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

JOHN PEHKONEN, on behalf of himself
and others similarly situated,

Plaintiff,

vs.

BUREAU VERITAS COMMODITIES
AND TRADE, INC. fka INSPECTORATE
AMERICAN CORPORATION, a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 20STCV40104
Related Case No. 20STCV49152

Judge: Hon. Carolyn Kuhl

Department: 12

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS ACTION
SETTLEMENT; AND (4) GRANTING
LEAVE TO FILE A FIRST AMENDED
CLASS ACTION COMPLAINT**

*[filed concurrently with Plaintiff's Notice of
Motion and Motion; Declaration of David
Yeremian; Declaration of Walter Haines; and
[Proposed] Order]*

Date: April 21, 2022
Time: 10:30 a.m.
Dept.: 12

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On December 23, 2020, Plaintiff filed a class action complaint against Defendant in the
4 Superior Court for the State of California, in Los Angeles, Case Number 20STCV40104,
5 alleging: (1) failure to pay minimum wages; (2) failure to pay wages and overtime; (3) meal
6 period violations; (4) rest break violations; (5) failure to keep required payroll records; (6)
7 violation of Labor Code § 226(a); (7) penalties pursuant to Labor Code §§ 203; and, (8) violation
8 of Business & Professions Code §17200, *et seq.* (“Class Action”). On December 23, 2020,
9 Plaintiff filed a Complaint for Representative Action Penalties under the Private Attorneys’
10 General Act (“PAGA”), alleging (1) failure to pay minimum wages; (2) failure to pay wages and
11 overtime; (3) meal period violations; (4) rest break violations; (5) violation of Labor Code §§
12 226(a) and 1174; and, (6) violation of Labor Code §§ 203 and 204 in Los Angeles County
13 Superior Court Case Number 20STCV49152. (“PAGA Action”).

14 Pursuant to the proposed Joint Stipulation of Class Action and PAGA Claims (“Settlement
15 Agreement” or “Settlement”), filed concurrently herewith, the class consists of all current and
16 former non-exempt employees of Defendant in the state of California employed during the Class
17 Period from October 20, 2016 until February 28, 2022. After engaging in substantial investigation
18 and extensive negotiations with the assistance of a respected third-party neutral, Deborah
19 Crandall Saxe, Esq., the parties have agreed to settle all claims alleged in the lawsuit on a class-
20 wide non-reversionary basis for \$375,000.00, inclusive of all fees and costs. All approximately
21 150 Class Members shall receive a settlement share unless they opt out.

22 The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and
23 adequate, and in the best interests of the Class. Consequently, Plaintiff, with the consent of
24 Defendant, hereby move this Court for an order: (1) granting preliminary approval of the
25 proposed class action settlement, as embodied in the Joint Stipulation of Class Action Settlement
26 (“Settlement” or “Settlement Agreement”) filed concurrently herewith; (2) approving the Notice
27 of Class Action Settlement to be sent to Class Members, and the notification schedule as set forth
28 in the Settlement Agreement and the Proposed Order, also filed concurrently herewith; and (3)

1 setting a hearing for final approval of the class action settlement.

2 **II. STATUS OF THE LITIGATION**

3 **A. Procedural History**

4 On December 23, 2020, Plaintiff filed a class action complaint against Defendant in the
5 Superior Court for the State of California, in Los Angeles, Case Number 20STCV40104,
6 alleging: (1) failure to pay minimum wages; (2) failure to pay wages and overtime; (3) meal
7 period violations; (4) rest break violations; (5) failure to keep required payroll records; (6)
8 violation of Labor Code § 226(a); (7) penalties pursuant to Labor Code §§ 203; and, (8) violation
9 of Business & Professions Code §17200, *et seq.* (“Class Action”). On December 23, 2020,
10 Plaintiff filed a Complaint for Representative Action Penalties under the Private Attorneys’
11 General Act (“PAGA”), alleging (1) failure to pay minimum wages; (2) failure to pay wages and
12 overtime; (3) meal period violations; (4) rest break violations; (5) violation of Labor Code §§
13 226(a) and 1174; and, (6) violation of Labor Code §§ 203 and 204 in Los Angeles County
14 Superior Court Case Number 20STCV49152. (“PAGA Action”). On July 10, 2019, Defendant
15 filed a motion to compel arbitration and on August 8, 2019, Plaintiff filed an amended Complaint
16 that dismissed the class claims and only included PAGA. On March 21, 2022, Class Action and
17 PAGA Action were related.

18 **B. Investigation**

19 Before filing the lawsuit, Class Counsel investigated and researched the facts and
20 circumstances underlying the pertinent issues and the law applicable thereto. (Yeremian Decl., ¶
21 11.) This required thorough discussions and interviews between Class Counsel and Plaintiff John
22 Pehkonen, as well as preliminary research into the various legal issues involved in the case. (*Id.*)
23 After conducting their initial investigation, Class Counsel determined that Plaintiff John
24 Pehkonen’s claims were well-suited for class and representative action adjudication owing to
25 what appeared to be a common course of conduct affecting a similarly situated group of
26 employees. (*Id.*)

27 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
28 claims giving rise to the action, including: (1) conducting informal and formal discovery, and

1 meeting and conferring with defense counsel about same; (2) reviewing and analyzing time and
2 pay records as well as employment handbooks, Plaintiff's personnel files, relevant policies and
3 other documentation; (3) researching the applicable law and potential defenses; (4) constructing
4 damage models based on interpretations of California law; and (5) reviewing information
5 provided by Defendant at the mediation. (Yeremian Decl., ¶ 12.) The Class enumerated in this
6 action is ascertainable because the Class Members may be readily identified by reference to
7 Defendant's records. (*Id.*) Defendant agreed to share information from these records with the
8 Class Action Administrator in order to identify and contact the Class Members. (*Id.*) There are
9 approximately 150 total Class Members. (*Id.*)

