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and all others similarly situated

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

NATHANIAL RUBERO and ERNESTO
CARRANZA AGUILAR on behalf of
themselves and all others similarly situated

Plaintiffs,

vs.

CLASSIC DISTRIBUTING AND
BEVERAGE GROUP, INC. a California
corporation, and DOES 1 through 50,
inclusive,

Defendants.

Case No. 20STCV38353
Assigned For All Purposes To:
Judge: Hon. Stuart Rice
Dept.: 1

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT; [PROPOSED] ORDER**

[Declarations of James R. Hawkins, Mary Butler,
Nathaniel Rubero and Ernesto Carranza Aguilar
filed concurrently herewith]

Date: November 6, 2023
Time: 10:30 a.m.
Dept.: 1

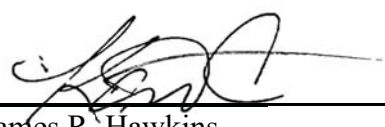
PLEASE TAKE NOTICE THAT on November 6, 2023 at 10:30 a.m. in Department 1 of
the above-entitled court located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs

1 Nathaniel Rubero and Ernesto Carranza Aguilar ("Plaintiffs") will and hereby do move the Court for
2 an Order for final approval of: (1) the Class Action and PAGA Settlement Agreement; (2) the Gross
3 Settlement Amount of Four Hundred Fifty Thousand Dollars (\$450,000); (3) all settlement payments
4 to individual Class Members; (4) all individual PAGA payments to Aggrieved Employees (5) a Class
5 Representative Service Payment in the amount of Ten Thousand Dollars (\$10,000) to each of the
6 named Plaintiffs Nathaniel Rubero and Ernesto Carranza Aguilar (6) Thirty Thousand Dollars
7 (\$30,000) in PAGA penalties; (6) costs of administering the Settlement paid to the Settlement
8 Administrator, Simpluris, Inc. in the amount of Eleven Thousand Seven Hundred Twenty-Two
9 Dollars (\$11,722.00); (7) an award of One Hundred Fifty Thousand Dollars (\$150,000) (33.3333% of
10 the Gross Settlement Amount) in Class Counsel Fees to Class Counsel, James Hawkins, APLC, and;
11 (8) Class Counsel Expenses of Nineteen Thousand Nine Hundred Dollars (\$19,900.00)

12 This Motion is made pursuant to California Rules of Court Rule 3.769, which requires court
13 approval of the settlement of a putative class action. Further, this Motion will be based on the
14 following: Memorandum of Points and Authorities set forth herein; the Class Action and PAGA
15 Settlement Agreement attached to the Declaration of James R. Hawkins as Exhibit 1; the Declarations
16 of James R. Hawkins, Plaintiffs Nathaniel Rubero and Ernesto Carranza Aguilar, and Mary Butler in
17 support of Plaintiffs' Motion for Final Approval; and any supplements thereto and such evidence or
18 oral argument as may be presented at the hearing, and on the complete records and file herein.

19
20 **DATED: October 13, 2023**

JAMES HAWKINS APLC

21
22 By: 

James R. Hawkins

Lance Dacre

Kacey E. Cook

Attorneys for Plaintiffs

Nathaniel Rubero and Ernesto Carranza Aguilar

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Nathaniel Rubero and Ernesto Carranza Aguilar (“Plaintiffs” or “Class
4 Representatives”), on behalf of themselves and putative class (“Class” or “Class Members”), seek
5 final approval of the Class Action and PAGA Settlement Agreement (“Settlement” or “Settlement
6 Agreement” reached with Classic Distributing and Beverage Group, Inc. (“Defendant” or
7 “Classic Distributing”) (Plaintiffs and Defendant together, the “Parties”).

8 On May 12, 2023, this Court preliminarily approved the settlement amount of Four
9 Hundred fifty Thousand Dollars (\$450,000) as being fair, adequate, and reasonable. Further, this
10 Court preliminarily appointed Plaintiffs’ counsel, James Hawkins, Isandra Fernandez, and Lance
11 Dacre of James Hawkins APLC as Class Counsel, the named Plaintiffs Nathaniel Rubero and
12 Ernesto Carranza Aguilar as Class Representatives, and preliminarily certified the Settlement
13 Class (“Class Members”) which means a member of either the Sales Representative Class or the
14 Sales Associate Class, as either a Participating Class Member or Non-Participating Class Member
15 (including a Non-Participating Class Member who qualifies as an Aggrieved Employee) during the
16 Class Period between October 5, 2019 to June 30, 2022 (the “Class Period”) (Settlement
17 Agreement ¶ 1.12). The Court also preliminarily approved Simpluris, Inc. (“Simpluris”) as the
18 Settlement Administrator.

19 On May 17, 2023, the Parties notified the Class Members about the settlement through the
20 Settlement Administrator, Simpluris, Inc., (Declaration of Mary Butler (“Butler Decl.”) ¶ 8). The
21 deadline for requests for exclusions from and objections to the Settlement expired July 3, 2023,
22 forty-five (45) days after the mailing (Butler Decl. ¶ 10.) The benefits conferred to the Settlement
23 Class, as a result of this Settlement, are extremely favorable. Specifically, as previously set forth
24 in Plaintiffs’ Motion for Preliminary Approval (“Preliminary Approval Motion”), this is a cash
25 settlement with no reversionary aspect. Every Class Member who has not opted out of the
26 Settlement will automatically be mailed an individual settlement payment. There is no claims
27 filing process, and Class Members do not have to file a claim to be mailed a payment. Moreover,

1 out of the 583 class members there are zero (0) requests for exclusion, zero (0) disputes, and zero
2 (0) objections to the settlement. (Butler Decl. ¶¶ 11-13).

