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Attorneys for Plaintiffs NATHANIAL RUBERO
ERNESTO CARRANZA AGUILAR on behalf of themselves
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

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT; DECLARATION OF
JAMES R. HAWKINS IN SUPPORT
THEREOF; [PROPOSED] ORDER**

Date: April 19, 2023
Time: 10:30 a.m.
Dept.: 1

PLEASE TAKE NOTICE THAT on April 19, 2023, in Department 1 of the above-entitled court located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs Nathaniel Rubero and Ernesto Carranza Aguilar (“Plaintiffs”) will and hereby do move the Court for an Order (1) provisionally certifying the Class for Settlement purposes only; (2) provisionally approving James Hawkins and Isandra Fernandez and Lance Dacre from the law firm of James Hawkins, APLC, as counsel for Plaintiffs and the Class Members in this matter, (3) provisionally approving Nathaniel Rubero and Ernesto Carranza Aguilar as the Class Representatives; (4) approving Simpluris, Inc. as the Settlement Administrator; (5) preliminarily approving the class action settlement; and (6) approving and directing distribution of the Court Approved Notice of Class Action Settlement and Hearing Date for Final Approval.

This Motion is made pursuant to Rule 3.769 of the California *Rules of Court*, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify a class for settlement purposes. The basis for this Motion is that the proposed Settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to participate in, opt out of, or object to the Settlement.

This Motion will be based on the Memorandum of Points and Authorities included herein, the Declaration of James R. Hawkins, the Class and PAGA Settlement Agreement attached to the Declaration of James R. Hawkins as Exhibit A, and upon the oral arguments of counsel (should there be any) and upon the complete records and file herein.

DATED: March 28, 2023

JAMES HAWKINS APLC

By:

James R. Hawkins, Esq

Isandra Y. Fernandez, Esq.

Lance Dacre, Esq.

Kacey E. Cook, Esq.

Attorneys for Plaintiffs

Nathaniel Rubero and Ernesto Carranza Aguilar

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On October 5, 2020, Plaintiffs Nathaniel Rubero and Ernesto Carranza Aguilar filed this
4 wage and hour class action (“Lawsuit” or “Action”) on behalf of themselves and all employees
5 employed by, or formerly employed by Classic Distributing Food & Beverage, Inc., (hereinafter
6 “Defendant” and/or “Classic Distributing”) (Plaintiffs and Defendant collectively referred to as
7 “Parties”) who occupied non-exempt hourly positions, or primarily employed in executive,
8 professional or administrative capacities in the state of California (“Class Action Complaint”).
9 The Lawsuit seeks recovery of alleged unpaid wages, premium wages and penalties pursuant to
10 California Labor Code, California Industrial Welfare Commission (“IWC”) Wage Orders, Bus. &
11 Prof. Code § 17200 and PAGA. The action further seeks an award of attorneys’ fees, interest and
12 costs. Classic Distributing denies the claims alleged and disputes any liability for the damages
13 sought.

14 Subject to Court approval, the Parties have reached a settlement of the claims asserted on
15 behalf of the class and representative PAGA group in this Lawsuit for a total of Four Hundred
16 Fifty Thousand Dollars \$450,000 (hereinafter “Gross Settlement Amount” or “GSA”), which
17 includes Individual Class Payments, Individual PAGA Payments, the Labor and Workforce
18 Development Agency PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class
19 Representative Service Payment and the Administrator’s Expenses.(the “Action”) **This is a cash**
20 **settlement.** Every Class Member who does not opt out of the Settlement will automatically be
21 mailed an individual settlement payment. However, every Class Member who is also within the
22 PAGA group will be mailed their respective individual class payment associated with the PAGA
23 penalty portion of the settlement amount regardless of opt-out status. There is no claims filing
24 process, and Class Members do not have to file a claim to be mailed a payment.

25 As discussed more thoroughly below, the proposed Settlement satisfies all of the criteria
26 for preliminary settlement approval under California law and falls well within the range of proper
27 approval. As such, Plaintiffs move this Court to: (i) provisionally certify the proposed Class; (ii)
28 provisionally approve James Hawkins, Isandra Fernandez and Lance Dacre from the law firm of

1 JAMES HAWKINS, APLC as class counsel for Plaintiffs and the Class in this matter; (iii)
2 provisionally approve named Plaintiffs Nathaniel Rivera and Ernesto Carranza Aguilar as the
3 class representatives; (iv) appoint Simpluris, Inc. as the settlement administrator; (v) grant
4 preliminary approval of the Class Action and PAGA Settlement Agreement (hereinafter
5 “Settlement Agreement”); (vi) direct distribution of the Court Approved Notice of Class Action
6 Settlement and Hearing Date for Final Approval on the terms and conditions set forth in the
7 Settlement Agreement; and (vii) schedule a final approval hearing.

8 **II. FACTUAL BACKGROUND**

9 On October 5, 2020, Plaintiffs Nathaniel Rubero and Ernesto Carranza Aguilar initiated
10 this action in the Superior Court for the County of Los Angeles on behalf of themselves and all
11 others similarly situated, styled *Rubero et al. v. Classic Distributing ad Beverage Group*, No.
12 20STCV38353. The Complaint asserts causes of action for; (1) failure to pay lawful wages
13 including overtime wages; (2) failure to provide lawful meal periods or compensation in lieu
14 thereof; (3) failure to provide lawful rest periods or compensation in lieu thereof; (4) failure to
15 pay timely wages; (5) failure to indemnify employee expenses (6) knowing and intentional failure
16 to comply with itemized employee wage statement provisions; and (7) violations of the unfair
17 competition law (Bus. & Prof. Code § 17200 *et seq.*) (the “Action”). (See Declaration of James R.
18 Hawkins “Hawkins Decl.” ¶ 2.)

19 On October 5, 2020, Nathaniel Rubero and Ernesto Carranza Aguilar provided notice to
20 the Labor and Workforce Development Agency (“LWDA”) of their intent to pursue Defendant
21 for all civil penalties arising from Defendant’s alleged failure to, inter alia, pay all wages earned
22 including failure to provide proper rest periods and meal breaks, failure to reimburse employee
23 expenses, failure to provide accurate wage statements to Plaintiffs and other similarly situated
24 aggrieved employees (Hawkins Decl. ¶ 3). On January 28, 2021, Plaintiffs filed a First Amended
25 Complaint, which included one additional cause of action for violations of the Private Attorney
26 General Act (Labor Code § 2699 *et seq.*) (“PAGA”). (Hawkins Decl., ¶ 4.)

