Representative Enhancement Payment in  
15 an amount less than that requested by Plaintiff, as detailed herein; (ii) the Court  
16 approves Attorneys’ Fees and Costs in an amount less than that requested by  
17 Plaintiff, as detailed herein; and/or (iii) the Court approves Settlement  
18 Administration Costs in an amount less than that requested by Plaintiff, as detailed  
19 herein.<sup>20</sup>

20 Given that there are only approximately 323 Class Members, the average net  
21 recovery will be approximately \$333.00. This recovery will be a windfall for members of  
22 the Settlement Class, who mostly earn at or near the minimum wage.<sup>21</sup> This average net  
23 recovery is greater than many other wage and hour class action settlements approved by  
24 California state and federal courts. (See, e.g., *Sandoval v. Nissho of Cal., Inc.* (Super. Ct.  
25 San Diego, No. 37-2009-00091861) [average net recovery of approximately \$145.00];  
26 *Fukuchi v. Pizza Hut* (Super. Ct. L.A. County, No. BC302589) [average net recovery of  
approximately \$120.00]; *Contreras v. United Food Group, LLC* (Super. Ct. L.A. County,

27 <sup>20</sup>EXH. 4 to Greifinger Decl. at ¶ 42.

28 <sup>21</sup>Greifinger Decl., ¶ 16.

No. BC389253) [average net recovery of approximately \$120.00]; *Ressler v. Federated Department Stores, Inc.* (Super. Ct. L.A. County, Case No. BC335018) [average net recovery of approximately \$90.00]; *Doty v. Costco Wholesale Corp.* (C.D.Cal. May 14, 2007, No. CV05-3241 FMC-JWJx) [average net recovery of approximately \$65.00]; *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) [average net recovery of approximately \$60.00]; *Lim v. Victoria's Secret Stores, Inc.* (Super. Ct. Orange County, No. 04CC00213) [average net recovery of approximately \$35.00]; *Gomez v. Amadeus Salon, Inc.* (Super. Ct. L.A. County, No. BC392297) [average net recovery of approximately \$20.00]; *Jones v. Bath & Body Works, Inc.* (C.D.Cal. July 11, 2016, No. 2:13-cv-05206-FMO-AJW) [average net recovery of approximately \$50.00]; *Palencia v. 99 Cents Only Stores* (Super. Ct. Sacramento County, No. 34-2010-00079619) [average net recovery of approximately \$80.00].)

**4. Release by the Settlement Class**

In exchange for the Maximum Settlement Amount, Participating Class Members will agree to a narrowly tailored release of the Released Claims during the Class Period:

“Released Claims” means all claims and allegations under state, federal or local law, whether statutory, common law or administrative, arising out of or related to the allegations set forth in the Operative Complaint, or which could have been alleged based on the facts and allegations pled in the Operative Complaint that occurred during the Class Period (“Class Release”), including but not limited to claims for: failure to pay overtime compensation and liquidated damages (Lab. Code, §§ 510, 1194, 1194.2, & 1198); failure to pay minimum wages and liquidated damages (Lab. Code, §§ 1182.12, 1194, 1194.2, 1197.1, & 1198, and Cal. Code Regs., tit. 8, § 11050); failure to provide meal periods (Lab. Code, §§ 226.7 & 512, and Cal. Code Regs., tit. 8, § 11050); failure to provide rest periods (Lab. Code, §§ 226.7 & 512, and Cal. Code Regs., tit. 8, § 11050); failure to provide itemized wage statements (Lab. Code, § 226); failure to reimburse business expenses (Lab. Code, §§ 2800 & 2802); failure to provide adequate seating (Lab. Code, § 1198 and Cal. Code Regs., tit. 8, § 11050, subd. (14));

1 improper receipt and distribution of gratuities (Lab. Code, § 351); failure to pay wages  
2 upon termination of employment (Lab. Code, § 203); civil penalties under Labor Code  
3 section 558; unfair competition (Bus. & Prof. Code, § 17200, et. seq.); and (12)  
4 penalties under the Private Attorneys General Act (Lab. Code, § 2698, et. seq.), claims  
5 for injunctive relief, punitive damages, liquidated damages, penalties of any nature  
6 (including civil penalties under PAGA), interest, fees, (including fees under California  
7 Code of Civil Procedure section 1021.5), and costs, and all other claims and  
8 allegations made or which could have been made in the Action based on the facts and  
9 allegations pled in the Operative Complaint during the Class Period. Upon entry of  
10 final judgment and funding of the Maximum Settlement Amount, the PAGA  
11 Employees shall also release the Released Parties<sup>22</sup> from all PAGA claims that were or  
12 could have been alleged in the Operative Complaint which occurred during the PAGA  
13 Period, as further specified below (“PAGA Release”). Both the Class and PAGA  
14 Releases expressly exclude all other claims, including claims for vested benefits,  
15 wrongful termination, unemployment insurance, disability, social security, workers’  
16 compensation, or claims outside the Class or PAGA Periods. Released Claims do not  
include claims that, as a matter of law, cannot be released.<sup>23</sup>

17 **5. Release by PAGA Employees**

18 In addition to the release of Released Claims discussed, *supra*, all Class Members who worked  
19 for Defendants as hourly paid and/or non-exempt employees at Patrick Molloy’s Sports Pub in  
20 California during the period from October 7, 2019, to the date of Preliminary Approval (“PAGA  
21 Employees”) – and the LWDA – shall be deemed to have released their respective PAGA claims against  
22 the Released Parties, which include any and all claims against the Released Parties that were or could  
23 have been pled based on the factual allegations of the operative Complaint, including but not limited to  
24 claims seeking civil penalties for failure to pay overtime compensation and liquidated damages; failure to

25 \_\_\_\_\_  
26 <sup>22</sup> The “Released Parties” means Defendants Ro-Al, Inc., dba Patrick Molloy’s, Patrick Molloy Bastian, Alice Bastian Hahn,  
27 and Harry Frederick Hahn (including but not limited to the Estate of Harry Frederick Hahn), and all of their present and former  
parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents,  
attorneys, insurers, successors and assigns, and any individual or entity which could be liable for any of the Released Claims,  
and Defendants’ counsel of record in the Action. (Greifinger Decl., ¶ 27.)