3 Additionally, in the event the Court approves the requested fees, costs and enhancements,
4 the estimated *highest* Settlement Share to be paid to the Sales Representative Class is
5 approximately \$819.48 and the *average* Settlement Share to be paid is approximately \$149.83.
6 For the Sales Associate Class, the *highest* Settlement Share to be paid is approximately \$1,094.34
7 and the *average* Settlement Share to be paid is approximately \$224.75 (Butler Decl. ¶ 14).

8 In sum, the proposed Settlement, which is the product of diligent advocacy and arms-
9 length negotiations by Class Counsel, provides significant benefits to the Class and has been well
10 received as a favorable outcome. The Settlement of this action is fair, reasonable, and adequate,
11 and in the best interest of the Class. Accordingly, final approval of the Settlement should be
12 granted.

13 **II. LITIGATION AND SETTLEMENT**

14 **A. Pleadings**

15 On October 5, 2020, Plaintiffs Nathaniel Rubero and Ernesto Carranza Aguilar initiated
16 this action in the Superior Court for the County of Los Angeles on behalf of themselves and all
17 others similarly situated, styled *Rubero et al. v. Classic Distributing ad Beverage Group*, No.
18 20STCV38353. The Complaint asserts causes of action for; (1) failure to pay lawful wages
19 including overtime wages; (2) failure to provide lawful meal periods or compensation in lieu
20 thereof; (3) failure to provide lawful rest periods or compensation in lieu thereof; (4) failure to
21 pay timely wages; (5) failure to indemnify employee expenses (6) knowing and intentional failure
22 to comply with itemized employee wage statement provisions; and (7) violations of the unfair
23 competition law (Bus. & Prof. Code § 17200 *et seq.*) (the “Action”). (See Declaration of James R.
24 Hawkins “Hawkins Decl.” ¶ 2.)

25 Also on October 5, 2020, Nathaniel Rubero and Ernesto Carranza Aguilar provided
26 notice to the Labor and Workforce Development Agency (“LWDA”) of their intent to pursue
27 Defendant for all civil penalties arising from Defendant’s alleged failure to, inter alia, pay all

1 wages earned including failure to provide proper rest periods and meal breaks, failure to
2 reimburse employee expenses, failure to provide accurate wage statements to Plaintiffs and
3 other similarly situated aggrieved employees (Hawkins Decl. ¶ 3). On January 28, 2021,
4 Plaintiffs filed a First Amended Complaint, which included one additional cause of action for
5 violations of the Private Attorney General Act (Labor Code § 2699 *et seq.*) (“PAGA”)
6 (Hawkins Decl., ¶ 4.). The First Amended Complaint is the operative complaint in this matter
7 (*Id.*)

8 Prior to the filing of this Action, *Juan Carlos Rios v Classic Distributing & Beverage*
9 *Group, Inc.*, (LASC Case No 20PSCV00012) (the “Rios” Action) had been filed and also
10 alleged claims for the First, Fourth, Sixth, Seventh and Eighth causes of action, except only on
11 behalf of Classic Distributing’s Sales Representatives, i.e., no Sales Associates were involved
12 in the Rios Action. The parties to the Rios Action mediated and reached a settlement in March
13 2021. Under the terms of said settlement, Classic Distributing’s Sales Representatives waived
14 and released some or all of any claims they otherwise might have had under the First, Fourth,
15 Sixth, Seventh and Eighth causes of action in the instant Action, from May 2018 through
16 December 15, 2021. Accordingly, for said time period only the Second, Third and Fifth causes
17 of action were fully available to Classic Distributing’s Sales Representatives.

18 **B. Discovery and Mediation**

19 Through informal discovery, Plaintiffs and Classic Distributing have exchanged extensive
20 documents and information related to the claims asserted (Hawkins Decl. ¶ 7.) Defendant has
21 produced thousands of pages of information, including timecard records and wage reports of
22 putative Class members. (*Id.*) Defendant also provided Plaintiffs with class data and random
23 samples of time records, wage statements, information regarding the number of non-exempt
24 employees during the relevant time period. (Hawkins Decl. ¶ 8.)

25 After conducting informal discovery, exchanging relevant information and engaging in
26 numerous discussions regarding the claims alleged, on June 30, 2022, the Parties participated in a
27 private mediation with mediator Gig Kyriacou, an experienced wage and hour class action

1 mediator. (Hawkins Decl. ¶ 9.) During the course of the mediation, the Parties exchanged further
2 information and documentation concerning Plaintiffs' claims and Classic Distributing's defenses
3 thereto, and aggressively advocated for their respective positions; however, they did not reach a
4 settlement (*Id.*)

5 After the mediation, the parties continued in settlement negotiations, with the assistance
6 of the mediator. (Hawkins Decl. ¶ 10.) On or about July 14, 2022, the parties reached a settlement
7 in principle of this Action for a maximum settlement amount of \$450,000. (*Id.*) Thereafter, the
8 Parties exchanged multiple drafts of the proposed settlement agreement and class notice
9 documents and engaged in communications regarding the settlement terms (*Id.*) The final terms
10 and provisions of the settlement agreement were approved and executed by all the parties on or
11 about February 7, 2023. (Hawkins Decl. ¶ 11; Exhibit 1- Settlement Agreement.)