27 Plaintiffs bring this action pursuant to Labor Code 200, 201, 202, 203, 204, 221, 225, 226,
28 226.7, 510, 512, 1194, 1199, 2802 and California Code of Regulations, Title 8, section 11040 *et*

1 *seq.* seeking unpaid lawful wages, unpaid rest and meal period compensation, unreimbursed
2 business expenses, penalties and other equitable relief, and reasonable attorneys' fees and costs.
3 Pursuant to Business and Professions Code sections 17200 through 17208, Plaintiffs also seek
4 restitution for unpaid wages, as well as civil penalties pursuant to PAGA based on the alleged
5 violations of the aforementioned Labor Code sections.

6 Throughout this litigation, Defendant has denied Plaintiffs' allegations and raised defenses
7 to their claims, individually and on a representative basis. (Hawkins Decl. ¶ 5.) Defendant
8 maintains that its employment policies and practices meet the requirements of the Labor Code
9 and applicable Wage Orders. (*Id.*) To date, no motion for class certification has been filed, no
10 class has been certified and the Court has not made any findings that Classic Distributing engaged
11 in any wrongdoing or in violation of any state law, rule or regulation, with respect to the issues
12 presented in the litigation. (Hawkins Decl. ¶ 6.)

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

19 After conducting informal discovery, exchanging relevant information and engaging in
20 numerous discussions regarding the claims alleged, on June 30, 2022, the parties participated in a
21 private mediation with mediator Gig Kyriacou, an experienced wage and hour class action
22 mediator. (Hawkins Decl. ¶ 9.) During the course of the mediation, the parties exchanged further
23 information and documentation concerning Plaintiffs' claims and Classic Distributing's defenses
24 thereto, and aggressively advocated for their respective positions; however, they did not reach a
25 settlement (*Id.*)

26 After the mediation, the parties continued in settlement negotiations, with the assistance
27 of the mediator. (Hawkins Decl. ¶ 10.) On or about July 14, 2022, the parties reached a settlement
28 in principle of this Action for a maximum settlement amount of \$450,000. (*Id.*) Thereafter, the

1 Parties exchanged multiple drafts of the proposed settlement agreement and class notice
2 documents and engaged in communications regarding the settlement terms (*Id.*) The final terms
3 and provisions of the settlement agreement were approved and executed by all the parties on or
4 about February 7, 2023. (Hawkins Decl. ¶ 11; Exhibit A- Settlement Agreement.)

5 Based on their own respective independent investigations and evaluations and after taking
6 into account the sharply disputed factual and legal issues involved in this matter, the risks
7 attending further prosecution in light of certification issues faced due to the *Brinker Rest. Corp. v.*
8 *Super. Ct.*, (2012) 53 Cal. 4th 1004 (“*Brinker*”) decision, the discovery and investigation
9 conducted to date, Plaintiffs and their counsel are of the opinion that settlement for the
10 consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and
11 adequate and is in the best interests of the named Plaintiffs and Class Members. (Hawkins Decl. ¶
12 12.)

13 **III. SUMMARY OF SETTLEMENT TERMS**

14 **A. Class Members**

15 “Class Member” or “Settlement Class Member” means a member of either the Sales
16 Representative Class or the Sales Associate Class, from October 5, 2019 to June 30, 2022 (the
17 “Class Period”). (Settlement Agreement, p.1, ¶ 1.5, 1.9.) “Sales Associate Class” means all
18 persons employed by Classic Distributing in California and classified as a non-exempt Sales
19 Associate during the Class Period. “Sales Representative Class” means all persons employed by
20 Classic Distributing in California and classified as a non-exempt Sales Representative during the
21 Class Period. (Settlement Agreement, p. 4, ¶ 1.45, 1.46.)

22 **B. Allocation of the Gross Settlement Amount**

23 1. The total maximum amount of settlement is Four Hundred Fifty Thousand Dollars
24 (\$450,000) (the “Gross Settlement Amount”) (Settlement Agreement, p. 2, ¶ 1.22.) The Gross
25 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,
26 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
27 Service Payment and the Administrator’s Expenses. (*Id.*)
28

2. Subject to Court approval, the law firm of James Hawkins APLC shall be paid \$150,000 and a Class Counsel Litigation Expenses Payment of not more than \$20,000. (Settlement Agreement, p. 5, ¶ 3.2.2.)

3. Subject to Court approval, Class Representatives shall be paid Service Payments of not more than \$10,000 each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as a Participating Class Member). (Settlement Agreement, p. 5, ¶ 3.2.2.)

4. Subject to Court approval, the Settlement Administrator shall be paid an Administrator Expenses Payment not to exceed \$12,000 except for a showing of good cause. To the extent the Administration Expenses are less or the Court approves payment less than \$12,000, the Administrator will retain the remainder in the Net Settlement Amount (Settlement Agreement, p.6, ¶ 3.2.3.)

5. Subject to Court approval, the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount is \$30,000, of which 25% (\$7,500.00) will be allocated to the Aggrieved Employees and 75% (\$22,500.00) to LWDA (the “LWDA PAGA Payment”) in settlement of PAGA claims. (Settlement Agreement, p.3, ¶ 1.34; p. 6, ¶ 3.2.5.)

6. Subject to Court approval, the Net Settlement Amount (“NSA”) means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Settlement Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments (Settlement Agreement, p. 3, ¶ 1.28.)

7. Each Individual Class Payment shall be allocated as follows: a) twenty percent (20%) to wages subject to IRS Form W-2 reporting and applicable taxes/withholdings and b) eighty percent (80%) to interest and penalties for which an IRS Form 1099 will be issued.; (Settlement Agreement, p. 6, ¶ 3.2.4.1.)

8. Employer’s share of payroll taxes will be paid separately by Defendant (Settlement Agreement. (Settlement Agreement, p. 7, ¶ 4.3.)

1 Here, there are approximately 674 putative Class Members consisting of 414 Sales
2 Associate Class Members and 260 Sales Representative Class Members. (Settlement Agreement,
3 p. 7, ¶ 4.1.) The NSA subject to Court approval, is \$218,000 out of which 60% will be assigned to
4 the Sales Associate Class and 40% to the Sales Representative Class (Settlement Agreement, p.6,
5 ¶ 3.2.4) Thus, the estimated average net recovery for the Sales Associate Class will be
6 approximately \$315.94 (60% of estimated NSA of \$218,000 = \$130,800 ÷ 414 Sales Associates)
7 and the average net recovery for the Sales Representative Class will be approximately \$335.38
8 (40% of the estimated NSA \$218,000 = \$87,200 ÷ 260 Sales Representatives) (Settlement
9 Agreement, p. 6 ¶ 3.2.4.)¹ These average net recovery amounts are significantly more than other
10 wage and hour class action settlements approved by California state and federal courts. *See, e.g.,*
11 *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.)
12 (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-
13 3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately \$65); *Sorenson v.*
14 *Defendants, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of
15 approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County
16 Super. Ct.) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case
17 No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20); and *Jones v.*
18 *Bath& Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of
approximately \$50).