28 <sup>23</sup> EXH. 4 to Greifinger Decl. at ¶ 24

1 pay minimum wages and liquidated damages, failure to provide meal periods; failure to provide rest  
2 periods; failure to provide itemized wage statements; failure to reimburse business expenses; failure to  
3 provide adequate seating; improper receipt and distribution of gratuities; failure to pay wages upon  
4 termination of employment; and civil penalties under Labor Code section 558. The Parties agree that  
5 there is no statutory right for any PAGA Employee to opt out or otherwise exclude himself or herself  
6 from the PAGA Payment and the associated release of claims and rights under PAGA.<sup>24</sup>

7 **6. Release by Plaintiff**

8 In addition to the Released Claims discussed, *supra*, Plaintiff agrees to release  
9 Defendants from any and all claims, known and unknown, asserted and not asserted  
10 which Plaintiff has or may have against Defendants.<sup>25</sup> Plaintiff also waives any and  
11 all rights conferred upon her by Civil Code section 1542.<sup>26</sup>

12 **ARGUMENT**

13 **I. The court should preliminarily approve the proposed Class Action Settlement**

14 **A. Courts review class action settlements to ensure that the terms are fair,**  
15 **adequate, and reasonable.**

16 California Rules of Court, rule 3.769<sup>27</sup> requires litigants to obtain court approval of  
17 class action settlements. Approval occurs in two steps: (1) an early “preliminary” review by  
18 the trial court; and (2) a subsequent “final” review after notice of the settlement has been  
19 distributed to class members for their comments and objections. (Rule 3.769(c)-(g);  
20 *Cellphone Termination Fee Cases* (2010) 180 Cal.App.4th 1110, 1118 [The court first  
21 “preliminarily approves the settlement” and second “conducts a final approval hearing to  
22 inquire into the fairness of the proposed settlement.”].) The motion for preliminary  
23 approval must be accompanied by: (1) the settlement agreement; (2) proposed notice to the  
24 class; and (3) the proposed order. (Rule 3.769(c).) The motion must also set fourth any  
25 agreement concerning the payment of attorneys’ fees. (Rule 3.769(b).)

26 <sup>24</sup>EXH. 4 to Greifinger Decl. at ¶¶ 18, 55.

27 <sup>25</sup>EXH. 4 to Greifinger Decl. at ¶ 71.

28 <sup>26</sup>EXH. 4 to Greifinger Decl. at ¶ 71.

<sup>27</sup> All subsequent references to rules are to the California Rules of Court unless otherwise specified.

1 If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires  
2 the court to: (1) schedule a final approval hearing; and (2) approve the method by which the  
3 parties are to provide notice to the class of the hearing and “an explanation of the proposed  
4 settlement.” The court must also approve a procedure for class members to file objections  
5 to the settlement. (Rule 3.769(f).) At the final approval hearing, the court must conduct an  
6 inquiry into the fairness of the proposed settlement. (Rule 3.769(g).)

7 Although Rule 3.769 does not provide detail as to the scope of review of the  
8 proposed settlement, preliminary approval is warranted if the settlement falls within a  
9 “reasonable range.” (See *North County Contractor’s Assn., Inc. v. Touchstone Insurance*  
10 *Services* (1994) 27 Cal.App.4th 1085, 1089-1090; Conte & Newberg, *Newberg on Class*  
11 *Actions* (4th ed. 2002) (hereafter “Newberg”) § 11.26.) Reasonableness and fairness are  
12 presumed where, as here: “(1) the settlement is reached through arms-length bargaining; (2)  
13 investigation and discovery are sufficient to allow counsel and the court to act intelligently;  
14 (3) counsel is “experienced in similar litigation;” and (4) the percentage of objectors is  
15 small” (collectively, “Dunk Factors”). (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th  
16 1794, 1802.)<sup>28</sup>

17 ***1. Plaintiffs’ counsel conducted a thorough investigation of the factual and legal***  
18 ***issues and were thus able to objectively assess the Settlement’s reasonableness.***

19 As set forth in greater detail above, based on their analysis of documents and class  
20 data produced by Defendants (including time and pay records and Defendants’ written

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21 <sup>28</sup> The presumption of fairness is consistent with California’s public policy goal of favoring settlements.  
22 *Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 236 [“The law wisely favors settlements.”];  
23 *Cellphone Termination Fee Cases, supra*, 180 Cal.App.4th at p. 1118 [“Public policy generally favors the  
24 compromise of complex class action litigation...”]; *7-Eleven Owners for Fair Franchising v. Southland*  
25 *Corp.* (2000) 85 Cal.App.4th 1135, 1151 [“Voluntary conciliation and settlement are the preferred means of  
26 dispute resolution. This is especially true in complex class action litigation.”]; *Skulnick v. Roberts Express,*  
27 *Inc.* (1992) 2 Cal.App.4th 884, 891 [“Public policy strongly discourages litigation and encourages  
28 settlement. [Citation.] Settlements can produce peace and goodwill in the community while reducing the  
expense and persistency of litigation.”].) Additionally, in reviewing the fairness of a class action settlement,  
“Due regard should be given to what is otherwise a private consensual agreement between the parties.”  
(*Cellphone Termination Fee Cases, supra*, 180 Cal.App.4th at p. 1117.) “The inquiry ‘must be limited to the  
extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching  
by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable  
and adequate to all concerned.’” (*Id.* at p. 1118.)

1 labor policies and procedures), Plaintiffs' Counsel were able to realistically assess the  
2 value of Plaintiffs' claims and intelligently engage defense counsel in settlement  
3 discussions that culminated in the proposed settlement now before the Court.<sup>29</sup> By engaging  
4 in a thorough investigation and evaluation of Plaintiffs' claims, Plaintiffs' Counsel can  
5 opine that the Settlement, for the consideration and on the terms set forth in the Settlement  
6 Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members  
7 in light of all known facts and circumstances, including the risk of significant delay and  
8 uncertainty associated with litigation, and various defenses asserted by Defendants.<sup>30</sup> Given  
9 that there are only approximately 323 Class Members, the average net recovery will be  
10 approximately \$333.00. This recovery will be a welcome windfall for members of the  
11 Settlement Class, who earn at or near the minimum wage.