10 Defendant, for their part, vigorously contested liability, the amount of claimed damages,
11 and the propriety of class certification. (Yeremian Decl., ¶ 13.) After Class Counsel analyzed the
12 relevant documents and other gathered data, Class Counsel believed that this case was appropriate
13 for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the parties
14 elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

15 **C. Settlement Efforts**

16 On October 26, 2021, the parties mediated this case with Hon. Howard R. Broadman
17 (Ret.), a respected and highly experienced mediator in wage and hour class actions. During
18 mediation, Plaintiff's and Defendant's counsel discussed all aspects of the case, including the
19 risks of litigation and the risks to both parties of proceeding with a motion for class certification
20 as well as the law relating to off-the-clock work, meal and rest period, and wage statements.¹
21 (*Id.*) As a result of the mediation, the parties agreed to settle the lawsuit according to the terms set
22 forth in the Settlement Agreement. (*Id.*; See Exhibit 1 attached to Yeremian Decl., "Settlement"
23 or "Settlement Agreement".)

24 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks
25 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class
26 Counsel believes that the recovery for each Class Member is fair and reasonable taking into

27 _____
28 ¹ Defendant's counsel also informed Class Counsel that Defendant was engaging in Pick up Stix
to resolve the claims of the Class Members.

1 consideration the amounts received in other wage and hour class actions, the risks inherent in
2 litigation of this genre, and the reasonable tailoring of each Class Member's claim to the
3 settlement award he or she will receive. (*Id.*) Further, and based on the settlement negotiations,
4 which were extensive, and conducted in good faith and at arm's length between attorneys with
5 substantial experience litigating class actions and wage and hour cases, the Settlement Agreement
6 was the product of a non-collusive settlement process in which the parties were forced to make
7 significant compromises in the interest of reaching a full and complete settlement of the lawsuit.
8 (*Id.*)

9 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

10 Under the terms of the proposed Settlement Agreement, the Defendant has agreed to pay
11 \$375,000.00 ("Gross Settlement Amount") on a non-reversionary basis to settle and release all
12 claims asserted by Plaintiff in the operative complaint on behalf of the proposed Class. (Yeremian
13 Decl., Exh. 1 §I ¶¶ 4, 5.) The Settlement Agreement defines the "Class Members" as all current
14 and former non-exempt employees of Defendant in the state of California employed during the
15 Class Period. The Class Period is the period from October 20, 2016 until February 28, 2022.
16 (Yeremian Decl., ¶ 16; Exh. 1, §I ¶ 6.) The "Net Settlement Amount," available for distribution to
17 Class Members, shall be the Gross Settlement Amount, less the Class Representative
18 Enhancement Payments, Attorneys' Fees and Costs, Settlement Administration Costs, and
19 seventy-five percent (75%) of the PAGA Payment. (Yeremian Decl., ¶ 17; Exh. 1, §I ¶ 19.) These
20 amounts are detailed as follows:

- 21 • not more than One-Hundred Twenty-Five Thousand Dollars and Zero Cents
22 (\$125,000.00) to Class Counsel for attorneys' fees, and not more than Fifteen Thousand Dollars
23 and Zero Cents (\$15,000.00) in costs; (Yeremian Decl., ¶ 17; Exh. 1, §V ¶ 45.);
- 24 • not more than Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00)
25 to the Class Representative for Service Enhancement Payment; (Yeremian Decl., ¶ 17; Exh. 1,
26 §IV ¶ 42.);
- 27 • up to \$4,599.00 for the Settlement Administration Costs; (Yeremian Decl., ¶ 17;
28 Exh. 1, §I ¶ 31.);

1 • Ten Thousand Dollars and Zero Cents (\$10,000.00) shall be allocated for
2 settlement of claims for civil penalties under PAGA, where 75% (\$7,500.00) will be paid to the
3 LWDA and 25% (\$2,500.00) will be included in the Net Settlement Amount and distributed to
4 Settlement Class Members); (Exh. 1, §VI ¶ 54.)

5 The “Individual Settlement Payment,” which is each Class Member’s share of the Net
6 Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on
7 the number of Workweeks a Class Member worked during the Class Period as a non-exempt
8 employee in California. (Yeremian Decl., Exh. 1, §VI ¶ 50.)

9 The settlement amount was a compromise figure, factoring in the inherent risks related to
10 certification, liability and damages. (Yeremian Decl., ¶ 19.) However, taking into account all of
11 the circumstances of the action and the defenses raised by Defendant against certification,
12 liability and damages, Class Counsel believes that the settlement is fair and reasonable. (*Id.*)