19 **C. Released Claims Summary**

20 Effective on the date when Classic Distributing fully funds the entire Gross Settlement
21 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
22 Payments, Plaintiffs, Participating Class Members, and Aggrieved Employees will release claims
23 against all Released Parties as set forth below. (Settlement Agreement, p. 8, ¶ 6.) Here, “Released
24 Parties” means Classic Distributing and each of its former and present directors, officers,
25

26 ¹ This 60/40 allocation between Sales Associates and Sales Representatives, respectively, reflects the fact that certain
27 of the Sales Representative’s claims in this Action are limited in this matter by a prior settled lawsuit, *Juan Carlos*
28 *Rios v. Classic Distributing and Beverage Group, Inc.*, LASC Case No. 20PSCV00012 (“Rios”) brought on behalf of
Classic’s Sales Representatives. The Rios settlement encompasses overtime and derivative claims, for Sales
Representatives, but not Sales Associates, from May 1, 2018 through December 2021.

1 shareholders, owners, attorneys, insurers, predecessors, successors, and assigns (Settlement
2 Agreement, p. 3, ¶ 1.41.)

3 1) Release by Participating Class Members

4 All Participating Class Members, on behalf of themselves and their respective former and
5 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
6 Released Parties from (i) all claims that were alleged, or reasonably could have been alleged,
7 based on the Class Period facts stated in the Operative Complaint and ascertained in the course of
8 the Action including, (a) any and all claims involving any alleged failure to pay minimum wage;
9 (b) any and all claims involving any alleged failure to provide meal periods or compensation in
10 lieu thereof; (c) any and all claims involving any alleged failure to provide rest periods or
11 compensation in lieu thereof; (d) any and all claims involving any alleged failure to pay timely
12 wages; (e) any and all claims involving any alleged failure to reimburse employee expenses; (f)
13 any and all claims involving any alleged failure to provide accurate, itemized wage statements;
14 and (g) any and all claims involving any alleged violations of the business and professions code §
15 17200 *et seq.* Except as set forth below, Participating Class Members do not release any other
16 claims, including claims for vested benefits, wrongful termination, violation of the Fair
17 Employment and Housing Act, unemployment insurance, disability, social security, workers'
18 compensation, or claims based on facts occurring outside the Class Period (Settlement
19 Agreement, p. 9, ¶ 6.2.)

20 2) Release by Aggrieved Employees

21 All Participating and Non-Participating Class Members (i.e. Class Members who validly
22 opt out of the Settlement (Settlement Agreement, p. 3, ¶1.29)) who are Aggrieved Employees are
23 deemed to release, on behalf of themselves and their respective former and present
24 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
25 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been
26 alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA
27 Notice including (a) any and all claims involving any alleged failure to pay minimum wage; (b)
28 any and all claims involving any alleged failure to provide meal periods or compensation in lieu

1 thereof; (c) any and all claims involving any alleged failure to provide rest periods or
2 compensation in lieu thereof; (d) any and all claims involving any alleged failure to pay timely
3 wages; (e) any and all claims involving any alleged failure to reimburse employee expenses; and
4 (f) any and all claims involving any alleged failure to provide accurate, itemized wage statements
5 (Settlement Agreement, p. 9, ¶ 6.3.)

6 3) Plaintiffs' Release

7 Plaintiffs and their respective former and present spouses, representatives, agents,
8 attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released
9 Parties from all claims, transactions, or occurrences that occurred during the Class Period,
10 including, but not limited to: (a) all claims that were, or reasonably could have been, alleged
11 based on the facts contained in the Operative Complaint and (b) all PAGA claims that were, or
12 reasonably could have been, alleged based on facts contained in the Operative Complaint,
13 Plaintiffs' PAGA Notice, or ascertained during the Action and released under 6.2 of the
14 Settlement Agreement. ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims
15 or actions to enforce the Settlement Agreement, or to any claims for vested benefits,
16 unemployment benefits, disability benefits, social security benefits, workers' compensation
17 benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs
18 acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or
19 law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release
20 shall be and remain effective in all respects, notwithstanding such different or additional facts or
21 Plaintiffs' discovery of them. (Settlement Agreement, p.8, ¶ 6.1.)

22 **D. Notice Procedure**

23 Subject to Court approval of the Settlement, Classic Distributing will deliver the Class
24 Data to the Administrator not later than 15 days after Preliminary Approval. (Settlement
25 Agreement, p. 7, ¶ 4.2.) No later than fourteen (14) days after the Effective Date, Defendant shall
26 fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Classic
27 Distributing's share of payroll taxes by transmitting the funds to the Administrator. (Settlement
28 Agreement, p. 7, ¶ 4.3.)

1 Using best efforts to perform as soon as possible, and in no event later than 14 days after
2 receiving the Class Data, the Administrator will send to all Class Members identified in the Class
3 Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish
4 translation, if applicable, in the form attached to the Settlement Agreement as Exhibit A. The first
5 page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class
6 Payment and/or Individual PAGA Payment payable to the Class Member, and the number of
7 Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before
8 mailing Class Notices, the Administrator shall update Class Member addresses using the National
9 Change of Address database (Settlement Agreement, pp.10,11 ¶ 8.4.2).

10 The Notice that is mailed out to Class Members shall be the Court-Approved Notice of
11 Class Action Settlement and Hearing Date for Final Court Approval (Exhibit A to the Settlement
12 Agreement). No later than three (3) business days after receipt of the Class Data, the
13 Administrator shall notify Class Counsel that the list has been received and state the number of
14 Class Members, PAGA Members, Workweeks, and PAGA Pay Periods in the Class Data
15 (Settlement Agreement, p.10, ¶ 8.4.1.)

16 Every Class Member who does not submit a timely and valid Request for Exclusion is
17 deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
18 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
19 Members’ Releases under Paragraphs 6.2 and 6.3 of the Settlement Agreement, regardless
20 whether the Participating Class Member actually receives the Class Notice or objects to the
21 Settlement (Settlement Agreement, pp. 11,12, ¶ 8.5.3.)

22 Not later than 3 business days after the Administrator’s receipt of any Class Notice
23 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any
24 forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
25 the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to
26 the most current address obtained. The Administrator has no obligation to make further attempts
27 to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a
28 second time. (Settlement Agreement, p. 11, ¶ 8.4.3.)

1 **IV. CALIFORNIA RULES OF COURT § 3.769 APPROVAL PROCESS**

2 A class action may not be dismissed, compromised or settled without approval of the
3 Court. (*Wershba v. Apple Computer, Inc.*, (2001) 91 Cal. App. 4th 224, 240; Cal. Rules of Court,
4 Rule 3.769.) The approval or rejection of the proposed settlement is committed to this Court's
5 sound discretion. (*Wershba*, 91 Cal. App. 4th at 234-235.) A court's decision to approve a class
6 action settlement may be reversed only upon a strong showing of "clear abuse of discretion."
7 (*Class Plaintiffs v. City of Seattle*, (9th Cir. 1992) 955 F.2d 1268, 1276.) The purpose of the
8 court's preliminary evaluation of the proposed settlement is to determine whether it is within the
9 "range of reasonableness" and thus, whether the notice to the class is appropriate. (NEWBERG,
10 §11.25 at 11-36-37.)