12 The settlement is particularly reasonable in light of the Defendants' financial  
13 condition and personal health status. As revealed by the tax returns, the restaurant and bar  
14 have been losing money since 2018 and have suffered severe financial consequences from  
15 the Covid-19 Pandemic.<sup>31</sup> The individual defendants are elderly and in frail health.<sup>32</sup>

16 ***2. The Settlement was reached through arm's length bargaining during which all  
parties were represented by experienced counsel.***

17 "[W]hat transpires in settlement negotiations is highly relevant to the assessment of  
18 a proposed settlement's fairness." (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.)  
19 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless  
20 evidence to the contrary is offered; thus, there is a presumption that settlement negotiations  
21 are conducted in good faith. (*Newberg, supra*, § 11.51.)

22 As explained above, the Parties only reached agreement after protracted  
23 negotiations. At all times, the Parties' negotiations were adversarial and non-collusive.<sup>33</sup>

24 The Parties were represented by experienced class action counsel throughout the

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25 <sup>29</sup>Greifinger Decl., ¶ 12.

26 <sup>30</sup>Greifinger Decl., ¶ 12.

27 <sup>31</sup>Greifinger Decl., ¶ 17.

28 <sup>32</sup>Greifinger Decl., ¶ 17.

<sup>33</sup>Greifinger Decl., ¶ 13.

1 negotiations resulting in this Settlement. Plaintiffs are represented by the Law Offices of  
2 David R. Greifinger. Plaintiffs' Counsel are seasoned class action attorneys who regularly  
3 litigate wage and hour claims through certification and on the merits and have considerable  
4 experience settling wage and hour class actions.<sup>34</sup> Defendants are represented by the Law  
5 Offices of William J. Beverly, a respected and experienced defense firm.

6 **B. The consideration provided for the class claims is fair and reasonable in light of**  
7 **Defendants' potential exposure and the risks of continued litigation**

8 In seeking approval, a settling party must provide sufficient information to "enable  
9 the court to make an independent assessment of the adequacy of the settlement terms."

10 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 131-132 (*Kullar*).)

11 However, "It is well-settled law that a cash settlement amounting to only a fraction of the  
12 potential recovery will not per se render the settlement inadequate or unfair." (*Officers for*  
13 *Justice v. Civil Service Commission of City & County of San Francisco* (9th Cir. 1982) 688  
14 F.2d 615, 628.) "The proposed settlement is not to be judged against a hypothetical or  
15 speculative measure of what might have been achieved by the negotiators." (*Id.* at p. 625.)  
16 "Estimates of a fair settlement figure are tempered by factors such as the risk of losing at  
17 trial, the expense of litigating the case, and the expected delay in recovery (often measured  
18 in years)." (*In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act*  
19 *(FACTA) Litigation* (C.D. Cal. 2014) 295 F.R.D. 438, 453.) In other words, in valuing the  
20 claims within a realistic *range* of outcomes, the settling plaintiff should discount the value  
21 of the settled claims for risks such as changes in the law, the probability of success, and  
22 other factors.<sup>35</sup>

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23 <sup>34</sup>Greifinger Decl., ¶¶ 3-5.

24 <sup>35</sup> Federal courts also recognize that there is an inherent "range of reasonableness" in determining whether to  
25 approve a settlement "which recognizes the uncertainties of law and fact in any particular case and the  
26 concomitant risks and costs necessarily inherent in taking any litigation to completion." (*Newman v. Stein*  
27 (2d Cir. 1972) 464 F.2d 689, 693; see, also *In re Omnivision Tech., Inc.* (N.D. Cal. 2008) 559 F.Supp.2d  
28 1036, 1042; *National Rural Telecommunications Cooperative v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D.  
523, 527 ["It is well-settled law that a proposed settlement may be acceptable even though it amounts to only  
a fraction of the potential recovery."]; *In re Global Crossing Sec. and ERISA Litigation* (S.D.N.Y. 2004) 225  
F.R.D. 436, 460-461 ["settlement amount's ratio to the maximum potential recovery need not be the sole, or  
even dominant, consideration when assessing settlement's fairness"]; *In re IKON Office Solutions, Inc.*  
*Securities Litigation* (E.D.Pa. 2000) 194 F.R.D. 166, 183-184 ["[T]he fact that a proposed settlement  
constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the

1           Settling parties are not, however, required to partake in a hypothetical accounting  
2 exercise: *Kullar* does not require an explicit statement of maximum value, but rather a  
3 record which allows “an understanding of the amount that is in controversy and the  
4 realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of*  
5 *Los Angeles* (2010) 186 Cal.App.4th 399, 409, quoting *Kullar, supra*, 168 Cal.App.4th at p.  
6 120.) The most important factor in determining whether a settlement is fair and reasonable  
7 is the “strength of the case for plaintiffs on the merits, balanced against the amount offered  
8 in the settlement.” (*Munoz* at p. 409, fn. 6, quoting *Kullar*, at p. 130.)

9           As explained in detail below, the Maximum Settlement Amount is within the range  
10 of reasonableness in light of the nature and magnitude of the claims being settled and the  
11 various potential impediments to recovery. Given that there are only approximately 323  
12 Class Members, the average net recovery will be approximately \$333.00. Beyond being  
13 reasonable, this recovery will be a welcome windfall for members of the Settlement Class,  
14 whose pay is at or near the minimum wage.

15           Plaintiff’s counsel, after reviewing the records and consulting with an expert,  
16 estimate Defendants’ maximum exposure for damages to the Class at \$1,764,694 principal  
17 and interest, including \$845,004 for unpaid tips, \$479,066 for rest break violations,  
18 \$406,206 for meal break violations, \$34,418 for unpaid business expenses.<sup>36</sup>

19           This estimate assumes that each and every one of Plaintiffs’ claims would have been  
20 certified for class-wide resolution, that Plaintiffs would have prevailed at trial, that the  
21 jury’s verdict would have been affirmed on appeal, and that Defendants would remain in  
22 good health and solvent. In other words, this estimate assumes complete and total victory.