13 Attached to the Settlement Agreement as **Exhibit A** is the Notice of Class Action
14 Settlement (the “Class Notice”). Class Members shall each receive a notice packet which will
15 include the Class Notice, via first class mail (after the Settlement Administrator conducts a
16 national change of address search). (Yeremian Decl., ¶ 20; Exh. 1, §§VIII, IX ¶¶ 59, 60.) Class
17 Members will have an opportunity to dispute the information provided in their Notices of Class
18 Action Settlement and they may produce evidence to support the information is inaccurate.
19 (Yeremian Decl., ¶ 21; Exh. 1, §§VIII, IX ¶¶ 59, 60.; *see also* Class Notice, **Exhibit A** attached to
20 the Settlement Agreement.) The Settlement Administrator shall decide the dispute and may ask
21 Defendant to produce the personnel and payroll files of the Class Member disputing their credited
22 workweeks in order to resolve the dispute. (Yeremian Decl., ¶ 21; Exh. 1, §§ VIII, IX ¶¶ 59, 64.)
23 Class Members wishing to opt-out from the Settlement Agreement must sign and postmark a
24 written Request for Exclusion to the Settlement Administrator within the Response Deadline.
25 (Yeremian Decl., ¶ 22; § IX ¶¶ 61, 62.) The Response Deadline will be thirty (30) calendar days
26 from the initial mailing of the Notice of Class Action Settlement. (Yeremian Decl., § IX ¶¶ 61,
27 62.) If a Class Member’s Request for Exclusion is defective as to the requirements, the Class
28 Member will be given an opportunity to cure the defect(s). (Yeremian Decl., ¶ 22; Exh. 1, § IX ¶¶

61, 62.)

Class Members will also have the opportunity to object to the Settlement Agreement, by filing a valid Objection with the Court and serving copies of the Notice of Objection on the Parties before the Response Deadline. (Yeremian Decl., ¶ 23; Exh. 1, § IX ¶ 65.)

The parties have also agreed that Simpluris shall handle the notice and claims administration (Exh. 1, §VII ¶55.), and the parties respectfully request this Court to appoint Simpluris to handle those procedures. The procedures for mailing notice and processing exclusions and objections as well as distribution of the Net Settlement fund is detailed in the Stipulation. (Exh. 1, §VIII.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at 473-75.) The decision to certify a class is a procedural one, and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

To certify a settlement class, the Court must find the two primary requirements for maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-defined community of interest in the questions of law and fact involving the parties to be represented. (See *Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab Company* (1967) 67 Cal. 2d 695, 704.) These criteria are met here for the reasons set forth below.

A. There Is A Numerous and Ascertainable Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class and the means available for identifying class members. (See *Vasquez, supra*, 4 Cal. 3d at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271.) Class members are “ascertainable” where they may be readily identified without unreasonable expense or time.

1 Plaintiff contends, and Defendant do not dispute for settlement purposes only, this
2 requirement and the requirement of numerosity is met. Class Members are all current and former
3 non-exempt employees of Defendant employed during the Class Period. The Class Period is the
4 period from February 18, 2018 through August 28, 2021. (Yeremian Decl., ¶ 64(a).) Documents
5 and information exchanged between the parties reflect a class of approximately 150 Class
6 Members. (Yeremian Decl., ¶ 64(a).) The Class Members have already been identified by
7 reference to Defendant's payroll and personnel records. (Yeremian Decl., ¶ 64(b).)

8 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

9 **B. There Is A Well-Defined Community of Interest**

10 A community of interest is established by the predominance of common issues of law and
11 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

12 [D]oes not depend upon an identical recovery, and the fact that each
13 member of the class must prove his separate claim to a portion of
14 any recovery by the class is only one factor to be considered ... The
15 mere fact that separate transactions are involved does not of itself
16 preclude a finding of the requisite community of interest so long as
17 every member of the alleged class would not be required to litigate
18 numerous and substantial questions to determine his individual right
19 to recover subsequent to the rendering of any class judgment which
20 determined in plaintiffs' favor whatever questions were common to
21 the class.

22 *Id.* at 809.

23 Plaintiff contends, and Defendant do not dispute for settlement purposes only, that
24 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the
25 Class is united in its proof. (Yeremian Decl., ¶ 64(e).) Because Plaintiff has alleged a single
26 scheme, "the relevant proof [does] not vary among class members" and "clearly presents a
27 common question fundamental to all class members." (*See In Re NASDAQ Market-Makers*
28 *Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers*
Antitrust Litigation, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show "no hesitancy"
in inferring class-wide causation, class-wide injury, and class-wide damages when a common
course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This
inference "eliminates the need for each class member to prove individually the consequences of

1 the defendants' actions to him or her.'” (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp*
2 (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).)

3 This action involves, *inter alia*, a determination about Defendant’s alleged failure to pay
4 wages and overtime due to allegedly common and unlawful policies, meal and rest periods, the
5 resulting failure to pay final wages when required, the failure to provide accurate paystubs, the
6 largely derivative claims under the Business & Professions Code and PAGA. Plaintiff contends
7 these practices affected Class Members in the same way. Plaintiff contends these practices
8 resulted in a failure to compensate employees at termination, and incomplete wages displayed on
9 wage statements. The outcome of litigation on this matter depends upon questions that are
10 common to Class Members. (Yeremian Decl., ¶ 64(f).) While Defendant maintained otherwise,
11 these issues will not be decided on the basis of facts peculiar to each Class Member, but rather on
12 the basis of facts common to them all. It is also true that these issues of liability can be
13 determined on a class-wide basis. (*Id.*)

14 **C. The Named Plaintiff’s Claims Are Typical**

15 A class representative’s claims are typical when they arise from the same event, practice,
16 or course of conduct that gives rise to the claims of other putative class members, and if their
17 claims rest on the same legal theories. The class representative’s claims must be “typical” but not
18 necessarily identical to the claims of other class members. It is sufficient that the representative is
19 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
20 (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
21 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class
22 representative must have identical interests with the class members.”) Thus, it is not necessary
23 that the class representative should have personally incurred all of the damages suffered by each
24 of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

25 Plaintiff contends, and Defendant do not dispute for settlement purposes only, that
26 Plaintiff’s claims are typical of Class Members’ claims because they arose from the same factual
27 basis and are based on the same legal theories. (Yeremian Decl., ¶ 64(c).) Plaintiff was employed
28 by Defendant during the Class Period, and was subject to the allegedly unlawful meal and rest

1 policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiff is a member of the
2 Class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay all wages,
3 whether Defendant failed to provide meal and rest periods, etc.), which would arise if this was an
4 individual action, applies to the other Class Members as well. The answer to these questions
5 would determine Defendant's liability to the putative class. (*Id.*) Thus, the claims of Plaintiff is
6 typical of the claims of the putative class. (*Id.*) Accordingly, the typicality requirement is
7 satisfied.