11 According to this procedure, Plaintiffs request this Court to provisionally certify the
12 proposed class for settlement purposes – conditional upon final approval of the settlement. The
13 practical purpose of provisional class certification is to facilitate distribution to all Class Members
14 of notice of the terms of the proposed Settlement and the date and time of the final approving
15 hearing. Additionally, Plaintiffs request this Court to preliminarily approve the Settlement as fair,
16 adequate and reasonable as set forth below.

17 **V. PRELIMINARY APPROVAL OF SETTLEMENT IS APPROPRIATE**

18 The law favors settlement, particularly in class actions and other complex cases in which
19 substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation.
20 (*City of Seattle* 955 F.2d at 1276; *Potter v. Pacific Coast Lumber Company*, (1951) 37 Cal. 2d.
21 592, 602-603.; 4 NEWBERG § 11.41.) To grant preliminary approval of this class action
22 settlement, the Court need find only that the settlement falls within the "range of reasonableness."
23 (*North County Contractor's Ass. Inc. v. Touchstone Ins. Svcs.*, (1994) 27 Cal. App. 4th 1085,
24 1089-1090.) In determining whether a class settlement is fair, adequate and reasonable, courts
25 must consider the following relevant factors: the strength of the plaintiff's case, the risk, expense,
26 complexity and likely duration of further litigation, the risk of maintaining class action status
27 through trial, the amount of offered settlement, the extent of discovery completed and the range of
28 the proceedings, and the experience and views of counsel. (*Dunk v. Ford Motor Co.*, (1996) 48

1 Cal. App. 4th 1794, 1801; *Clark v. American Residential Services, LLC*, (2009) 175 Cal. App.
2 4th. 785,799.) The list of factors is not exclusive and the court is free to engage in a balancing and
3 weighing of the factors depending on the circumstances of each case.” (*Clark*, 175 Cal. App. 4th
4 at 799; *Wershba*, 91 Cal. App. 4th at 245.)

5 Furthermore, courts must give “proper deference to the private consensual decision of the
6 parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement
7 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a
8 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
9 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
10 adequate to all concerned.” (*Hanlon v. Chrysler Corp.*, (9th Cir. 1998), 150 F.3d 1011, 1027.)

11 **A. The Terms of the Proposed Settlement are Fair**

12 A preliminary review of the terms of the Settlement Agreement provides no reason to
13 doubt its fairness. A presumption of fairness exists where: 1) the settlement is reached through
14 arms-length negotiations; 2) investigation and discovery are sufficient to allow counsel and the
15 court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of
16 objectors is small. (*Dunk v. Ford Motor Co.*, *supra*, at 1802.) The first three of these factors apply
17 at the preliminary approval stage; the percentage of objectors is determinable only at the final
18 approval stage.

19 1. The Settlement Was Reached Through Extensive Arm’s Length Bargaining and
20 Based on the Recommendation Proposed by the Mediator

21 As already discussed herein, the Parties have conducted themselves in informed, good
22 faith arm's-length negotiations after exchanging extensive information about the claims and
23 defenses of this lawsuit and engaging in pre-mediation and post mediation discussions aimed at
24 settling their dispute. In attempts to settle this lawsuit, the Parties participated in a full day
25 mediation with mediator Gig Kyriacou (Hawkins Decl., ¶ 9.) In sum, armed with all of the
26 relevant information and with the help of an experienced mediator, counsel for the parties
27 participated in lengthy, serious and informed negotiations which has resulted in the proposed
28 Settlement Agreement that is now placed before this Court.

1 2. Investigation and Discovery Were Sufficient For the Parties to Evaluate the Risks
2 Intelligently

3 Plaintiffs conducted significant investigation of the facts and law both before and after the
4 Action was filed. Plaintiffs' counsel reviewed voluminous supporting documents provided by
5 Defendant through discovery and in exchanges of information in preparation for mediation.
6 (Hawkins Decl., ¶¶ 6-9.)

7 3. Plaintiffs' Counsel is Experienced in Similar Litigation

8 Moreover, counsel for Plaintiffs has represented, mediated and settled other employee
9 class actions in wage and hour litigation and have knowledge of the strengths and weaknesses of
10 the claims against Classic Distributing and the benefits of the proposed Settlement under the
11 circumstances of the case. (Hawkins Decl., ¶ 13,-16.)

12 **B. The Settlement Provides for Reasonable Compensation to Class Members**

13 In seeking approval, a settling party must provide sufficient information to "enable the
14 court to make an independent assessment of the adequacy of the settlement terms." *Kullar v.*
15 *Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law
16 that a cash settlement amounting to only a fraction of the potential recovery will not per se render
17 the settlement inadequate or unfair." See *Officers for Justice v. Civil Serv. Comm'n of City & Cty.*
18 *of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). "The proposed settlement is not to be judged
19 against a hypothetical or speculative measure of what might have been achieved by the
20 negotiators." *Id.* at 625. "Estimates of a fair settlement figure are tempered by factors such as the
21 risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often
22 measured in years)." *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act*
23 *(FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the claims
24 within a realistic range of outcomes, the settling plaintiff should discount the value of the settled
25 claims for risks such as changes in the law, the probability of success, and other factors.

26 Settling parties are not, however, required to partake in a hypothetical accounting
27 exercise: "**Kullar does not ... require any such explicit statement of [maximum] value;** it
28 requires a record which allows 'an understanding of the amount that is in controversy and the

1 realistic range of outcomes of the litigation.” *Munoz v. BCI Coca-Cola Bottling Co.*, (2010), 186
2 Cal. App. 4th 399, 409-10 (citing *Kullar*, 168 Cal. App. 4th at 120 (emphasis added). Overall,
3 “the most important factor” in determining “whether a settlement is fair and reasonable” is the
4 “strength of the case for plaintiffs on the merits, balanced against the amount offered in the
5 settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As discussed further
6 below, the recovery of \$450,000 for the Settlement Class and PAGA aggrieved employees is well
7 within the range of reasonableness and undeniably fair, adequate and reasonable considering the
8 risks and hurdles of continued litigation.