12 The Preliminarily Approved Settlement

13 On March 28, 2023, Plaintiffs filed the Motion for Preliminary Approval of Class Action
14 and PAGA Settlement ("Preliminary Approval Motion") and on April 18, 2023, filed a
15 Supplement to the Preliminary Approval Motion. On April 19, 2023, the Court entered the Order
16 granting preliminary approval and preliminarily appointed Class Counsel (James R. Hawkins,
17 Isandra Fernandez and Lance Dacre of James Hawkins APLC), the Class Representatives
18 (Nathaniel Rubero and Ernesto Carranza Aguilar), and the Settlement Administrator (Simpluris,
19 Inc.). The Court also approved the proposed Court Approved Notice of Class Action Settlement
20 and Hearing Date for Final Approval (the "Class Notice"). Now that administration has been
21 completed, subject to the Court's final approval, the fees and expenses will be paid from the
22 Gross Settlement Amount (GSA) of Four Hundred Fifty Thousand Dollars (\$450,000) as follows:

- 23 1. Subject to Court approval, the law firm of James Hawkins, APLC shall be
24 paid \$150,000 in Class Counsel Fees Payment (33.333% of the GSA) and Class Counsel
25 2. Litigation Expenses Payment of \$19,900.00 (Settlement Agreement ¶ 3.2.2, Decl. of
26 Butler, ¶14).
27 3. Subject to Court approval, a Class representative Service Award of \$10,000 shall be paid

1 to each of the named Plaintiffs, for their time and effort pursuing the Action on behalf of the
2 Class (Settlement Agreement ¶ 3.2.1). Subject to Court approval, Settlement Administration Costs
3 shall be deducted from the GSA in the amount of \$11,722 (Butler Decl. ¶ 14) and were estimated
4 at \$12,000 (Settlement Agreement ¶ 3.2.3) Subject to Court approval, \$30,000 will be allocated to
5 the settlement of claims arising under PAGA, of which 75% (\$22,500) will go to the California
6 Labor and workforce Development Agency (the "LWDA Payment"), and 25% (\$7,500) will
7 allocated to the Individual PAGA Payments for Aggrieved Employees. (Settlement Agreement ¶
8 3.2.5.1).

9 4. Payment to Class Members who do not submit a valid request for exclusion, shall be made
10 based on a percentage of the Net Settlement Amount ("NSA") which is the amount remaining
11 after deducting amounts set forth in paragraphs 1-3 above from the GSA. The NSA is to be paid
12 to Participating Class Members as Individual Class Payments (Settlement Agreement ¶ 1.28).

13 5. Settlement Payments shall be allocated as follows for tax purposes: 20% of each
14 Participating Class Member's Individual Class Payment will be allocated to settlement of wage
15 claims (the "Wage Portion") The Wage Portions are subject to tax withholding and will be
16 reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual
17 Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-
18 Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be
19 reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability
20 for any employee taxes owed on their Individual Class Payment (Settlement Agreement ¶
21 3.2.4.1).

22 6. For any Class Member whose Individual Class Payment check or Individual PAGA
23 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
24 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
25 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
26 California Code of Civil Procedure Section 384, subd. (b) (Settlement Agreement ¶ 4.4.3)

1 **C. Dissemination of Class Notice**

2 On May 4, 2023, Counsel for Defendant provided Simpluris with a mailing list containing
3 the name, last known address, Social Security Number, and pertinent employment information
4 during the Class Period for the Class Members. The Class List contained data for 583 unique
5 Class Members (Butler Decl. ¶ 8) On May 17, 2023, after updating the mailing addresses through
6 the NCOA, Notices were mailed via First Class Mail to 583 Class Members contained in the
7 Class List (Butler Decl. ¶¶ 7, 8). Twenty-One (21) Notices were returned by the post office. For
8 those without a forwarding address, Simpluris performed an advanced address search (i.e. skip
9 trace) on all of these addresses by using Accurint, a reputable research tool owned by Lexis-
10 Nexis. Simpluris used the Class Member's name, previous address and Social Security number to
11 locate a more current address. Twenty-one (21) Notices were re-mailed to either a newfound
12 address, with forwarding addresses provided by the United States Postal Service or at the request
13 of the Class Member. No Notices were undeliverable (Butler Decl. ¶ 9)

14 **D. The Settlement Provides Reasonable Compensation to the Class Members**

15 Even without the presumption of fairness and reasonableness, the Settlement is clearly
16 well within the range of reasonableness. Subject to Court approval, the total potential Net
17 Settlement Fund is approximately Two Hundred Eighteen Thousand Two Hundred Seventy -
18 Eight Dollars (\$218,278) (Butler Decl. ¶ 14). All Settlement Class Members will be paid their
19 portion of the Net Settlement Amount. The NSA subject to Court approval, is \$218,278 out of
20 which 60% will be assigned to the Sales Associate Class and 40% to the Sales Representative
21 Class (Settlement Agreement, p.6, ¶ 3.2.4) Thus, the estimated average net recovery for the Sales
22 Associate Class will be approximately \$315.94 (60% of estimated NSA of \$218,000 = \$130,800
23 ÷ 414 Sales Associates) and the average net recovery for the Sales Representative Class will be
24 approximately \$335.38 (40% of the estimated NSA \$218,000 = \$87,200 ÷ 260 Sales
25 Representatives) (Settlement Agreement, p. 6 ¶ 3.2.4.)

26 The predominant claims in this action arise from alleged violations of California law with
27 respect to hours worked, meal breaks and breaks. Specifically, Plaintiffs allege that that they and
28

1 Class Members worked “off the clock” to complete certain tasks for which they did not receive
2 compensation. During the liability period, Plaintiffs contend that they and Class Members were
3 required to work during their meal periods by taking calls from management and/or clients. As
4 Sales Representatives, Plaintiffs allege that they were required to answer calls from their
5 managers and clients while they were off the clock at the end of their shifts. Plaintiffs contend
6 that they and Class Members were not compensated for this “off the clock” work and thus not
7 paid all lawful wages owed including overtime and/or minimum wage (Hawkins Decl. ¶ 12).