23           Ultimately, Plaintiffs’ Counsel determined an appropriate range of recovery for  
24 settlement purposes by offsetting Defendants’ maximum theoretical liability by: (i) the  
25 strength of the defenses to the merits of Plaintiffs’ claims; (ii) the risk of class certification  
26 being denied; (iii) the risk of losing on any of a number of dispositive motions that could

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27 settlement; rather the percentage should be considered in light of strength of the claims.”]; *Officers for*  
28 *Justice v. Civil Service Commission, supra*, 688 F.2d at p. 628 [“It is the complete package, taken as a whole  
rather than the individual component parts, that must be examined for overall fairness.”].)

<sup>36</sup>Greifinger Decl., ¶ 18.

1 have been brought between certification and trial (e.g., motions to decertify the class,  
2 motions for summary judgment, and/or motions in limine) that might have eliminated all or  
3 some of Plaintiffs' claims, or barred evidence/testimony in support of the claims; (iv) the  
4 risk of losing at trial; (v) the chances of a favorable verdict being reversed on appeal; (vi)  
5 the chances that Defendants might fall into further ill health and/or become insolvent; and  
6 (vii) the difficulties attendant to collecting on a judgment (collectively, the "Discount  
7 Factors").

8 After taking the Discount Factors into account, Plaintiffs' Counsel determined that it  
9 would be reasonable to settle for a fraction of Defendants' maximum potential exposure for  
10 the class claims (PAGA discussed in the following section), of approximately 12.8 percent,  
11 which is the Maximum Settlement Amount of \$225,000 divided by Defendants' maximum  
12 exposure for damages to the Class at \$1,764,694 principal and interest.

13 Such a discount is inherently reasonable given that Plaintiffs would have had to  
14 overcome **multiple, dependent** contingencies to prevail on their claims. If anything, the  
15 projected odds for each of the above contingencies is generous to the class' position, since  
16 plaintiffs in employment cases rarely prevail on **all of the claims** at any of the dispositive  
17 stages. Courts routinely approve settlements that provide a similar discounted range of the  
18 maximum potential recovery. (See, e.g., *In re Cendant Corp. Litigation* (3d Cir. 2001) 264  
19 F.3d 201, 241 [range of recoveries from 1.6 percent to 14 percent of maximum for  
20 securities class action settlements]; *In Re Armored Car Antitrust Litigation* (N.D.Ga. 1979)  
21 472 F.Supp. 1357, 1373 [citing approval of settlements ranging from one percent to eight  
22 percent of the estimated potential recovery]; *Balderas v. Massage Envy Franchising, LLP*  
23 (N.D.Cal. July 21, 2014) 2014 WL 3610945 at \*5 [settlement which amounted to eight  
24 percent of maximum potential recovery "[fell] within the range of possible initial approval  
25 based on the strength of plaintiff's case and the risk and expense of continued litigation"];  
26 *In re Omnivision Technologies, Inc.* (N.D.Cal. 2008) 559 F.Supp.2d 1036, 1042 [approving  
27 settlement of over six percent of maximum potential recovery in shareholder class action  
28

litigation].)<sup>37</sup>

## **II. The consideration provided for the PAGA claim is fair and reasonable after discounting the potential recovery for the risks of continued litigation**

The Settlement Agreement allocates \$10,000.00 to resolve Plaintiffs' PAGA claims, of which 75 percent (\$7,500.00) will be paid to the LWDA and 25 percent (\$2,500.00) will be will be paid to PAGA Employees on a pro rata basis.<sup>38</sup> This result was reached through good-faith negotiation. Based on information and evidence provided by Defendants, Plaintiff estimated that between October 17, 2019, and October 25, 2021 [the date set for Preliminary Approval], (the "PAGA Period") there have been approximately 103 aggrieved employees.<sup>39</sup> Statutory penalties could be calculated according to Labor Code section 2699, subdivision (f)(2). If, at the time of an alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Using the most generous method of calculation of penalties for the PAGA group, Mr. Gorlick estimates that PAGA penalties total \$3,936,849.<sup>40</sup>

However, some courts have interpreted Labor Code section 2699, subdivision (f)(2) to impose the enhanced "subsequent violation penalty" or "heightened penalty" only after

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<sup>37</sup>See also *In re Uber FCRA Litigation* (N.D.Cal. June 29, 2017, No. 14-cv-05200-EMC) 2017 U.S. Dist. LEXIS 101552 at \*23- 24 [granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys' fees and services awards, was valued at 7.5 percent or less of total possible verdict]; *Viceral v. Mistras Group, Inc.* (N.D.Cal. Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 U.S. Dist. LEXIS 140759 at \*21 [granting preliminary approval to class action settlement representing "8.1% of the full verdict value" with net settlement amount representing approximately 5.3 percent of full verdict value]; *Stovall-Gusman v. W.W. Granger, Inc.* (N.D.Cal. June 17, 2015, No. 13-cv-02540-HSG) 2015 WL 3776765 at \*4 [granting final approval to settlement with net recovery to Plaintiffs valued at 7.3 percent of potential maximum recovery]; *Cruz v. Sky Chefs, Inc.* (N.D.Cal. Dec. 19, 2014, No. 12-cv-02705-DMR) 2014 WL 7247065 at \*5 [granting final approval where gross settlement amount represented 8.6 percent of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys' fees and other deductions represented approximately 6.1 percent of maximum potential recovery]; *In re LDK Solar Securities Litigation* (N.D. Cal. July 29, 2010, No. 07-cv-05182-WHA) 2010 WL 3001384 at \*2 [granting final approving where proposed settlement amount was about five percent of the estimated damages before fee and costs—even before any reduction for attorney's fees and costs].

<sup>38</sup>EXH. 4 to Greifinger Decl. at ¶ 39.

<sup>39</sup>Greifinger Decl., ¶ 19.

<sup>40</sup>Greifinger Decl., ¶ 18.

1 an employer has been notified that its conduct violates the Labor Code. (E.g., *Trang v.*  
2 *Turbine Engine Components Technologies Corp.* (C.D. Cal. Dec. 19, 2012, No. CV 12–  
3 07658 DDP (RZx) 2012 WL 6618854 at \*5 [“Under California law, courts have held that  
4 employers are not subject to heightened penalties for subsequent violations unless and until  
5 a court or commissioner notifies the employer that it is in violation of the Labor Code.”];  
6 *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.* (S.D.  
7 Cal. 2009, No. 05cv1199–IEG–CAB) 2009 WL 2448430 [finding that California law  
8 imposes the “subsequent violation penalty” only after an employer has been notified its  
9 conduct violates the Labor Code].) Defendants would also argue that penalties for claims  
10 may not be stacked on top of one another (which Plaintiffs dispute), thus greatly reducing  
11 the potential exposure.