9 Based on documents and information produced by Defendants in formal discovery, in
10 preparation for mediation and during settlement negotiations and taking into account the nature of
11 the claim and Defendant’s defenses thereto, Plaintiffs’ counsel estimated the maximum potential
12 liability as follows:

13 a. Failure to Pay Lawful Wages for All Hours Worked

14 From the records provided, and based on Defendant’s representation, Plaintiffs understood
15 the average hourly rate of pay for the Sales Representatives to be approximately \$19.63 and for
16 Sales Associates to be approximately \$16.17. During the Class Period, the Sales Associates
17 worked a collective total of approximately 17,000 workweeks/66,300 shifts and the Sales
18 Representative worked a total of approximately 13,350 workweeks/52,065 shifts. Plaintiffs
19 calculated the estimated, potential maximum value for this claim based on an allocated 45
20 minutes of underpaid overtime per shift as \$2,355,227 (Sales Associates \$24.25 hourly overtime
21 rate x .75 x 66,300 = \$1,205,831 plus Sales Representatives \$29.44 hourly overtime rate x .75 x
22 52,056 shifts = \$1,149,396). Taking into consideration the nature of the claim and Defendant’s
23 defenses thereto including the inability to establish the violation with respect to all of the Class
24 Members, this claim was valued in the 15% to 10% violation rate and thus between an estimated
25 maximum of \$353,284 and \$235,523 for purposes of settlement. (Hawkins Decl., ¶ 18(a).)

26 Plaintiffs’ claim for failure to pay wages owed is based on allegations that they and Class
27 Members worked “off the clock” to complete certain tasks for which they did not receive
28 compensation. During the liability period, Plaintiffs contend that they and Class Members were

1 required to work during their meal periods by taking calls from management and/or clients. As
2 Sales Representatives, Plaintiffs allege that they were required to answer calls from their
3 managers and clients while they were off the clock at the end of their shifts. Plaintiffs contend
4 that they and Class Members were not compensated for this “off the clock” work and thus not
5 paid all lawful wages owed including overtime and/or minimum wage.² (*Id.*)

6 Defendant adamantly disputes Plaintiffs’ allegations that employees were required to
7 perform any work “off the clock” during meal breaks and/or at the end of their shifts and claimed
8 that Plaintiffs lacked evidence of any “off the clock” work. Further, Defendant asserts that this
9 claim would be difficult to certify given the predominance of the individualized inquiry as to the
10 whether, and to what extent, each Class Member performed work “off the clock.” (*Id.*)

11 b. Meal Period Claim

12 The meal period violation claim is based primarily on allegations that Classic Distributing
13 failed to provide an uninterrupted 30-minute meal break by the end of the fifth hour and failed to
14 pay putative Class Members, one hour of pay at their regular rate of compensation for each
15 workday that a meal period was not lawfully provided. As already discussed herein, due to the
16 workload requirements, and Defendant’s policies and practices, Plaintiffs allege that they and
17 Class Members routinely worked in excess of five hours without being provided a compliant
18 thirty-minute meal break. Further, when Plaintiffs and Class Members worked shifts in excess of
19 ten hours, they were not provided with a second thirty-minute meal break. (Hawkins Decl., ¶
20 18(b).)

21 Defendant denies Plaintiffs’ allegations and maintains that they and Class Members were
22 provided with the opportunity to take full, 30-minute meal periods to which they were entitled as
23 per compliant company policies. Further, Defendant adamantly disputes the propriety of
24 certification in this case. Defendant’s position is that, under the holding in *Brinker* and other state
25 and federal decisions, Defendant fulfilled its legal obligations to non-exempt employees by

26
27 ² As noted above, with respect to the Sales Representatives, their failure to pay overtime wage is limited in this
28 matter by the previously-settled Rios lawsuit. The *Rios* settlement encompasses overtime and derivative claims, for
Sales Representatives only, from May 1, 2018 through December 2021.

1 providing them with timely and proper meal periods. Additionally, Defendant paid meal break
2 premiums during the class period. The maximum estimated liability for the meal break claim,
3 based on a 100% violation is \$2,094,107 (66,3000 shifts x \$16.17 = \$1,072,071 plus 52,065 shift
4 x \$19.63 = \$1,022,036) which assumes a meal break violation during every work shift. However,
5 taking into consideration the nature of the claim, Defendant's defenses and certification issues
6 faced due to *Brinker*, for purposes of settlement, the meal break claim was valued between and
7 estimated maximum of \$209,411 (10%) and \$104,705.35 (5%). (*Id.*)

8 c. Rest Period Claim

9 The rest period violation claim is primarily based on allegations that, as with the meal
10 breaks, due to the workload, policies, and practices of Defendant, Plaintiffs and Class Members
11 during the liability period, were required to work without being permitted or authorized to take
12 compliant rest breaks. Additionally, Plaintiffs alleged that they and Class Members worked
13 more than 10 hours a day without receiving a third ten-minute rest break. Classic Distributing
14 disputes Plaintiffs' rest break claim and contends that Class Members were allowed to take ten
15 minute rest periods and regularly took such breaks. Taking into consideration the nature of the
16 claim, Defendant's defenses and certification issues faced due to *Brinker*, for purposes of
17 settlement, the rest break claim was valued between an estimated maximum of \$209,441 (10%)
18 and \$0 (Hawkins Decl., ¶ 18 (c).)

19 d. Failure to Reimburse Employee Expenses

20 This claim is based on Plaintiffs' allegations that, during the Class Period, they and Class
21 Members were required to use their personal phones in the performance of their job duties. For
22 example, Plaintiffs and Class Members were required to clock in and out for their shifts and meal
23 breaks on the MobileCast App. It appears that some Class Members were required to download
24 the App onto their personal phones while others, the Sales Representatives in particular, had work
25 phones issued to them. Nevertheless, Plaintiffs and other Class Members were still frequently
26 contacted on their personal phones, especially when not on the clock and if they could not be
27 reached on the work phone. Plaintiffs and Class Members did not receive any reimbursement
28 from Defendant for the use of their personal phones in the performance of their job duties

1 ((Hawkins Decl. ¶ 18(d).)

2 Defendant disputes this allegation and contends that the Class Members were not required
3 to use their personal phones in the performance of their job duties and, in fact, were issued
4 company phones. The estimated maximum liability assuming \$10 per month is \$97,690. Upon
5 further review and evaluation of the facts and circumstances surrounding this claim and taking
6 into consideration that it would require individualized inquiries into whether and to what extent
7 Class Members used their personal phones, this claim was valued in the range of from 1% to 0%
8 violation rate and therefore between an estimated maximum of \$977 and \$0. (*Id.*)

9 e. Failure to Provide Accurate Itemized Wage Statements

10 Under Lab. Code § 226(e), an employee suffering “injury as a result of a knowing and
11 intentional failure by an employer” to provide accurate wage statements is entitled to \$50 for the
12 initial violation and \$100 for each subsequent violation up to \$4,000. Classic Distributing denies
13 that it provided inaccurate wage statements. Further, Classic Distributing argues that, if any wage
14 statements were in fact inaccurate, they did not “knowingly and intentionally” fail to provide
15 accurate statements and that Plaintiffs and the class did not suffer any “injury” from such
16 inaccurate wage statements. (Hawkins Decl. ¶ 18 (e).)