8 Plaintiffs and Class Members were also not provided a minimum, uninterrupted 30-minute
9 meal break before the end of the fifth hour of their work shift. Plaintiffs also allege that they and
10 Class Members were not provided a second 30-minute meal period when they worked shifts in
11 excess of 10 hours (Hawkins Decl. ¶ 13). Similarly, with respect to the rest break claim, Plaintiffs
12 allege that, as with the meal breaks, due to the workload, policies, and practices of Defendant,
13 Plaintiffs and Class Members during the liability period, were required to work without being
14 permitted or authorized to take compliant rest breaks. Additionally, Plaintiffs alleged that they
15 and Class Members worked more than 10 hours a day without receiving a third ten-minute rest
16 break. Classic Distributing disputes Plaintiffs’ rest break claim and contends that Class Members
17 were allowed to take ten-minute rest periods and regularly took such breaks (*Id.*)

18 Defendants adamantly deny Plaintiffs’ allegations and maintain that Plaintiffs and Class
19 Members were provided with the opportunity to take all meal and rest periods to which they were
20 entitled. Defendant disputed that any of the claims had merit based upon its written policies
21 (Hawkins Decl. ¶ 14). Defendants also dispute the propriety of certification in this case and
22 contend that its policies and practices concerning the claims asserted in this lawsuit are compliant
23 with California law. Defendants have also denied and continue to deny that the lawsuit is
24 appropriate for class treatment for any purpose other than for settlement (*Id.*).

25 As thoroughly discussed in Plaintiffs’ motion for preliminary approval, Plaintiffs’ counsel
26 estimated the maximum potential liability between \$527,632 and \$1,149,396 that may be owed to
27

1 the putative class, assuming Plaintiffs and the Class were able to obtain an order certifying the
2 class and were also able to fully prove all their claims (Hawkins Decl. ¶ 15).

3 Through their counsel, Plaintiffs took into consideration the significant risk that class
4 certification could be denied on the central claims, or that a merits decision on the central claims
5 would not favor the Class (Hawkins Decl. ¶ 16). Plaintiffs considered the expense and length
6 continued proceedings necessary to continue the Action against Defendant through trial and any
7 possible appeals along with Defendant's financial position (*Id.*). Thus, the settlement for
8 Settlement Class members is fair, reasonable, and adequate, given the inherent risk of litigation,
9 the risk relative to class certification and the costs of pursuing such litigation (*Id.*)

10 **III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE**

11 The law favors settlement, particularly in class actions and other complex cases in which
12 substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation.
13 *City of Seattle* 955 F.2d at 1276; *Potter v Pacific Coast Lumber Company*, (1951) 37 Cal. 2d.
14 592, 602-603.; 4 NEWBERG §11.41. When faced with a motion for final approval of a class
15 action settlement under *Code of Civil Procedure* §382, a court inquires whether the settlement is
16 "fair, adequate, and reasonable." See e.g., *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*,
17 (2010) 186 Cal. App. 4th 399, 407-408; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
18 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801

19 **A. This Court Preliminarily Found This Settlement to be Fair, Adequate and** 20 **Reasonable and Nothing Has Changed to Disturb That**

21 Before granting Final approval of a class action settlement, courts must determine that the
22 proposed settlement is fair, reasonable, and adequate — and not a product of fraud, overreaching,
23 or collusion. Cal. R. Ct. 3.769 (g); Cal. Civ. Pro. Code § 382; *Dunk v. Ford Motor Co.*, supra, 48
24 Cal.App.4th at 1801. Courts must presume that a settlement is fair, reasonable, and adequate, and
25 thus appropriate for Final approval when the following three factors are satisfied: (1) the Parties
26 reached settlement via arms-length negotiations; (2) counsel conducted sufficient investigation
27 and discovery to allow themselves and the court to act intelligently; and (3) counsel is

1 experienced in similar litigation *Id.* at 1802. *See also 7-Eleven Owners for Fair Franchising v.*
2 *Southland Corp.*, (2000) 85 Cal. App. 4th 1135, 1146. Further, as discussed below, although not
3 determinative, courts consider the percentage of objectors in determining whether a presumption
4 of fairness exists. (*Id.*) There is no question that these factors are satisfied here. The Parties
5 conducted a sufficient amount of discovery and participated in a private mediation and numerous
6 conferences of counsel that ultimately led to an arms-length settlement that provides for
7 substantial recovery. Moreover, out of 583 Class Members presumed to have received Class
8 Notice there were no requests for exclusion from, no disputes with, or objections to, the
9 Settlement (Buter Decl. ¶¶ 11-13)

10 1. **The Settlement Resulted From Non-Collusive, Arms-Length Negotiations**

11 There certainly is no collusion between the parties. The involvement of a neutral third-
12 party mediator is a factor that favors approval and evidences the presumptive fairness of the arms-
13 length negotiations. Indeed, courts should give considerable weight to the competency and
14 integrity of counsel and the involvement of a neutral mediator in assuring themselves that a
15 settlement agreement represents an arms-length transaction entered without self-dealing or other
16 potential misconduct *Kullar v. Foot Locker, supra*, 168 Cal. App. 4th at 129. Here, the Parties
17 engaged in a mediation session with a knowledgeable wage and hour mediator Gig Kyriacou
18 (Hawkins Decl. ¶¶ 9,10.)

19 2. **The Settlement is Supported by Substantial Investigative and Discovery**
20 **Efforts**

21 As discussed in the preliminary approval papers, supporting declaration and herein, Class
22 Counsel analyzed a significant amount of information that Defendant produced in response to
23 formal and informal discovery requests and requests in preparation for mediation (Hawkins Decl.
24 ¶¶ 7-9). The Parties have conducted significant investigation of the facts and law during the
25 prosecution of the Action. Class Counsel's research enabled them to pinpoint the relevant issues
26 and claims and to assess potential liability and damages. These efforts resulted in the parties
27 having a clear view of the strengths and weaknesses of their respective cases and achieving a

1 resolution on favorable terms, as was evidenced during mediation and negotiations leading to
2 Settlement (Hawkins Decl. ¶¶ 7-10)

3 **3. Class Counsel is Experienced in Similar Litigation**

4 The endorsement of qualified and well-informed counsel of the settlement as fair is
5 entitled to significant weight. *See Dunk, supra*, 48 Cal.App.4th at 1802. As discussed in the
6 preliminary approval papers and set forth in the declaration of Class Counsel, Class Counsel have
7 represented, mediated, and settled other employee class actions in wage and hour litigation and
8 have knowledge of the strengths and weaknesses of the claims against Defendant and the benefits
9 of the proposed settlement under the circumstances of the case. (Hawkins Decl. ¶¶ 22-25). Class
10 Counsel contends that the Settlement is fair, adequate, reasonable, and in the best interests of the
11 Class as a whole

12 **4. Class Members' Positive Reaction to the Settlement Favors Final Approval.**

13 Finally, courts look at the reaction of class members to determine if a settlement that
14 directly affects their interests should be approved as fair, adequate, and reasonable. As noted
15 above, out of 562 Class Members presumed to have received the Class Notice, there were no
16 objections and no disputes to the Settlement (Butler Decl. ¶¶ 11- 13.)