8 **D. Adequacy of Class Counsel and Class Representatives**

9 Class Counsel are experienced in class actions, have represented their clients zealously
10 and have no conflicts of interest. (Yeremian Decl., ¶¶ 3-9, 66(d).) The Class Representatives'
11 interests are aligned with those of the Class Members, they have suffered the same injuries as the
12 Class Members, and have no conflicts of interest. (*Id.*) Therefore Class Counsel and the Class
13 Representatives are adequate.

14 **E. Predominance and Superiority**

15 Individual issues do not predominate over those common to the class. (Yeremian Decl.,
16 ¶64(f).) The class action mechanism is superior to individualized actions because Class Members
17 have little incentive to bring claims that are small. (*Id.*)

18 **V. THE TWO-STEP APPROVAL PROCESS**

19 Any settlement of class action litigation must be reviewed and approved by the Court.
20 This is accomplished in two steps: (1) An early (preliminary) review by the trial court, and (2) a
21 detailed review after the notice has been distributed to the class members for their comments or
22 objections. In this regard, the Manual for Complex Litigation (Second) explains:

23 A two-step process is followed when considering class
24 settlements... If the proposed settlement appears to be the product
25 of serious, informed, non-collusive negotiations, has no obvious
26 deficiencies, does not improperly grant preferential treatment to
27 class representatives or segments of the class, and falls within the
28 range of possible approval, then the court should direct that notice
be given to the class members of a formal fairness hearing, at which
evidence may be presented in support of and in opposition to the
settlement.

1 (Manual for Complex Litigation (Second) (1985) at § 30.44.) The preliminary approval of the
2 class action settlement by the trial court is simply a conditional finding that the settlement appears
3 to be within the range of acceptable settlements. (See, e.g., Newberg, § 11.25; North County
4 Contractor's Assn., Inc. v. Touchstone Ins. Services (1994) 27 Cal. App. 4th 1085, 1094-95.)
5 Thus, the preliminary approval of the class action settlement by the trial court is simply a
6 conditional finding that the settlement appears to be within the range of acceptable settlements.

7 Settlements to resolve PAGA claims also require court approval. (Labor Code §
8 2699(l)(2).) There is no articulated standard for approving PAGA settlements. PAGA settlements
9 for as little as \$0 have been approved. (See Nordstrom Com'n Cases (2010) 186 Cal.App.4th 576,
10 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim).) Courts have
11 also approved settlements for \$20,000 or less. (See, e.g., Hicks v. Toys 'R' Us—Delaware, Inc.,
12 (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4
13 million settlement); Chu v. Wells Fargo Invest. LLC (N.D. Cal. Feb. 16, 2011) 2011 WL 672645,
14 at *1 (approving PAGA payment of \$7,500 in \$6.9 million settlement); Williams v. Brinderson
15 Constructors (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in
16 \$300,000 settlement).)

17 A review of the preliminary approval criteria demonstrates a substantial basis for granting
18 the instant Motion and proceeding to a full settlement hearing.

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

20 As a matter of public policy, courts both encourage the use of the class action device and
21 favor settlement over continued litigation. (See, e.g., Linder v. Thrifty Oil Co. (2000) 23 Cal. 4th
22 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent
23 a failure of justice in our judicial system.”); Class Plaintiffs v. City of Seattle (1992) 955 F.2d
24 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class
25 action litigation is concerned.”).)

26 Moreover, courts presume the absence of fraud or collusion in the negotiation of a
27 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
28

1 negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.*
2 (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir.
3 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents,
4 particularly when settlement has been reached by experienced counsel familiar with the litigation.
5 (*Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp.
6 1087.)

7 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
8 several factors that should be analyzed in determining if a class action settlement should be
9 approved. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense,
10 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
11 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
12 stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
13 governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

14 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
15 informal discovery before entering into meaningful settlement negotiations in this matter,
16 including a detailed analysis of Defendant's policies and a considerable sample of Defendant's
17 time and pay records. (Yeremian Decl., ¶¶ 11-12.) This discovery permitted Class Counsel to
18 fairly evaluate the strengths of the case and the risks associated with ongoing litigation. Class
19 Counsel is very experienced in the handling of wage and hour class actions and supports this
20 Settlement. (Yeremian Decl., ¶¶ 3-9.)

21 **A. The Strength of Plaintiff's Case.**

22 The claims in this action include failure to pay minimum and overtime wages, failure to
23 provide meal breaks or rest breaks or provide premium pay in lieu thereof, failure to provide
24 accurate wage statements, failure to pay final wages when due, and related claims for violations
25 of California's Business & Professions Code and for penalties under PAGA. (Yeremian Decl., ¶
26 10.)

27 Class Counsel felt confident that the claims in this case would be certified given that
28 Defendant's policies were applicable to all Class Members and unlawful on their face. (Yeremian

Decl., ¶¶ 24-50.) Defendant contend, however, that that the policies complied with California law.