17 Per information provided by Defendants, Plaintiffs believe there were 614 Class
18 Members working during the relevant time period. Thus, if a calculation is performed using
19 the maximum exposure permitted per Class Member under Labor Code section 226, this
20 amounts to a maximum exposure for Defendant of \$2,456,000 (614 Class Members x \$4,000
21 penalties). However, some of the Class Members working during the relevant time period
22 may have worked for only one pay period during the relevant time period and some may have
23 worked for tens of pay periods. For purposes of settlement negotiations, said claim was
24 valued between an estimated maximum of \$491,200 (20%) and \$0. (*Id.*)

25 f. Failure to Timely Pay Wages

26 With respect to Lab. Code §203 claim, there were an estimated total of 382 former Class
27 Members to whom this claim applied and an estimated maximum potential liability of \$402,350.
28 The estimated maximum potential liability was determined to be \$1,575,502 based on the

1 following: The estimated average daily pay rate of \$129.36 for Sales Associates x 30 days=
2 \$3,881 x 270 Class Members = \$1,047,870 plus the estimated average daily rate of \$157.04 for
3 Sales Representatives x 30 days = \$4,711 x 112 former Class Members = \$527,632 (Hawkins
4 Decl., ¶ 18(f).)

5 Defendant once again defends that no unpaid wages are owed as Defendant did not fail to
6 pay the correct wages. Defendant further contends that its actions were not willful as required for
7 penalties to issue and that, thus, waiting time penalties cannot be awarded. For purposes of
8 settlement negotiations, said claim was valued between \$315,100 (20%) and \$157,550 (10%)
9 (*Id.*)

10 g. Bus. & Prof. Code § 17200 Claim

11 The only remedies available under the unfair competition law (“UCL”) Business and
12 Professions Code Section 17200 et seq. are restitution and injunction, as opposed to damages
13 *Clark v. Superior Court*, (2010) 50 Cal. 4th 605, 610. The UCL provides that “[t]he court may
14 make such orders or judgments ... as may be necessary to restore to any person in interest any
15 money or property, real or personal, which may have been acquired by means of such unfair
16 competition.” (Bus. & Prof. Code, § 17203.) Restitution under the UCL includes “earned wages.”
17 *Cortez v. Purolator Air Filtration Prods. Co.*, (2000) 23 Cal. 4th 163, 177-78 (Hawkins Decl., ¶
18 18(g).)

19 Restitution under the UCL is not available for all violations of the Labor Code. See
20 *Pineda v. Bank of Am., N.A.*, (2010) 50 Cal. 4th 1389, 1401-02. In *Pineda*, the California
21 Supreme Court held Labor Code § 203 is “not designed to compensate employees for work
22 performed [but] it is intended to encourage employers to pay final wages on time, and to punish
23 employers who fail to do so.” *Id.* Like Labor Code section 203, section 226 for wage statement
24 violations is also intended to “punish” the employer and is not an action brought to recover
25 wages. See *Gomez v. Jacobo Farm Labor Contractor, Inc.*, (2019) 334 FRD. 234, 267-268 (*Id.*)

26 Here, Plaintiffs’ UCL claim is solely premised on the failure to pay lawful wages and
27 premium wages claims discussed above. Class Counsel assigned a zero dollar value to the UCL
28 claim because it does not provide any additional value in this Action other than to increase the

1 statute of limitations to four years for the underlying claims. Those claims are valued and
2 analyzed above based on the four year statute of limitations provided by the UCL. However, the
3 UCL claim in and of itself does not provide any additional damages. Therefore, there is no
4 additional or separate monetary value that this statute provides based on the facts of this Action
5 (*Id.*)

6 h. Lab. Code § 2699 (PAGA Claim)

7 Plaintiffs' claims under PAGA are primarily predicated on or derivative of the rest and
8 meal break claims. The estimate maximum PAGA penalty was calculated as \$1,618,3000. This
9 figure attributes a \$100 penalty to each of the estimated 16,183 pay periods in scope during the
10 PAGA period. The figure also assumes that there is a 100% violation rate during the PAGA
11 period, such that every single pay period in question involved at least one Labor Code violation,
12 despite disputes regarding Defendant's liability. (Hawkins Decl., ¶ 18(h).) However, PAGA
13 claims under the facts and circumstance of this case may result in no award or at best a very
14 minimal award by the trial court. See specifically §2699(e)(2) which states in its pertinent part:

15 "... a court may award a lesser amount than the maximum civil penalty amount
16 specified by this part if, based on the facts and circumstances of the particular case, to do
17 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

18 For instance, in *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a
19 federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%,
20 because the court found maximum penalties "unjust" because the employees had suffered no
21 injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code
22 violations are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5 7 (2nd Dist.
23 Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County
24 Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist.
25 LEXIS 48557, *40 43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

26 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each
27 of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.
28 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff

1 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of
2 the Labor Code by the defendant."). Here, Plaintiffs would need to prove that each PAGA
3 Aggrieved Employee suffered all violations for each pay period the employee worked. As
4 discussed herein, the nature of the PAGA based claims (i.e. rest break, meal period, wage
5 statement, failure to pay all wages owed and to timely pay wages) and Defendant's asserted
6 defenses thereto present a risk that some or all of the PAGA penalties sought may not be
7 awarded. Given the nature of these claims, as analyzed above, Class Counsel believes it to be
8 likely that if there would be any award it would be a minimal amount. Therefore, the amount of
9 \$30,000 (which has been reserved for the PAGA claim) is both fair and reasonable (*Id*)

10 Through their counsel, Plaintiffs took into consideration the significant risks that class
11 certification could be denied on the central claim, or that a merits decision on the central claim
12 would not favor the Class. Plaintiffs have considered the expense and length of continued
13 proceedings necessary to continue the Action against Classic Distributing through trial and any
14 possible appeals. Plaintiffs are also aware of the burdens of proof necessary to establish liability
15 for the claims asserted in the Action, Classic Distributing's defenses thereto, and the difficulties
16 in establishing Plaintiffs' damages. (Hawkins Decl., ¶ 19.)

17 The proposed Settlement requires Defendant to pay each Class Member who does not opt
18 out a portion of the Net Settlement Amount as specifically set forth in the Settlement Agreement.
19 (Hawkins Decl., ¶ 20.) The amount to be paid to the Class is undoubtedly fair, adequate and
20 reasonable especially in light of the significant risk to Plaintiffs and Class Members in continuing
21 with the litigation and not prevailing on class certification or at trial. (*Id.*)

22 For all the foregoing reasons, the proposed Settlement Agreement is fair, adequate and
23 reasonable, and is in the best interests of the Class Members.