12 It should be noted that PAGA gives the Court wide latitude to reduce the amount of  
13 civil penalties “based on the facts and circumstances of a particular case” when “to do  
14 otherwise would result in an award that is unjust, arbitrary and oppressive, or  
15 confiscatory.” (Lab. Code, § 2699, subd. (h).) In reducing PAGA penalties, courts have  
16 considered issues including whether the employees suffered actual injury from the  
17 violations, whether the defendant was aware of the violations, and the employer’s  
18 willingness to fix the violation. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504,  
19 529; see also *Cotter v. Lyft, Inc.* (N.D.Cal. 2016) 193 F. Supp. 3d 1030, 1037; *Fleming v.*  
20 *Covidien Inc.* (C.D.Cal. Aug. 12, 2011, No. ED CV 10-01487 RGK (OPX) 2011 WL  
21 7563047 at \*4.)

22 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested  
23 PAGA penalties in the amount of approximately \$70 million. (*Carrington v. Starbucks*  
24 *Corp.*, *supra*, 30 Cal.App.5th at p. 517.) The trial court instead awarded only \$150,000—**or**  
25 **0.021 percent of the maximum**—and stated that this reduction was warranted because  
26 imposing the maximum penalty would be “unjust, arbitrary, and oppressive” based on  
27 Starbucks’s “good faith attempts” to comply with meal period obligations and because the  
28 court found the violations were minimal. (*Ibid.*) The Court of Appeal affirmed the lower  
court’s reduced award of a \$150,000 penalty under PAGA. (*Id.* at p. 529.)

1 Likewise, in *Fleming v. Covidien Inc.* (C.D.Cal. Aug. 12, 2011, No. ED CV 10-  
2 01487 RGK (OPX) 2011 WL 7563047, the court reduced the potential penalties by over  
3 82%, awarding \$500,000.00 instead of maximum penalties of \$2.8 million. (2011 WL  
4 7563047 at \*4; see also *Thurman v. Bayshore Transit Management* (2012) 203 Cal.App.4th  
5 1112, 1135-1136 [affirming 30 percent reduction under specified PAGA claim where the  
6 employer produced evidence that it took its obligations seriously]; *Li v. A Perfect Day*  
7 *Franchise, Inc.* (N.D.Cal. June 15, 2012, No. 5:10-CV-01189-LHK) 2012 WL 2236752 at  
8 \*17 [denying PAGA penalties for violation of Labor Code section 226 as redundant with  
9 recovery on a class basis under Labor Code section 226, directly]; *Aguirre v. Genesis*  
10 *Logistics* (C.D.Cal. Dec. 30, 2013, No. SACV 12-00687 JVS (ANx)) 2013 WL 10936035 at  
11 \*2-\*3 [reducing penalty for past PAGA violations from \$1.8 million to \$500,000.00, after  
12 rejecting numerous other PAGA claims].)

13 The Plaintiffs here determined an appropriate range of settlement for PAGA  
14 penalties as a percentage of the settlement range that was consistent with other hybrid  
15 class/PAGA settlements approved by California courts.<sup>41</sup> Where PAGA penalties are  
16 negotiated in good faith and “there is no indication that [the] amount was the result of self-  
17 interest at the expense of other Class Members,” the amounts are generally considered  
18 reasonable. (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. 08-00844) 2009 U.S.

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19 <sup>41</sup> See, e.g., *Dearaujo v. Regis Corp.* (E.D. Cal. June 29, 2016, No. 2:14-cv-01408-KJM-AC) 2016 WL  
20 3549473 at \*3 [preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties with  
21 \$7,500.00 paid to LWDA]; *Garcia v. Gordon Trucking, Inc.* (E.D.Cal. Oct. 31, 2012, No. 1:10-CV-0324  
22 AWI SKO) 2012 WL 5364575 at \*7 [approving \$3.7 million settlement containing \$10,000.00 PAGA  
23 penalties with \$7,500 paid to LWDA]; *Chu v. Wells Fargo Investments, LLC* (N.D.Cal Feb. 16, 2011, No. C  
24 05-4526 MHP) 2011 WL 672645 at \*1 [approving \$6.9 million settlement containing \$10,000.00 PAGA  
25 penalties with \$7,500.00 paid to LWDA]; *Guerrero v. R.R. Donnelley & Sons Co.* (Super. Ct., Riverside  
26 County Super. Ct., July 16, 2013, No. RIC 10005196, Judge Matthew C. Perantoni) [gross settlement fund of  
27 \$1,100,000.00, of which \$3,000.00 (or 0.3 percent) was allocated to the settlement of PAGA penalties];  
28 *Parra v. Aero Port Services, Inc.* (Super. Ct. L.A. County, April 20, 2015, No. BC483451, Judge Jane  
Johnson) [gross settlement fund of approximately \$1,458,900.00, of which \$5,000.00 (or 0.3 percent) was  
allocated to the settlement of PAGA penalties]; *Thompson v. Smart & Final, Inc.* (Super. Ct. L.A. County,  
Nov. 18, 2014, No. BC497198, Judge William F. Highberger) [gross settlement fund of \$3,095,000.00, of  
which approximately \$13,333.00 (or 0.4 percent) was allocated to the settlement of PAGA penalties];  
*Chavez v. Vallarta Food Enterprises, Inc.* (Super. Ct. L.A. County, Nov. 10, 2014, No. BC490630, Judge  
William F. Highberger) [gross settlement fund of \$1,545,900.00, of which \$10,000.00 (or 0.6 percent) was  
allocated to the settlement of PAGA penalties]; *Coleman v. Estes Express Lines, Inc.* (Super. Ct. L.A.  
County, Oct. 3, 2013, No. BC429042, Judge Kenneth R. Freeman) [gross settlement fund of \$1,535,000.00,  
of which \$1,000.00 (or 0.1 percent) was allocated to the settlement of PAGA penalties].)

1 Dist. LEXIS 33900 at \*24; see, also, *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576,  
2 579 [Trial court did not abuse its discretion in approving class action settlement that did not  
3 allocate any damages to PAGA claims.]