B. The Risks Associated with the Merits.

As with all litigation, there are risks that a party will not prevail on the merits. In this case, Plaintiff contends that he and other Class Members were not properly provided meal periods. (Yeremian Decl., ¶¶ 28-30.) Defendant contended that Class Members were given a reasonable opportunity to take their meal periods, and in fact received their meal periods most of the time, and meal period premiums when they did not. (*Id.* at ¶ 30.) Defendant also argued that its written policies were valid and disseminated to all Class Members and that it even paid meal period premiums from 2019 onward. If Defendant's contentions are proven true and prevail in trial, the likely outcome of this claim would be no recovery for the Class Members. Plaintiff also contended that Defendant did not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction thereof. (Yeremian Decl., ¶ 32.) Plaintiff contends that Class Members consistently worked in excess of consecutive four-hour shifts and were entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift which they were denied. Plaintiff contended that Class Members were required to work through their rest breaks, and through their entire shifts. Defendant maintained that it did provide the reasonable opportunity for Class Members to take duty-free rest breaks. (Yeremian Decl., ¶ 33.) Defendant also pointed out that, unlike meal periods, rest breaks need not be recorded which makes proving alleged violations that much harder than for meal periods. As these considerations would likely depress the damages *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts to the rest-break claim.

Plaintiff alleged that Defendant failed to pay Plaintiff and Class Members minimum wages for all hours worked, in violation of minimum wage laws. (Yeremian Decl., ¶ 26.) Plaintiff contended that he and other Class Members were not paid proper overtime and minimum wages. Specifically, Defendant's unlawfully rounded down the hours Employees as worked as show in the earning statements. However, Plaintiff's review of the records showed that 68.5% of Employees were either overpaid due to rounding or not affected by rounding making this claim

1 difficult to certify. Additionally, Defendant paid incentive, and other nondiscretionary bonuses to
2 Employees. The bonus amounts must be included in determining the regular rate of pay for
3 overtime purposes. Defendant failed to calculate the regular rate with the bonuses.

4 Defendant contended that it paid for all reported hours worked, that Class Members were
5 trained to record all hours worked, and that they paid proper minimum wages. (*Id.* at 27.)
6 Additionally, Defendant also maintained that the allegations regarding failure to pay wages for
7 hours worked in excess of eight hours in a day did not constitute a basis for violation of Labor
8 Code § 510. Defendant argued that given their written policies and practices, any unrecorded
9 hours were likely subject to individualized inquiry and unlikely to be certified. Furthermore,
10 Defendants contended they paid overtime at the appropriate regular rate of pay. Given the
11 difficulty in certifying this claim, Class Counsel had to apply a significant discount to damages
12 based on this theory.

13 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties.**

14 In order to establish liability for these penalties, Plaintiff would first have to establish
15 liability for the underlying claims. Moreover, Defendant argued that certain wage violations, even
16 if established, could not be the predicate for a Labor Code § 226 wage statement or § 203 waiting
17 time claim. (Yeremian Decl., ¶¶ 35, 39.) Defendant further contended that wage claim violations,
18 even if established, could not be the predicate for a Labor Code § 226 wage statement claims.
19 *See, e.g. Culley v. Lincare Inc.* (E.D. Cal. 2017) 236 F.Supp.3d 1184, 1195-96; *Soto v. Motel 6*
20 *Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393 (noting wage statement need only document
21 compensation actually received and the hours used to calculate that compensation). Finally,
22 because the damages for this cause of action are penalties, the statute of limitations only runs
23 from one year prior to the filing of the original complaint. *See* Cal. Civ. Pro. § 340.

24 In addition, Plaintiff would have to establish that Defendant's conduct was willful to
25 recover waiting time penalties. (Labor Code § 203.) With these penalties, there is always the risk
26 that the trier of fact would not have held that Defendant's actions were done "willfully." A good
27 faith belief in a legal defense can preclude a finding of willfulness. (*Gonzalez v. Downtown LA*
28 *Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleges

1 that Defendant failed to pay for all hours worked. Plaintiff contends the Class Members are
2 entitled to these wages and premiums, which he alleges were not paid at the time of their
3 termination or resignation. If Plaintiff is successful on his claims, the penalties pursuant to Labor
4 Code § 203 shall attach. As such, there was some risk associated with waiting time penalties that
5 Class Counsel had to consider. (Yeremian Decl., ¶¶ 37-39.)

6 **D. The Risks Associated with the PAGA Penalties.**

7 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
8 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
9 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
10 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
11 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount
12 by the Labor Code section relating to the underlying alleged Labor Code violation, that amount
13 shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
14 maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil
15 penalty amount specified by this part if, based on the facts and circumstances of the particular
16 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
17 confiscatory.”]); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112,
18 1135 [reducing PAGA award on this basis].)

19 Additionally, PAGA penalties for multiple Labor Code violations are “stacked,” and
20 plaintiff is entitled to recover penalties for multiple violations based on the same conduct.
21 *Hernandez v. Towne Park, Ltd.*, No. 12 Civ. 02972, 2012 WL 2373372, at *17 n.77 (C.D. Cal.
22 June 22, 2012) (“federal courts applying California law have concluded that stacking is
23 appropriate”; defining “stacking” as multiple PAGA penalties assessed for the same pay period
24 for different Labor Code violations). However, as discussed PAGA provides that the Court “may
25 award a lesser amount than the maximum civil penalty amount specified by this part if, based on
26 the facts and circumstances of the particular case, to do otherwise would result in an award that is
27 unjust, arbitrary and oppressive, or confiscatory.”