24 **C. The Class Representative Payment and Class Counsel Fees Are Reasonable**
25 **and Should be Awarded**

26 The Settlement Agreement provides for an award to be paid to the Class Representatives.
27 The primary purpose is to provide Plaintiffs Nathaniel Rubero and Ernesto Carranza Aguilar an
28 enhancement payment, taking into consideration the risks, time, effort and expenses incurred by

1 them in coming forward to provide invaluable information and negotiate and litigate this matter
2 on behalf of all Class Members. (Hawkins Decl., ¶ 21.) Plaintiffs have actively participated in
3 this litigation by providing significant supporting documents and information and assisting
4 counsel in developing information necessary to litigate and settle this case which has resulted in a
5 favorable settlement for the putative Class Members. (*Id.*) Thus, the payment of \$10,000.00 each
6 to the Class Representatives represents a small portion of the aggregate settlement amount and
7 should be awarded.

8 Further, as will be discussed in more detail in Plaintiffs' motion for final approval of the
9 Settlement, class counsel fees in the amount of \$150,000 is reasonable within California's
10 standard benchmark and well within the range customarily approved by the California courts in
11 comparable class actions.

12 VI. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE

13 In addition to such terms as class definition, settlement amounts and payment procedures,
14 the Settlement Agreement reached between the Parties contains a provision to which the Parties
15 stipulate to the Court's provisional certification of the Class, but do so for the purposes of this
16 settlement only. Plaintiffs now requests this Court to provisionally certify the Class.

17 It is well established that trial courts should use a lower standard for determining the
18 propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor*
19 *Co.*, (1996) 48 Cal.App.4th at 1794, 1807, fn. 19.) Under California law, a class action is
20 appropriate when the Class is ascertainable and there is a "well defined community of interest in
21 the questions of law and fact affecting the parties to be represented." (Code Civ. Proc., §382;
22 *Dunk*, 48 Cal. App. 4th at 1806.) State law requirements under *California Code of Civil*
23 *Procedure* section 382 for class certification largely mirrors *Federal Rules of Civil Procedure*
24 Rule 23 – namely, numerosity and typicality of the class representative's claims, adequacy of
25 representation, predominance of common issues and superiority. As discussed below, although
26 Defendant adamantly disputed and continues to dispute Plaintiffs' ability to certify a litigation
27 class, all of the requirements of certification for settlement purposes are met for the proposed
28 settlement Class.

1 **A. The Proposed Class is Ascertainable**

2 Here, the proposed class is ascertainable because all of the Class Members are/were
3 employed directly by Classic Distributing and received their compensation directly from Classic
4 Distributing. The Class Members have been identified through Defendant’s employee and
5 personnel files. (*See Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 [“Class Members
6 are ‘ascertainable’ where they may be readily identified without unreasonable expense or time by
7 reference to official records”].)

8 **B. Numerosity of the Class is Sufficient**

9 If the class is sufficiently large that joinder of all members is impractical or that individual
10 joinder is impractical, the numerosity requirement is met. (*Hebberd v. Colgrove* (1972) 28
11 Cal.App.3d 1017, 1030.) Here, the proposed class consists of approximately 674 members,
12 consisting of current and former employees of Defendant. Therefore, joinder of individual claims
13 would be impractical and the numerosity requirement is met.

14 **C. There are Common Questions of Law and Fact to the Class**

15 Commonality is met if there are common questions of fact and law to the class. (*Hanlon v.*
16 *Chrysler Corp.* 150 F.3d at 1019 [“The existence of shared legal issues with divergent legal
17 factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal
18 remedies within the class”].) Here, Plaintiffs allege that the proposed Class Members’ claims all
19 stem from the same alleged conduct. Specifically, Plaintiffs allege that Classic Distributing
20 violated California wage and hour law by (1) failure to pay lawful wages including overtime
21 wages; (2) failure to provide lawful meal periods or compensation in lieu thereof; (3) failure to
22 provide rest periods or compensation in lieu thereof; (4) failure to timely pay wages due at
23 termination; (5) knowing and intentional failure to comply with itemized employee wage
24 statement provisions (6) failure to indemnify employee expenses; and (7) violations of the unfair
25 competition law. Plaintiffs seek recovery of all alleged wages, premium wages, penalties and
26 interest pursuant to the California Labor Code, the California Industrial Welfare Commission
27 (“IWC”) Wage Orders, Bus. & Prof. Code § 17200 *et seq.*, and PAGA. Although Defendant
28 disagrees with Plaintiffs’ contentions for purposes of certifying a litigation class, for purposes of a

1 settlement class, these circumstances create questions of law and fact common to all proposed
2 Class Members.

3 **D. The Typicality Requirement is Met**

4 The typicality requirement is met if the claims of the named Class Representative are
5 typical of those of the class, though “they need not be substantially identical.” (*Hanlon* 150 F.3d
6 at 1020.) Factual differences may exist between the Class and the Class Representative(s) so long
7 as the claims arise from the same events or course of conduct and are based on the same legal
8 theories. (*Id.*) Here, the claims of the Class Representatives are typical of the other Class
9 Members because they arise from the same factual basis and are based on the same legal theories
10 as those applicable to all Class Members. (*Wherner v. Syntex* (N.D. Cal. 1987) 117 F.R.D. 641,
11 644.) Thus, for purposes of a settlement class, the typicality requirement is met.

12 **E. The Adequacy Requirement is Met**

13 If the named representative and his or her counsel have no interests adverse to the interest
14 of the proposed Class Members and are committed to vigorously prosecuting the case on behalf
15 of the class, then the adequacy requirement is met. (*McGhee v. Bank of America*, (1976) 60 Cal.
16 App. 3d 442,450.) Here, under the proposed settlement, the Class Representatives will receive a
17 reasonable award for their time and efforts assisting counsel with factual issues surrounding the
18 case and risk incurred in bringing this action on behalf of the Class Members. Other than this
19 specific payment, all Class Members will receive a percentage of the Net Settlement Amount
20 based on his or her respective number of covered work weeks. Therefore, no “settlement
21 allocation” questions are raised. (*Hanlon* 150 F.3d at 1020.)