4 **A. The court should preliminarily approve the negotiated attorneys’ fees and**  
5 **costs.**

6 The purpose of an attorneys’ fee award in class action litigation is to reward counsel  
7 who took the risk of non-payment and invested in a case that achieved a substantial and  
8 positive result for the class. California courts routinely award attorneys’ fees equalling one-  
9 third or more of the potential value of the common fund. (See *Laffitte v. Robert Half, Inc.*  
10 (2016) 1 Cal.5th 480 [affirming a fee award representing one-third of the common fund];  
11 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn.11[ (“Empirical studies show that,  
12 regardless whether the percentage method or the lodestar method is used, fee awards in  
13 class actions average around one-third of the recovery [citation].”)]. At final approval,  
14 Plaintiffs will seek Court-approval of attorneys’ fees of \$75,000.00 (one-third of the Class  
Settlement Amount) and up to \$10,000.00 in litigation costs.

15 **B. The court should preliminarily approve the negotiated class representatives’**  
16 **enhancement payments.**

17 Enhancement payments “are fairly typical in class action cases.” (*Cellphone*  
18 *Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393 [affirming incentive awards of  
19 \$10,000.00]; *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, citing  
20 Newberg, *supra*, § 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action*  
21 *Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev. 1303.) Enhancement payments “are  
22 intended to compensate class representatives for work done on behalf of the class, to make  
23 up for financial or reputational risk undertaken in bringing the action, and, sometimes, to  
24 recognize their willingness to act as a private attorney general.” (*Rodriguez*, 563 F.3d at pp.  
25 958–959.) “[T]he rationale for making enhancement or incentive awards to named plaintiffs  
26 is that they should be compensated for the expense or risk they have incurred in conferring  
27 a benefit on other members of the class.” (*Clark v. American Residential Services LLC*  
28 (2009) 175 Cal.App.4th 785, 806.)

1 Approximately 323 current and former employees will share a \$225,000.00  
2 settlement fund due entirely to the effort and commitment of Plaintiff Katherine Townsend.  
3 Subject to Court approval, therefore, the Settlement provides for a Class Representative  
4 Enhancement Payment of \$7,500.00 to Ms. Townsend.<sup>42</sup> The Class Representative  
5 Enhancement Payment is fair and reasonable compensation for Plaintiff's efforts in  
6 pursuing the action, serving as a private attorney general under PAGA, assisting counsel  
7 with the litigation and settlement, regularly conferring with counsel on the status of the  
8 case and the strategies for prosecuting the claims, and reviewing the proposed settlement to  
9 ensure that its terms are fair and provide adequate relief for the Settlement Class.

10 Plaintiff will file a formal motion for the negotiated Class Representative  
11 Enhancement Payments after preliminary approval of the Settlement is granted. Plaintiff  
12 respectfully submits that the above showing is sufficient for preliminary approval of the  
13 negotiated Class Representative Enhancement Payment.

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16 <sup>42</sup> The amount of the requested enhancement payment is reasonable by reference to the amounts that  
17 California courts (both federal and state) have repeatedly found to be reasonable for wage-and-hour class  
18 action settlements. (See, e.g., *Rodriguez v. La-Z-Boy Inc.* (Super. Ct. San Bernardino County, Nov. 4, 2019,  
19 No. CIVDS1615392) [\$10,000.00 enhancement payment]; *Harris v. Mr. C Manager, LLC* (Super. Ct. San  
20 Bernardino County, Aug. 4, 2019, No. CIVDS1721484 ) [\$10,000.00 enhancement payment]; *Alvarez v.*  
21 *MAC Cosmetics Inc.* (Super. Ct. San Bernardino County, July 29, 2016, No. CIVDS1513177) [\$10,000.00  
22 enhancement payments]; *Carter v. GMRI Inc.* (Super. Ct. Riverside County, Jan. 10, 2017, No. RIC  
23 1506085)[(\$10,000.00 enhancement payments to the named plaintiffs]; *Crook v. Barton Healthcare System*  
24 (Super. Ct. El Dorado County, Dec. 9, 2016), No. SC20150146 [\$10,000.00 enhancement payment to the  
25 named plaintiff]; *Singh v. American Building Supply, Inc.* (Super. Ct. Sacramento County, Oct. 3, 2016, No.  
26 34-2015-00179889-CU-OE-GDS) [\$10,000.00 enhancement payment to the named plaintiff]; *Alvarez v.*  
27 *MAC Cosmetics Inc.* (Super. Ct. San Bernardino County, July 29, 2016, No. CIVDS1513177) [\$10,000.00  
28 enhancement payments to the named plaintiffs]; *Coffey v. Beverages & More, Inc.* (Super. Ct. L.A. County,  
July 26, 2016, No. BC477269) [\$10,000.00 enhancement payment to the named plaintiff]; *Restoration*  
*Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct. April 28, 2016) [\$10,000.00  
enhancement payments to the named plaintiffs]; *Cook v. United Insurance Co. of Amer.* (Super. Ct. Contra  
Costs County, April 15, 2016, No. CIVMSC10-00425) [\$10,000.00 enhancement payments to the named  
plaintiffs]; *Quintana v. Claire's Boutiques, Inc.* (N.D. Cal. Dec. 1, 2015, No. 5:13-cv-00368-PSG)  
[\$10,000.00 enhancement payments to the named plaintiffs]; *Paredes v. American Family Care, Inc.* (Super.  
Ct. Sacramento County, Nov. 17, 2015, No. 34-2014-00167060-CU-OE-GDS) [\$10,000.00 enhancement  
payment to the named plaintiff]; *Hoagland v. Brooks Brothers Group, Inc.* (Super. Ct. L.A. County, July 16,  
2015, No. BC511534) [\$10,000.00 enhancement payment to the named plaintiff]; *Baker v. L.A. Fitness Int'l,*  
*LLC* (Super. Ct. L.A. County, Dec. 12, 2012), BC438654 [\$10,000.00 enhancement payments to three named  
plaintiffs]; *Blue v. Coldwell Banker Residential Brokerage Co.* (Super. Ct., L.A. County, Mar. 21, 2011, No.  
BC417335) [\$10,000.00 enhancement payment].)