28 Plaintiff discounted potential penalties under this claim given this authority, and for other

1 reasons. The PAGA claims are premised on the same underlying failure to provide meal and rest
2 breaks, wage statement, and waiting time claims, and thus subject to the same disputes and
3 defenses. There is also a dispute as to whether violations in later pay periods trigger the \$200
4 penalty under PAGA as a “subsequent violation.” (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App.
5 4th 1157, 1203 (2008).) As such, there is a fair amount of risk associated with PAGA claims.
6 (Yeremian Decl., ¶¶ 41-44.) The parties also considered that the purpose of PAGA is to “achieve
7 maximum compliance with state labor laws,” and that through the proposed settlement,
8 Defendant has agreed to ensure policies comply with California law. (*Iskanian v. CLS Transp.*
9 *Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379.) This makes the settlement’s contemplated PAGA
10 payment of \$10,000.00 appropriate.

11 Based on this analysis, Class Counsel believes that this settlement is fair and reasonable
12 and in the best interest of the Class. (Yeremian Decl., *passim*.)

13 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

14 Given the risks outlined above, the issues in this case were complex and the risk for
15 Plaintiff and the Class Members associated with this litigation was high. (Yeremian Decl., ¶¶ 48-
16 51.) A class trial would have required the retention of expensive expert witnesses, the accrual of
17 extensive litigation costs, and the parties would have had to spend a substantial amount of time.

18 Finally, given the complexity and unsettled nature of the issues, it is likely that any
19 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
20 further delay for the Class Members who have already waited years for resolution in this matter.

21 **F. The Risk of Maintaining Class Action Status Through Trial.**

22 In class actions, decertification is always a possibility. There is always a risk that a trial of
23 this magnitude can become unmanageable. (*Id.*) Given cases like *Duran v. U.S. Bank Nat. Assn.*,
24 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples in class actions,
25 decertification is a real risk that Class Counsel must take into account.

26 **G. The Amount Offered in Settlement.**

27 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-
28 collusive, and arms-length negotiations between the parties with an experienced mediator. In

1 order to determine the approximate potential damages which would be owed to each of the Class
2 Members, Class Counsel analyzed the time records for Plaintiff and Defendant provided Class
3 Counsel with records for a sampling of the class members. By analyzing this information, Class
4 Counsel was able to estimate the full value of the case if Plaintiff was to prevail at trial.

5 There are approximately 150 total Class Members. Class Counsel estimated the maximum
6 exposure for the meal period claim is \$520,971. (Yeremian Decl., ¶ 31.) Class Counsel estimated
7 the maximum exposure for the rest period claim is \$520,971. (Yeremian Decl., ¶ 33.) The
8 maximum exposure on the unpaid wage claim is \$259,061 based on the regular rate claim and
9 Plaintiff's expert valued the rounding claim at zero. (*Id.* at ¶ 27.) The maximum exposure for the
10 wage statement claim is \$224,250. (*Id.* at ¶ 36.) The maximum exposure for the waiting time
11 penalties claim is \$356,275. (*Id.* at ¶ 40.) On the PAGA claim, Plaintiff's estimated maximum
12 exposure is \$227,500.² (*Id.* at ¶ 44.)

13 Once Class Counsel was able to determine the maximum potential damages, it was able to
14 determine a fair and reasonable settlement for the Class. (*Id.* at ¶¶ 48-53.) Class Counsel analyzed
15 the likelihood of success on the merits. (*Id.*) It believes that the Class had a reasonable likelihood
16 of success on the core claims. (*Id.*) However, Defendant disputes this contention, denies all
17 wrongdoing in this matter and is confident it has strong legal and factual defenses to Plaintiff's
18 claims. Moreover, Class Counsel determined that the likelihood of success on the claims for
19 unpaid wages and waiting time penalties were not as strong, because various defenses including
20 issues not suitable for class treatment, no detriment to the class members over time, and *de*
21 *minimis* defenses. Defendant may have had the opportunity to establish that they had a good faith
22 belief that they were complying with law. (*Id.*) After taking into account the likelihood of success
23 on each claim and the challenges faced with certifying these claims, Class Counsel determined
24 that the settlement amount of \$375,000.00 was fair and reasonable.

25 Under the Settlement, each of the approximately 150 Class Members will receive on

26
27 ² Additionally, if the PAGA penalties are stacked Class Counsel estimated Defendant's maximum
28 total exposure on the PAGA claim at approximately \$693,975(\$23,000 PAGA for Overtime +
\$227,000 PAGA for Rest Breaks+\$214,200 PAGA for Meal Breaks+\$227,500 PAGA for Wage
Statements).

1 average \$1,436.01 after expenses. (*Id.* at ¶ 47.) Plaintiff feels that this Settlement is fair,
2 reasonable, and advantageous to the class. (*Id.*)

3 To summarize, the Settlement here is fair because it provides a substantial payment to
4 each Class Member for releasing his or her claims; extinguishes the risk of litigation; and
5 provides a fair and adequate distribution of the settlement proceeds whereby the funds are
6 allocated to Class Members proportionally based on their Payout Ratio.

7 As detailed at length in the accompanying Declaration of David Yeremian, the settlement
8 is the result of extensive settlement negotiations between the parties, conducted at arm's length,
9 and informed by substantial factual and legal investigations. (Yeremian Decl., *passim*.)
10 Throughout this case, Class Members have been represented by experienced counsel with many
11 years of experience in employment class action litigation. (Yeremian Decl., ¶¶ 3-9.)

12 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
13 including but not limited to, interviewing Plaintiff on repeated occasions; drafting pleadings;
14 conducting considerable discovery, and meeting and conferring with defense counsel about same;
15 reviewing and analyzing time records and various handbooks and policies, Plaintiff's personnel
16 file, and other documentation; researching California law; preparing for and attending mediation;
17 and negotiating and finalizing the Settlement Agreement and related documents. (Yeremian
18 Decl., ¶¶ 11-14.)