22 Any Class Member who submits a valid and timely Request for Exclusion is a Non-
23 Participating Class Member and shall not receive an Individual Class Payment or have the right to
24 object to the class action components of the Settlement. (Settlement Agreement, p. 12, ¶ 8.5.4).
25 As a result, there is no conflict of interest between the Class Representatives and the Class
26 Members. Additionally, the Class Representatives and their counsel have been committed to
27 prosecuting this action on behalf of the Class.
28

1 **F. Common Issues Predominate and Class-wide Settlement is Superior to Other**
2 **Available Methods of Resolution**

3 Class certification is authorized where common questions of law and fact predominate
4 over individual questions and where class-wide treatment of a dispute is superior to individual
5 litigation. (*Richmond v. Dart Industries, Inc.*, (1981) 29 Cal.3d 462, 469.) The test is whether the
6 proposed class is sufficiently cohesive to warrant adjudication by representation. (*Hanlon, supra*,
7 at p. 1022.) Plaintiffs contend that the proposed Class in this case is sufficiently cohesive, since
8 all Class Members share a “common nucleus of facts and potential legal remedies.” Specifically,
9 all of the Class Members and the Class Representatives seek compensation for alleged unpaid
10 wages, premium wages for failure to provide compliant meal and rest breaks, as well as penalties
11 and interest for the allegations described herein; common questions about compensation or lack
12 thereof for worked performed by Class Members predominate over individual questions, and the
13 Class Members’ potential legal remedies are identical. (*Id.*) Although Defendant disagrees with
14 Plaintiffs’ contentions, it has agreed the Class may be certified for settlement purposes only.

15 Additionally, particularly in the settlement context, class resolution is superior to other
16 methods for the fair and efficient adjudication of the controversy. (*Hanlon*, 150 F. 3d at p. 1023;
17 *Dunk, supra*, 45 Cal. App. 4th at p. 1087.) The superiority requirement involves a “comparative
18 evaluation of alternative mechanisms of dispute resolution.” (*Hanlon, supra*, at p. 1023.) Here,
19 the alternative methods of resolution are a plethora of individual claims from potentially over
20 674 plaintiffs. The class action device can thus conserve judicial resources by avoiding the waste
21 and delay of repetitive proceedings and prevent inconsistent adjudication of similar issues and
22 claims. (*Sav-On Drug Stores, Inc. v Superior Court* (2004) 34 Cal. 4th 319, 340; *Bell v Farmers*
23 *Ins. Exchange* (2004) 115 Cal.App.4th 715, 741.) Therefore, settlement on a class-wide basis is
24 superior.

25 **VII. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

26 The Class Notice is attached as Exhibit A to the Settlement Agreement. The Class Notice
27 provides the requisite, pertinent information to Class Members and the options available to them.
28 Should a Class Member wish to exclude themselves from the Settlement, they can send a request

1 for exclusion to the settlement administrator. Should a Class Member wish to object to the
2 Settlement, they can object as described in the Notice. If a Class Member does nothing in
3 response to the Notice, the Class Member will be mailed an individual settlement payment.

4 **A. The Class Notice Satisfies Due Process**

5 California statutory and case law vests the Court with broad authority to fashion an
6 appropriate notice process. (Cal. Rules of Court 3.760 *et seq.*) A proposed method of notice of a
7 proposed settlement is fair, adequate and reasonable if it has “a reasonable chance of reaching a
8 substantial percentage of the Class Members. (*Cartt v. Superior Court*, (1975) 50 Cal. App. 3d
9 960, 974.) The Notice plan described herein entails mailing the Notice to all known and
10 reasonably ascertainable Class Members based on Defendant’s payroll records and provides for a
11 reasonable chance of reaching a significant percentage of Class Members. (See section III (D)
12 herein.) Further, such individual notice by first class mail is routinely approved as consistent with
13 due process. (See, *e.g.*, MANUAL at §§21.311, 21.312; Wright & Miller, Fed. Practice &
14 Procedure §1797.6 [“Of course, notice by mail to all of the identified Class Members . . . will
15 suffice.”] (citing cases).) The Notice is consistent with the class certification notices approved by
16 numerous state and federal courts and is the best notice practicable under circumstances of this
17 case.

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

19 Not only is the manner of the proposed notice proper, so too is the content of the said
20 notice. The proposed notice provides information on the meaning and the nature of the proposed
21 settlement, the terms and provisions of the settlement, the relief the settlement will provide the
22 Class Members, the application of Plaintiffs’ counsel for reimbursement of costs and attorneys’
23 fees from the settlement amount, the date, the time and place of the Final Fairness and Approval
24 Hearing, and the procedure and deadlines for opting out of the Settlement or for submitting
25 comments and objections. (Cal. Rule of Court 3.769(f).)

26 The Notice also fulfills the requirement of neutrality in class notices. (2 NEWBERG
27 §8.39.) It summarizes the proceedings to date and the terms and conditions of the settlement in an
28 informative and coherent manner, in compliance with the MANUAL’S statement, “the notice

1 should be accurate, objective, and understandable to class members.....” (MANUAL at §30.21.)
2 The Notice clearly states the settlement does not constitute an admission of liability by Classic
3 Distributing and recognizes the Court has not ruled on the merits. It also states the final settlement
4 approval decision has yet to be made. Accordingly, the Notice complies with the standards of
5 fairness, completeness and neutrality required of a settlement class notice disseminated under the
6 authority of the Court. (F.R.C.P. 23(c)(2).)

7 Moreover, the Notice comports with CA Rules of Court, Rule 3.766(d). As per Rule
8 3.766, the contents of the Notice providing for an opt out procedure for the Class Members must
9 include the following:

- 10 (1) A brief explanation of the case, including the basic contentions or denials of
11 the parties;
- 12 (2) A statement that the Court will exclude the member from the class if the
13 member so requests by a specified date;
- 14 (3) A procedure for the member to follow in requesting exclusion from the class;
- 15 (4) A statement that the judgment, whether favorable or not, will bind all members
16 who do not request exclusion; and
- 17 (5) A statement that any member who does not request exclusion may, if the
18 member so desires, enter an appearance through counsel.

19 The Class Notice contains the information required under Rule 3.766(d). (See Ex. A
20 attached to Settlement Agreement.)

21 **VIII. CONCLUSION**

22 Based on the foregoing, Plaintiffs respectfully request that the Court enter the Proposed
23 Order Granting Preliminary Approval submitted concurrently herewith, and thus:

- 24 1. Grant preliminary approval of the Settlement Agreement, and certify the
25 Settlement Class for the purposes of settlement only;

1 2. Confirm named Plaintiffs Nathaniel Rubero and Ernesto Carranza Aguilar as the
2 Class Representatives and James R. Hawkins, Isandra Fernandez and Lance Dacre of the law firm
3 of JAMES HAWKINS, APLC as Class Counsel;

4 3. Approve and appoint Simpluris, Inc. as Settlement Administrator;

5 4. Enter an Order preliminarily approving the proposed settlement and approving the
6 Notice; and

7 5. Schedule the Final Approval Hearing Date on _____, 2023; (to be
8 determined by the Court at the hearing for preliminary approval of settlement.
9

10 Respectfully submitted,

11
12 Dated: March 28, 2023

JAMES HAWKINS, APLC

13 

14 James R. Hawkins, Esq.

15 Isandra Y. Fernandez, Esq.

16 Lance Dacre, Esq.

17 Kacey E. Cook, Esq.

18 Attorneys for Plaintiffs

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