17 A court may appropriately infer that a class action settlement is fair, adequate, and
18 reasonable even when class members object to it. Indeed, a court may approve a class action
19 settlement as fair, adequate, and reasonable even over the objections of a significant percentage of
20 class members. *See Boyd v. Betchel Corp.* (D.C. Cal 1976) 485 F. Supp. 610, 624. *Reed v.*
21 *General Motors* (5th Cir. 1983) 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec.*
22 *Litig.* (D. Ariz. 1989) 720 F. Supp. 1379, 1394. In our case, there were no objections to the
23 Settlement and no disputes. The Court should construe this as a further indication of Class
24 Members' support for the Settlement as fair, adequate, and reasonable.

25 **IV. CLASS REPRESENTATIVES SERVICE PAYMENT IS REASONABLE**

26 The settlement provides for a Class Representative Service Payment to be paid to the
27 Class Representatives. The purpose is to provide an additional incentive payment, taking into

1 consideration the risks, time and effort in coming forward to fulfill all the duties associated with
2 being a Class Representative. Awarding incentive awards to compensate named plaintiffs in class
3 actions has been specifically recognized. See, e.g., *Clark v. American Residential Services, LLC*,
4 (2009) 175 Cal App 4th 785, 804 (incentive awards to named plaintiff appropriate for
5 participation in class action); *Bell v Farmers Ins. Exchange*, (2004) 115 Cal App 4th 715, 726
6 (upholding “service payments” to named plaintiffs for their efforts in bringing class case).

7 As stated by the Court of Appeal in the *Cellphone Termination Fee Cases*: incentive
8 awards are "intended to compensate class representatives for work done on behalf of the class, to
9 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
10 recognize their willingness to act as a private attorney general." *Cellphone Termination Fee*
11 *Cases*, (2010) 186 Cal. App. 4th 1380, 1394 (approving an incentive award of \$10,000).

12 The Class Representative Service Payment is intended to compensate named Plaintiffs
13 Nathaniel Rubero and Ernesto Carranza Aguilar as the Class Representatives for their willingness
14 to accept the responsibility of representing the interests of all Class Members. The purpose is to
15 provide an incentive payment, taking into consideration the risks, time, and effort expended by
16 her in coming forward to provide invaluable information and to litigate this matter on behalf of all
17 Class Members. The Class Representative Service Payment is also in consideration for executing
18 a general release of all their claims against Defendant (Hawkins Decl. ¶ 18; Declaration of
19 Nathaniel Rubero and Ernesto Carranza Aguilar (“Ruber0” and/or “Carranza” Decl.”) ¶ 8- 10).

20 Plaintiffs also risked potential judgment against them if this case had been unsuccessful.
21 In class action losses, class representatives are deemed the losing party that is liable for the
22 prevailing party’s costs *Earley v. Superior Court*, (2000) 79 Cal. App. 4th 1420, 1433-1434.
23 Finally, Plaintiffs also risked this lawsuit having a negative impact on future employment
24 opportunities, as prospective employers may be less inclined to hire an employee who has served
25 as a class representative (Hawkins Decl. ¶ 19.) See, e.g. *Staton v. Boeing*, 327 F.3d 938, 977 (9th
26 Cir. 2003). As such, Plaintiffs respectfully requests that this Court approve the Class
27 Representative Service Payments in the amount of \$10,000 each.

1 consider is the result for the class. The Supreme Court has said that in an award of attorney's fees
2 the "most critical factor is the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424,
3 436 (1983). The "benefit obtained for the class" is considered the "foremost" consideration in
4 determining the appropriate fee in a common fund case. *In Re Bluetooth*, 654 F.3d at 942.

5 The lodestar-multiplier method begins with a calculation of time spent and reasonable
6 hourly compensation of each attorney and paralegal who worked on the case. Then to compensate
7 counsel for risk, quality, and result, courts commonly apply a "multiplier" to the lodestar in
8 awarding attorneys' fees. California courts often increase the base lodestar with a multiplier after
9 considering: (1) the continuing obligation of plaintiff's counsel to devote time and effort to the
10 litigation; (2) the extent to which the litigation precluded other employment by the attorneys; (3)
11 the contingent nature of the fee agreement, both from the point of view of eventual success on the
12 merits and securing an award; (4) the experience, reputation, and ability of the attorneys who
13 performed the services, and the skill they displayed in litigation; (5) the amount involved and the
14 results obtained on behalf of the class by plaintiff's counsel; and (6) the reaction of the class
15 members. See, e.g. *Serrano*, *supra*, 20 Cal. 3d at 49; *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.
16 App. 4th at 1810 n.21. However, no rigid formula applies, and each factor should be considered
17 only "where appropriate." See *Dept. of Transp. v. Yuki*, (1995) 31 Cal. App. 4th 1754, 1771; See
18 also *Serrano*, *supra*, 20 Cal.3d at 49.