19 Among those matters considered during the course of settlement negotiations were the
20 strength of Plaintiff's case versus the amounts offered in settlement; the risks, expenses, and
21 length of further litigation, including class certification and the appeals process; the present state
22 of the law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present
23 value of a settlement versus the long wait necessitated by any potential judgment in class
24 members' favor; the burdens of proof necessary to establish liability against Defendant; and
25 Defendant's defenses to the action. (Yeremian Decl., *passim*.)

26 These factors each indicated that the interests of Class Members are best served by a
27 settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.
28 The Settlement Agreement confers a substantial benefit on the class of up to \$375,000.00.

1 Moreover, the settlement awards for each Class Member will be tailored to their workweeks
2 during the class period. (*Id.* at ¶ 18.) In addition Class Counsel secured prospective relief for the
3 class in that Defendant will ensure their policies comply with California law.

4 Class Counsel believes that the settlement is fair and reasonable and serves the best
5 interests of the Class Members. Although the recommendations of counsel proposing the class
6 settlement are not conclusive, the Court can properly take the recommendations into account,
7 particularly if counsel has been involved in litigation for some period of time, appear to be
8 competent, and have experience with this type of litigation, and significant discovery has been
9 completed. *See Newberg*, §11.47.

10 **VII. THE CLASS REPRESENTATIVE ENHANCEMENTS ARE FAIR AND** 11 **REASONABLE**

12 It is appropriate to provide a relatively modest additional incentive payment to the class
13 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901
14 F.Supp. 294.

15 Plaintiff is entitled to reasonable service payments for his efforts and initiative in bringing
16 and helping to prosecute this class action. Plaintiff spent significant time better apprising himself
17 of his rights, deciding whether remedial action should be taken, how it should be taken, searching
18 for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing his
19 case and the law. (Yeremian Decl., ¶¶ 59-63.) In the end, Plaintiff decided to vindicate not only
20 his own rights but also those of his co-workers by filing a class action lawsuit.

21 The courage it took to do this should not be underestimated. By suing Defendant, Plaintiff
22 contends he increased his risk of retaliation by prospective employers. (*Id.*) Plaintiff's lawsuit has
23 now cost Defendant considerable resources, and Plaintiff contends such conduct will not be lost
24 on a prospective employer who has to choose between an applicant who has never sued a prior
25 employer and one who has. (*Id.*) Plaintiff contends this risk is particularly real in the information
26 age, where employers can, more easily than ever, perform background checks of prospective
27 employees, sometimes with the stroke of a key. (*Id.*)

28 But Plaintiff did not allow his fear of the potential repercussions of being class

1 representatives deter his from acting for the benefit of Class Members. (*Id.*) To the contrary,
2 Plaintiff has been intimately involved in this case since its inception. (*Id.*) He has devoted a
3 substantial amount of time to helping Class Counsel effectively develop and prosecute this action
4 at every stage of the litigation. (*Id.*) Both before and after the filing of this lawsuit, Plaintiff
5 conferred with Class Counsel to discuss every aspect of this case; Plaintiff has provided Class
6 Counsel with information about Defendant and about the industry generally, reviewed documents,
7 identified witnesses, consulted Class Counsel throughout the litigation, participated in the
8 mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and
9 signed the settlement agreement. (*Id.*)

10 Plaintiff has spent a significant amount of time with Class Counsel detailing their
11 knowledge of Defendant's practices. (*Id.*) They have diligently, adequately, and fairly represented
12 Class Members, and have not placed their interests above any member of the putative class. (*Id.*)
13 This sort of payment to a class representative has been a common feature of settlements
14 negotiated by Class Counsel and has been routinely approved by trial courts. (*Id.*)

15 In light of the foregoing, Class Counsel believes that the incentive award in the amount of
16 \$7,500.00 to the Class Representatives is fair and reasonable. (*Id.*)

17 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE** 18 **CLASS MEMBERS.**

19 Constitutional due process requires that class members be provided with notice sufficient
20 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
21 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
22 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*
23 at 314.) The notice must apprise the class members of the pendency of the action; reasonably
24 convey information regarding the settlement and the class members' rights, entitlements, and
25 obligations; and afford class members the opportunity to present their objections. (*Id.*)

26 The Notice meets constitutional standards because it provides all the information a
27 reasonable person would need to make a fully informed decision about the settlement. It will
28 notify all class members of the terms of the settlement, of its effect on their rights, of their options

1 as class members (i.e., participate, object, opt out, do nothing), and of the consequences of
2 exercising those options. (Yeremian Decl., ¶¶ 52-54.) Moreover, the Notice will specifically
3 direct any class members who have questions or concerns to contact the Class Action
4 Administrator, Simpluris, or Class Counsel. (*Id.*)

5 The standard for determining the adequacy of notice is whether the notice has “a
6 reasonable chance of reaching a substantial percentage of the class members.” (*Cartt v. Superior*
7 *Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California’s Deskbook on the
8 Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual
9 notice by mail is preferred when possible and dissemination of combined certification/settlement
10 notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820,
11 828.)

12 Here, the Class Notice packet will be sent via first-class mail to each class member.
13 (Yeremian Decl., ¶ 52.) If any Class Notices are returned undeliverable without a forwarding
14 address, the Settlement Administrator will use the national change of address database and
15 perform a skip trace to locate the class member and mail a new Class Notice to him or her at the
16 correct address. (*Id.*) Thus, most, if not all, class members will likely receive the Notice Packet.