1     **III. California Law authorizes provisional certification for settlement purposes.**

2     **A. The California standard for class certification**

3           Class actions are statutorily authorized “when the question is one of common or  
4     general interest, of many persons, or when the parties are numerous, and it is impracticable  
5     to bring them all before the court.” (Code Civ. Proc., § 382; *Lee v. Dynamex, Inc.* (2008)  
6     166 Cal.App.4th 1325, 1332, disapproved on another ground in *Noel v. Thrifty Payless, Inc.*  
7     (2019) 7 Cal.5th 955.986, fn. 15.) Class certification is appropriate when there is an  
8     “ascertainable class and a well-defined community of interest among class members.” (*Sav-*  
9     *On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) Class treatment is not  
10    inappropriate even if class members at some point may be required to make individual  
11    showings as to eligibility for recovery. (*Id.* at p. 333.)

12           Conditional certification of the proposed Settlement Class is particularly warranted  
13    here given the relatively relaxed standard for certification at the preliminary approval stage.  
14    (See *Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at p. 1807, fn. 19 [courts may apply a  
15    “lesser standard of scrutiny” for class certification in settlement cases].)<sup>43</sup> In *Dunk*, the  
16    Court of Appeal specifically rejected the argument that the standard for certifying a class  
17    for purposes of settlement is identical to the standard for certifying the same class for  
18    purposes of litigation:

19                   [An objector] argues the court must use the same standard under  
20                   Federal Rules of Civil Procedure, rule 23 (28 U.S.C.) to determine the  
21                   propriety of both settlement and litigation class certifications...That  
22                   rule is contrary to the Ninth Circuit rule, stated in *Officers for Justice*  
23                   *v. Civil Service Com. supra*, 688 F.2d at p. 633, and the position of the  
                    leading commentators (Newberg & Conte, *supra*, § 11.28 at p. 11–58),  
                    which allow a lesser standard of scrutiny for settlement cases...We  
                    agree with the latter. The two basic purposes for the Rule 23  
                    certification requirements, as they relate to questions of a nationwide

24           <sup>43</sup> See also Newberg on Class Actions (5th ed.), § 13:18 [Courts “declin[e] to treat formal class certification  
25    as a prerequisite for preliminary approval and undertak[e] a more cursory class certification analysis at the  
26    preliminary approval stage.”]; *Dearaujo v. Regis Corp.* (E.D. Cal. June 30, 2016, No. 2:14-CV-01408-KJM-  
27    AC) 2016 WL 3549473 at \*6 “[D]espite the Supreme Court’s cautions in *Amchem*...a cursory approach  
28    appears the norm.”]; *In re Amtrak Train Derailment in Philadelphia, Pennsylvania* (E.D. Pa. Apr. 6, 2016,  
  No. 15-MD-2654) 2016 WL 1359725 at \*4 (“[A] settlement class can be preliminarily certified based on a  
  less rigorous analysis than that necessary for final certification.”); *In re Processed Egg Products Antitrust*  
  *Litigation* (E.D. Pa. Feb. 28, 2014, No. 08-MD-2002) 2014 WL 828083 at \*2 [At the preliminary approval  
  stage, “the Court must determine whether the proposed class should be conditionally certified, and leave the  
  final certification decision for the Fairness Hearing.”].)

class, are: (1) to keep the lawsuit manageable for trial; and (2) to protect the interests of the non-representative class members. The first purpose is inapposite in the settlement context, and the second, as it relates to commonality of issues, only makes a difference if the non-representative class members would do much better by litigating on their own or in their own jurisdiction. The second category concerns are protected by the trial court's fairness review of the settlement.

(*Ibid.*)

**B. The proposed settlement class is sufficiently numerous.**

The class is sufficiently numerous if it is so large that the joinder of all members would be impracticable. (Code Civ. Proc., § 382.) “[T]here is no set number required as a matter of law for the maintenance of a class action.” (*Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030 [class of 28 members appropriate].) As few as 10 class members have satisfied the numerosity requirement. (See *Bowles v. Superior Court* (1955) 44 Cal.2d 574.) Here, approximately 323 settlement class members make the class more than sufficiently numerous.

**C. The proposed settlement class is ascertainable.**

“Whether a class is ascertainable is determined by examining: (1) the class definition; (2) the size of the class; and (3) the means available for identifying class members’ at the remedial stage [citation].” (*Aguirre v. Amscan Holdings, Inc.* (2015) 234 Cal.App.4th 1290, 1300.) It is often said that class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records. (*Ibid.*)

The proposed Settlement Class consists of All persons who are or were hourly paid and/or non-exempt employees of RO-AL, INC., PATRICK MOLLOY BASTIAN, and ALICE BASTIAN HAHN at Patrick Molloy’s Sports Pub in the State of California, at any time during the period commencing on May 12, 2016, to the date of Preliminary Approval (the “Class Period”). Because all Class Members are either current or former employees of Defendants, the class is readily ascertainable from Defendants’ regular business records.

**D. There is a well-defined community of interest among settlement class members.**

The community-of-interest requirement embodies three factors: (1) predominant

1 common questions of law or fact; (2) a class representative with claims or defenses typical  
2 of the class; and (3) a class representative and counsel who can adequately represent the  
3 class. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)

4 Predominance hinges on whether “the issues which may be jointly tried, when compared  
5 with those requiring separate adjudication, are so numerous or substantial that the  
6 maintenance of a class action would be advantageous to the judicial process and to the  
7 litigants.’ [Citation.]” (*Ibid.*)

8 Here, Plaintiffs aver common issues of fact and law predominate because the  
9 California statutes relating to each of Plaintiffs’ claims, and Defendants’ defenses thereto,  
10 apply with equal force and effect to all Class Members. Factually, Plaintiffs contend that  
11 Defendants’ policies and practices apply class-wide and Defendants’ liability can be  
12 determined by facts common to all members of the class. Plaintiff also asserts the wage-  
13 and-hour issues are both numerous and substantial, and a class action is the most  
14 advantageous method of dealing with the claims of the Settlement Class members.