19 **1. Time and Effort**

20 Class Counsel, who are experienced wage and hour class action attorneys, have put a
21 significant number of hours in this case. Class Counsel had to conduct substantial investigation,
22 research numerous issues, review and analyze policies, independently analyze time records, and
23 wage statements, as well as dedicate substantial time to analyze data, time records and payroll
24 records and discuss with class members (Hawkins Decl. ¶¶ 7-9, 22-25). Those efforts, along with
25 negotiating the settlement, attempting to obtain preliminary approval, preparing and filing the
26 final approval papers, required a significant amount of time and labor (*Id.*) Since on or about
27 September 17, 2020, prior to the inception of the filing of this lawsuit on October 5, 2020, the

total amount of attorney time and paralegal time estimated to have been expended, and also estimated to be expended in finalizing this matter, is 213.9 Class Counsels' base lodestar total equates to attorney fees of \$153,530 (Hawkins Decl. ¶¶ 27, 28).

2. Extent Litigation Precluded Other Employment

Inherent to class action litigation is the amount of time and labor required to properly adjudicate the case. From start to settlement, judgment or verdict, class action litigation commands commitment, an extensive amount of time, labor and resources to successfully litigate. Although this litigation did not conclusively preclude other employment it did impact Class Counsels' ability to take on other class action cases. Class Counsel is a boutique law firm with few attorneys and staff (Hawkins Decl. ¶ 23.)

3. Contingent Nature of the Agreement

In *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132, the court noted, the economic rationale for contingency cases has been explained as follows: “A contingent fee must be higher than a fee for the same legal services paid as they are performed. As discussed further below, the contingent fee compensates the lawyer not only for the legal services he renders but also for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.” (Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534, 567.) “A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.” *Id.* Here, Class Counsel took the matter on a contingent basis (Hawkins Decl. ¶ 26)

4. Experience, Reputation, and Ability of Plaintiff's Counsel

As also set forth in the Declaration of James R. Hawkins submitted in support of the Preliminary Approval Motion and discussed herein, Class Counsels' skill and experience in litigating wage and hour class actions, in state and federal forums, contributed to the results obtained on behalf of the putative class members (Hawkins Decl. ¶¶ 20-25).

1 settling this case prior to trial rather than continuing to litigate issues that remain somewhat
2 unsettled, counsel obtained exceptional results for the class at far less expense to the parties, the
3 counsel and to this Court. Accordingly, a positive multiplier of Class Counsels' lodestar is further
4 warranted. "Considering that our Supreme Court has placed an extraordinarily high value on
5 settlement, it would seem counsel should be rewarded, not punished, for helping to achieve that
6 goal." *Lealao, supra*, 82 Cal. App. 4th at 52. Multipliers of two to four are commonplace in
7 California class actions and can range even higher. *Wershba, supra*, 91 Cal. App. 4th at 255; *In re*
8 *California Indirect Purchases* (October 22, 1998) WL1031494 at * 10, fn 5. Again, in this case,
9 as noted above a multiplier is not necessary as the total lodestar amount is more than the
10 requested class counsel fee of \$150,000.

11 **B. Class Counsels' Requested Fees Are Reasonable Under the Percentage of the**
12 **Benefit Method.**

13 **1. Attorney's Fees Should be Based Upon the Total Benefit to the Class.**

14 Under California law, courts have the discretion to award fees under the percentage
15 method when fees are drawn from an ascertainable fund. *See Laffitte v. Robert Half Int'l*, 1 Cal.
16 5th 480, 503 (2016) ("*Laffitte II*") ("We join the overwhelming majority of federal and state
17 courts in holding that when class action litigation establishes a monetary fund for the benefit of
18 the class members, and the trial court in its equitable powers awards class counsel a fee out of that
19 fund, the court may determine the amount of a reasonable fee by choosing an appropriate
20 percentage of the fund created."). The common fund method "better approximates the workings
21 of the marketplace than the lodestar approach" in setting the price of contingent fees. *See Lealao*
22 *v. Beneficial Cal. Inc.* 82 Cal. App. 4th 19, 48 (2000) ("*Lealao*"). The percentage method
23 "provide[s] incentives roughly comparable to those negotiated in the private bargaining that takes
24 place in the legal marketplace." (*Id.*)

25 The primary benefit of the percentage method is that it focuses on the benefit conferred on
26 the class as a result of the efforts of Class Counsel. Awarding Class Counsel fees based on a
27 percentage of the recovery has the advantages of eliminating the incentive for attorneys to

1 increase hours unnecessarily, encouraging early settlement of disputes, and preserving judicial
2 resources otherwise used to monitor attorneys' billable hours. See *In re Activision Sec. Litig.*,
3 (N.D. Cal. 1989) 723 F. Supp. 1373, 1378-79; *MANUAL FOR COMPLEX LITIGATION* 4th ed.
4 §14.121 (2004) ("in practice, the lodestar method is difficult to apply, time consuming to
5 administer, inconsistent in result. . . capable of manipulation,... [and] creates inherent incentive to
6 prolong the litigation"); See also *In re Quantum Health Resources, Inc.* (C.D.Cal. 1997) 962
7 F.Supp. 1254, 1256 (noting that lodestar "creates an incentive to keep litigation going in order to
8 maximize the number of hours included in the court's lodestar calculation").

9 The percentage of the fund method survives in California class action cases. *Laffitte v*
10 *Robert Half Intern, Inc.* (2016) 1 Ca. 4th 480, 506. [See also. *Chavez v. Netflix, Inc.*, (2008) 162
11 Cal. App. 4th 43 at 65, 66; *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.*,
12 (2005) 127 Cal. App. 4th 387, 397 [the common fund doctrine is "frequently applied in class
13 actions when the efforts of the attorney for the named class representatives produce monetary
14 benefits for the entire class"]; *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal. App. 4th at 254.