17 Pursuant to controlling authority, the proposed Class Notice and method of distribution
18 fully comport with due process requirements. Therefore, the Court should approve the Class
19 Notice and direct that it be distributed as proposed herein.

20 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

21 Non-settling parties and third parties periodically may attempt to object to proposed class
22 action settlements, but the right of non-settling parties to object at the final settlement approval
23 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
24 members have standing to object to a proposed settlement. “Beginning from the unassailable
25 premise that settlements are to be encouraged, it follows that to routinely allow non-class
26 members to inject their concerns via objection at the settlement stage would tend to frustrate this
27 goal.” (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being
28 filed to obtain a good faith determination, no persons other than class members have standing to

1 object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d
2 1330.)

3 **X. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS**
4 **REASONABLE AND SHOULD BE APPROVED.**

5 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will
6 seek an award of fees of no more than \$125,000.00, approximately one-third of the Gross
7 Settlement Amount, and not more than \$15,000 in costs. The requested fees are fair compensation
8 for a law firm involved in undertaking complex, risky, expensive, and time-consuming litigation
9 solely on a contingent basis. (Yeremian Decl. ¶¶ 56-58.) Defendant will not oppose Class
10 Counsel's fees and cost request.

11 California courts routinely look to the federal courts on class action approvals. The Ninth
12 Circuit has recognized that an appropriate method for awarding attorneys' fees in class actions is
13 to award a percentage of the "common fund" created as a result of the settlement. (*Vincent v.*
14 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common
15 fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries
16 so that the active beneficiary does not bear the entire burden alone." (*Id.*) Accordingly, courts
17 have discretion to choose either the percentage-of-the-fund method or the lodestar method. (*In re*
18 *Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.)

19 Several courts have, however, expressed frustration with the "lodestar" approach for
20 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
21 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns
22 the interests of class counsel and absent class members; (2) it encourages efficient resolution of
23 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
24 demands on judicial resources. (*In re Activision Securities Litigation*, (N.D. Cal. 1989) 723
25 F.Supp. 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach
26 to determine the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir.
27 1994) 47 F.3d 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).)

28 Class Counsel's application for attorneys' fees in light of the facts and circumstances

1 surrounding this case is well within the range of reasonableness. Historically, courts have
2 awarded percentage fees in the range of 20% to 50% of the common fund, depending on the
3 circumstances of the case. (*Newberg*, at §14.03; *see also In re Activision Securities Litigation*,
4 723 F. Supp. at 1378.) *Newberg* further notes: “[A]chievement of a substantial recovery with
5 modest hours expended should not be penalized but should be rewarded for considerations of
6 time saved by superior services performed.” (*Id.* at §§ 14-10:14-11.)

7 The attorneys’ fees request provided for in the Settlement Agreement is commensurate
8 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or
9 greater than the percentage requested in this case. (*See, e.g., In re Pacific Enterprises Securities*
10 *Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common
11 fund); *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding
12 plaintiffs’ counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin*
13 *Antitrust Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement
14 fund); *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to
15 counsel of one-third (1/3) of recovery achieved).)

16 In wage and hour class actions in particular, California trial courts have customarily
17 approved attorney’s fees consistent with or greater than the percentage of the common fund
18 requested in this case. (*See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC
19 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys’ fees of at least
20 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
21 Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
22 Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*
23 *Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon.
24 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County
25 Super.Ct. Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper*
26 *Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).)

27 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive
28 any compensation until recovery is obtained. (*See Yeremian Decl.*, ¶¶ 56-58.) The Court should

1 also consider the benefit obtained by Class Counsel on behalf of class members. Thus, the
2 requested award for Class Counsel is reasonable.

3 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
4 **APPROVAL**

5 The parties respectfully request this Court, as part of the preliminary approval process, to
6 grant the following relief and make the following orders:

- 7 1. Review and approve the Settlement Agreement;
- 8 2. Court accepts for filing the First Amended Class Action Complaint attached to the
9 Declaration of David Yeremian as Exhibit 2.
- 10 3. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit
11 A;
- 12 4. Consider and determine that the proposed class action settlement as set forth in the
13 Settlement Agreement preliminarily appears fair, reasonable, and adequate;
- 14 5. Enter an order conditionally certifying the action as a class action for settlement
15 purposes only and preliminarily approving the proposed class action settlement and the
16 Settlement Agreement;
- 17 6. Approve and appoint David Yeremian of David Yeremian & Associates, Inc. to serve
18 as Class Counsel for settlement purposes;
- 19 7. Approve and appoint Simpluris as the Class Action Administrator to handle the notice
20 and claims procedures as set forth in the Settlement Agreement;
- 21 8. Approve the proposed settlement's allocation of funds to claims made under PAGA;
- 22 9. Order Defendant to disclose to Simpluris the names, last-known addresses, dates of
23 employment, and social security numbers of class members as set forth in the Settlement
24 Agreement;

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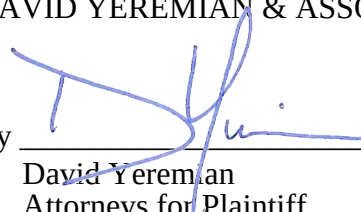
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- 1 10. Order that Simpluris mail the Class Notice to class members; and
2 11. Set a date for the Final Approval Hearing.

3
4 Dated: March 29, 2022

Respectfully submitted,

5 DAVID YEREMIAN & ASSOCIATES, INC.

6
7 By  _____

8 David Yeremian
9 Attorneys for Plaintiff
10 John Pehkonen and, on behalf
11 of himself and others similarly situated