15 Plaintiffs allege the asserted wage and hour claims are typical of the proposed  
16 Settlement Class because they arise from the same factual basis and are based on the same  
17 legal theories applicable to the other Class Members. Likewise, Plaintiffs’ interests are  
18 entirely coextensive with the interests of the Class. Plaintiffs maintain that they were  
19 injured by the same company-wide practices to which the proposed Settlement Class was  
20 subject and seek the same relief. Plaintiffs have already demonstrated their ability to  
21 advocate for the interests of the Class by initiating this litigation, undertaking  
22 representative discovery, and evaluating the proposed settlement to assure that it is fair.

23 Additionally, Plaintiffs are represented by competent counsel who have extensive  
24 experience in litigating wage and hour class action cases.<sup>44</sup> Plaintiffs’ counsel have  
25 obtained approval of similar same class-wide claims that are at issue in this case.<sup>45</sup>  
26 Plaintiffs’ Counsels’ wage-and-hour class action expertise establishes that they are well  
27 qualified to represent the interests of this Class.

28 <sup>44</sup>Greifinger Decl., ¶¶ 3-5.

<sup>45</sup>Greifinger Decl., ¶¶ 3-5.

1 Plaintiffs contend a class action is also superior to a multitude of individual  
2 lawsuits. Given the size and amount of each individual Class Member’s claim, Plaintiffs  
3 assert Class Members likely have little incentive to litigate their claims on an individual  
4 basis because the out-of-pocket expense and personal commitment necessary to litigate  
5 each claim outweighs any potential recovery. In sum, Plaintiffs aver class treatment is  
6 superior to individual, case-by-case adjudication.

7 **E. The proposed notice properly informs class members about the case and the**  
8 **settlement.**

9 Class members are entitled to the best practical notice under the circumstances.  
10 (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class  
11 members sufficient information to decide whether they should accept the benefits offered,  
12 opt out and pursue their own remedies, or object to the settlement. (*Trotsky v. Los Angeles*  
13 *Fed. Savings & Loan Assn.* (1975) 48 Cal.App.3d 143, 151-152, disapproved on another  
14 ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 270, fn. 4.) The  
15 notice must advise class members “that they may be excluded from the class if they so  
16 request and that they will be bound by the judgment, whether favorable or not, if they do  
17 not request exclusion.” (*Kass*, at p. 106.)<sup>46</sup>

18 The proposed Notice of Class Action Settlement (“Class Notice”) fairly and  
19 neutrally informs Class Members of their rights and remedies in this action. The proposed  
20 Class Notice will be mailed to all class members by First Class mail and will include  
21 information regarding the nature of the lawsuit, a summary of the substance of the  
22 Settlement’s terms, the class definition, the procedure and time period within which to  
23 submit Requests for Exclusions or objections to the Settlement, the date for the final  
24 approval hearing, the formula used to calculate settlement payments, and the terms and  
25 scope of the Released Claims.<sup>47</sup> In the event Class Notices are returned as undeliverable,

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26 <sup>46</sup> Due process does not require that each class member actually receive a notice, but rather a procedure  
27 reasonably certain to reach class members. (Wright, A. Miller & M. Kane, *Federal Practice and Procedure*  
28 (2d ed. 1986) § 1789, p. 253.)

<sup>47</sup> EXH. 4 to Greifinger Decl. at Exhibit A.

1 the Settlement Administrator will attempt to locate a current address using, among other  
2 resources, a skip-trace search.<sup>48</sup>

3 Both the method of disseminating the Class Notice and content of the Class Notice  
4 satisfy due process and the requirements of California law. (Rule 3.776(f); *State of*  
5 *California v. Levi Strauss* (1986) 41 Cal.3d 460, 485 [“The class notice must ‘fairly apprise  
6 the class members of the terms of the proposed compromise and of the options open to  
7 dissenting class members.’ [Citation.]”). Additionally, the proposed Settlement  
8 Administrator, CPT Group, Inc., has extensive experience and expertise in administering  
9 class action settlements.<sup>49</sup>

### 10 CONCLUSION

11 The Parties have negotiated a fair and reasonable settlement of the class claims. The  
12 Parties request that the Court preliminarily approve the Class Action Settlement.

13 Dated: September 30, 2021

**LAW OFFICES OF DAVID R. GREIFINGER**

14  
15 By:   
16 DAVID R. GREIFINGER  
17 CALVIN A. MARSHALL  
18 *Attorneys for Plaintiff, KATHERINE*  
19 *TOWNSEND and the putative Class*

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21  
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27 \_\_\_\_\_  
28 <sup>48</sup> EXH. 5 to Greifinger Decl. at ¶ 7.  
EXH. 5 to Greifinger Decl.

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18  
4 and not a party to the within lawsuit; my business address is 15515 W. Sunset Boulevard,  
Unit 214, Pacific Palisades, CA 90272.

5 On **September 30, 2021**, I served the foregoing document described as **NOTICE**  
6 **OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS**  
7 **ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND**  
8 **AUTHORITIES**

on the interested parties in this action by placing **[X]** a true copy thereof on:

9 William J. Beverly  
10 LAW OFFICES OF WILLIAM J.  
11 BEVERLY  
3424 Carson Street, Suite 400  
Torrance, CA 90503-5721  
BeverlyLaw@Frontier.com

- 12
- 13 **[ ]** (BY MAIL): as follows: I deposited the envelopes for mailing in the ordinary course  
14 of business at Los Angeles County, California. I am "readily familiar" with this  
15 firm's practice of collection and processing correspondence for mailing. Under that  
16 practice, the sealed envelopes are deposited with the U.S. Postal Service that same  
17 day in the ordinary course of business, with postage thereon fully prepaid at Los  
18 Angeles County, California.
- 19 **[ ]** BY E-MAIL: I hereby certify that this document was served from Los Angeles  
20 County, California, by e-mail delivery on the parties listed herein at their most recent  
21 known e-mail address or e-mail of record in this action.
- 22 **[ X ]** (BY CASE ANYWHERE E-SERVICE) Under the court's September 24, 2020,  
23 Order Authorizing Electronic Service, the above-named document has been  
24 electronically served on counsel of record by transmission through the Case  
25 Anywhere system on the date below. The transmission of this document to Case  
26 Anywhere system was reported as complete and a copy of the Case Anywhere  
27 confirmation will be maintained in our office.

28 I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

Executed on **September 30, 2021**, at Los Angeles County, California.

Calvin A. Marshall, Esq.

Type or Print Name



Signature