15 **2. The Contingent Nature of Class Counsel's Representation Supports the**
16 **Requested Fees Based on 33.33% of the GSA.**

17 Further, the contingent nature of Class Counsel's representation also warrants the
18 requested attorney fees based on the percentage of the common fund. The risks in taking on any
19 class action are enormous especially in regards to wage-and-hour class actions because the wage
20 laws are still developing and a change in the law could wipe out a plaintiff's recovery. Litigating a
21 class action through trial takes years and requires the investment of hundreds of thousands of
22 dollars. Attorneys willing to undertake this risk deserve appropriate compensation. As elaborated
23 by the California Supreme Court in *Graham v. Daimler Chrysler Corp.*, (2008) 34 Cal. 4th 553,
24 579-580, counsel should be awarded a fee enhancer for taking on contingent cases because a
25 "contingent fee compensates the lawyer not only for the legal services he renders but for the loan
26 of those services. The implicit interest rate on such a loan is higher because the risk of default (the
27

1 loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of
2 conventional loans."

3 As the California Supreme Court specifically explained:

4 A contingent fee must be higher than a fee for the same legal services paid as they
5 are performed. The contingent fee compensates the lawyer not only for the legal
6 services he renders but for the loan of those services. The implicit interest rate on
7 such a loan is higher because the risk of default (the loss of the case, which cancels
8 the debt of the client to the lawyer) is much higher than that of conventional loans.
A lawyer who both bears the risk of not being paid and provides legal services is
not receiving the fair market value of his work if he is paid only for the second of
these functions. If he is paid no more, competent counsel will be reluctant to
accept fee award cases.

9 *Id.* at 580. (citing *Ketchum v. Moses*, (2001) 24 Cal. 4th 1122, 1132-33).

10 In the legal marketplace, an attorney whose compensation is entirely dependent on success
11 – who takes a significant risk – should and does expect a significantly higher fee than an attorney
12 who is paid a market rate as the case goes along, win or lose. *See, e.g., Rader v. Thrasher*, (1962)
13 57 Cal. 2d 244, 253 (“[a] contingent fee contract, since it involves a gamble on the result, may
14 properly provide for a larger compensation than would otherwise be reasonable” (citation
15 omitted); *Salton Bay Marina v. Imperial Irrig. Dist.*, (1985) 172 Cal. App. 3d 914, 955
16 (contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee
17 award).

18 Class Counsel represented the class members in this matter and has borne the entire risk
19 and costs of litigation on a pure contingency basis. To date, Class Counsel has not received any
20 compensation and expended litigation costs on behalf of the class. Class action contingency cases
21 are inherently risky. Upon retention, Class Counsel makes a commitment to litigate the case
22 through trial. These types of cases can take years, hundreds of hours of work and cost an
23 enormous amount of money; these risks are known upon retention. The risks involved coupled
24 with the contingency basis of this case further support Class Counsel’s request for attorneys’ fees
25 and costs (Hawkins Decl. ¶ 26)

1 **3. Additional Factors re: Contingency Market Rate Justify the Requested**
2 **Fee Award**

3 Further, important public policies underlie a court's determination of a motion for
4 attorneys' fees in class actions. Employees who are wronged by an employer's violation of state
5 and federal labor laws should have access to counsel with the ability and resources necessary to
6 litigate complex cases. *See e.g., Say-On Drug Stores, Inc. v. Superior Court*, (2004) 34 Cal. 4th
7 319, 340 (enforcement of labor laws and class action device both matters of public policy); Our
8 legal system places unique reliance on private litigants to enforce substantive provisions of
9 employment law through class actions. *See e.g. Gentry v. Superior Court*, 42 Cal. 4th 443, 450-6
10 (2007) (confirming the public importance of private enforcement of overtime laws through class
11 actions); *Lealao*, 82 Cal. App. 4th (legal system relies on private litigants to enforce substantive
12 provisions of law through class and derivative actions; attorneys providing the essential
13 enforcement services must be provided incentives roughly comparable to those negotiated in the
14 private bargaining that takes place in the legal marketplace).

15 As the California Court of Appeal recognized in *Thayer v. Wells Fargo Bank, supra*, 92
16 Cal. App. 4th at 839: "Adequate fee awards are perhaps the most effective means of achieving
17 [the] salutary goal [of encouraging `private attorney general actions and] [c]ourts should not be
18 indifferent to the realities of the legal marketplace or unduly parsimonious in the calculation of
19 such fees." *See also Lealao*, 82 Cal.App.4th at 53 (cautioning against fee awards that are too
20 small and therefore "chill the private enforcement essential to vindication of many rights..."). At a
21 minimum, attorneys providing these substantial benefits should be paid an award equal to the
22 amount negotiated in private bargaining that take place in the legal marketplace. *Deposit*
23 *Guaranty Nat. Bank, Jackson, Miss. v. Roper*, (1980) 445 U.S. 326, 338; *Lealao*, 82 Cal. App. 4th
24 at 49-50.

1 4. **Class Counsels' Requested Fee Award is Well Within California's**
2 **Benchmark Awards and Thus Reasonable Under the Percentage of the**
3 **Benefit Method.**

4 Cass Counsel's request for 33.33% of the monetary fund recovered is California's
5 standard benchmark and well within the range customarily approved by the California courts in
6 comparable class actions and other class actions as well as with contingency contracts negotiated
7 by plaintiffs and their counsel. "Empirical studies also show that regardless of whether the
8 percentage method or the lodestar method is used, fee awards in class actions average around
9 one-third of the recovery." See e.g., *Chavez v. Netflix, Inc.*, supra 162 Cal. App. 4th at 66 fn.11;
10 *In re California Indirect Purchases* (October 22, 1998) WL1031494 at * 9(citing to *In re Milk*
11 *Antitrust Litigation* (L.A. Sup. Ct. 1998) Civ. Case No. BC070061 (33 1/3% award); *In re*
12 *Facsimile Paper Antitrust Litigation* (San Francisco Sup. Ct. 1997) Civ. Case No. BC0070061
13 (33 1/3% award) *In re Liquid Carbon Dioxide Cases* (San Diego Sup.Ct.1996) J.C.C.P. 3012 (33
14 1/3% award); *Romero v Producers Dairy Food, Inc.* (E.D. Cal. Nov. 14, 2007) WL 3492841 at *
15 4 ("fee awards in class actions average around one-third of the recovery." (quoting *Newberg on*
16 *Class Actions* § 14.6 (4th ed.2007)).

17 Moreover, the percentage should be measured against the full fund established by the
18 settlement and not upon the total value of the net settlement fund. *Williams v. MGM-Pathe*
19 *Communications Co.*, (9th Cir. 1997)129 F.3d 1026, 1027. This method recognizes that the
20 efforts of class counsel established the entire settlement, including non-monetary benefits, for the
21 benefit of the class. *Id.* In the Ninth Circuit's decision in *Williams*, the parties settled class action
22 claims in favor of the class for a total settlement fund of \$4.5 million, and the district court
23 awarded class counsel attorneys' fees based upon "the class members' claims against that fund.
24 *Williams*, 129 F.3d at 1027. The class counsel in *Williams* contended that the district court erred
25 and should have calculated their fee as one-third of the entire \$4.5 million settlement fund. *Id.*
26 The Ninth Circuit agreed with class counsel and determined that the district court's award of a fee
27 based solely upon the claims against the settlement fund was an abuse of its discretion.

1 Ninth Circuit courts have applied *Williams* in a variety of contexts, including claims made
2 settlements without a minimum or maximum recovery. *See, e.g., Browning v. Yahoo! Inc.*, (N.D.
3 Cal. Nov. 16, 2007) WL 4105971 at *13–14(claims-made settlement with no minimum or
4 maximum recovery); *Young v. Polo Retail*, (N.D. Cal. Mar. 28, 2007) WL 951821 at*14-24
5 (same); *Lopez v. Youngblood*, (E.D. Cal. Sept. 1, 2011) WL 10483569 at *32–43 (reversionary
6 common fund with maximum recovery only). *Hopson v. Hanesbrands Inc.*, (N.D. Cal. Apr. 3,
7 2009) 09 WL 928133 at *11; *Glass v. UBS Financial Services*, (N.D. Cal. Jan. 26, 2007) WL
8 221862 at *16) (same). In sum, Class Counsels’ request for an award of attorney’s fees in the
9 amount of 33.33 % of the maximum settlement amount is reasonable.

10 **VI. CLASS COUNSEL’S REQUESTED COSTS ARE REASONABLE**

11 Class Counsel has not only expended substantial time in diligently prosecuting this
12 Action, but they have also expended considerable resources during litigation with no guarantee
13 that their costs would be reimbursed. The Settlement provides for reasonable actual costs of up to
14 \$20,000.00 (Settlement Agreement ¶ 3.2.2). The attorney cost amount actually incurred is
15 \$19,900.00, thus Class Counsel respectfully requests that the Court approve the incurred amount
16 as per the Settlement Agreement (Hawkins Decl. ¶ 25, Exh. 2.)

17 **VII THE SETTLEMENT ADMINISTRATOR’S REQUESTED EXPENSES** 18 **ARE REASONABLE**

19 Simpluris was retained to administer the notice and claims process. Simpluris’ duties
20 included, among other things: (a) printing and mailing the Court Approved Notice of Class
21 Action Settlement and Hearing Date for Final Court Approval (“Notice”); (b) receiving
22 undeliverable Notices; (c) receiving any requests for exclusion; (d) and answering questions from
23 Class Members. If the Court grants final approval of the Settlement, Simpluris will be
24 responsible among other things, for: (e) calculating individual Settlement payments, distributing
25 funds, and tax-reporting following final approval; (f) mailing Settlement checks; (g) and for such
26 other tasks as the Parties mutually agree or the Court orders Simpluris to perform (Butler Decl. ¶
27 3). Plaintiffs requested that, as per the Settlement Agreement, the Settlement Administrator be

1 awarded costs of administrating the settlement in an amount not to exceed \$12,000 (Settlement
2 Agreement ¶ 3.2.3). As per Simpluris, the costs of administrating the settlement are \$11,722 and
3 should be awarded Simpluris (Butler Decl. ¶ 15).

4 **VII. CONCLUSION**

5 For all of the foregoing reasons, Plaintiffs request that the Court (1) grant final approval of
6 this Settlement and approve distribution to the Settlement Class Members, (2) approve payment
7 of \$30,000 in payment of PAGA penalties, (3) approve Settlement Administrator costs in the
8 amount of \$11,722. (4) approve the request for a \$10,000 Class Representative Service Payment
9 to each of the named Plaintiffs Nathaniel Rubero and Ernesto Carranza Aguilar, and (5) approve
10 Class Counsel's request for an award of \$150,000 in attorneys' fees and \$19,900.00 in costs.
11 Finally, Plaintiffs request that the Court enter the [Proposed] Order Granting Final Approval of
12 Class Action and PAGA Settlement, filed concurrently herewith.

13 Respectfully submitted,

14
15 Dated: October 13, 2023

JAMES HAWKINS, APLC

16
17 

James R. Hawkins, Esq.

Isandra Y. Fernandez, Esq.

Lance Dacre, Esq.

Kacey E. Cook, Esq.

Attorneys for Plaintiffs

Nathaniel Rubero and Ernesto Carranza Aguilar

PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On October 13, 2023, I served on the interested parties in this action the following document(s) entitled:

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; [PROPOSED] ORDER

DECLARATION OF JAMES R. HAWKINS IN SUPPORT OF THE MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

[XX] BY CASEANYWHERE: Via electronic filing service provider—electronically transmitting the documents listed above to CaseAnywhere, an electronic filing service provider, at www.caseanywhere.com pursuant to the Court's Order Authorizing Electronic Service. The transmission(s) was reported as complete and without error to the addresses as stated on the service list below.

SERVICE LIST

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Attorneys for Defendant,
**CLASSIC DISTRIBUTING AND
BEVERAGE GROUP, INC.**

[XX] STATE: I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on October 13, 2023, at Irvine, California.


Irma Ceja