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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RUTH RAMIREZ, et al.,

Plaintiff,

vs.

C&W FACILITY SERVICES, INC., et
al.,

Defendants.

Case No.: 2:20-CV-11319-JVS-PVC
consolidated with
2:21-CV-03458-JVS-PLA

Assigned to Hon. James V. Selna

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND
CERTIFICATION OF SETTLEMENT
CLASS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: January 9, 2023
Time: 1:30 p.m.
Courtroom: 10C

Action Filed: November 3, 2020
Action Removed: December 14, 2020
Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on January 9, 2023, in Courtroom 10C of the above-
3 entitled Court, located at 411 West 4th Street, Santa Ana, CA 92701-4516, Plaintiffs
4 RUTH RAMIREZ and JORGE RUIZ QUEZADA (“Plaintiffs”) will and hereby do move
5 the Court for an order granting preliminary approval of the JOINT STIPULATION OF
6 CLASS AND REPRESENTATIVE ACTION SETTLEMENT (“Settlement” or
7 “Agreement” herein) reached with Defendant C&W FACILITY SERVICES, INC.
8 (“Defendant” or “C&W”), a true and correct copy of which is attached as Exhibit 1 to the
9 Declaration of H. Scott Leviant submitted herewith. Specifically, Plaintiff moves for an
10 order to:

- 11 1. grant preliminary approval of the terms of the Agreement as fair,
12 reasonable and adequate under Rule 23(e) of the Federal Rules of Civil Procedure,
13 including the amount of the settlement; the amount of distributions to class
14 members; the procedure for giving notice to class members; the procedure for
15 opting out of the settlement; and the amounts allocated to the service payment and
16 attorney’s fees and costs;
- 17 2. preliminarily certify for settlement purposes the Settlement Class
18 described in the Agreement;
- 19 3. appoint Plaintiffs as representatives for the Settlement Class;
- 20 4. appoint Moon & Yang, APC, and Melmed Law Group as counsel for the
21 Settlement Class;
- 22 5. approve the use of Phoenix Settlement Administrators as the settlement
23 administrator;
- 24 6. direct that notice issue to members of the Settlement Class as provided in
25 the Agreement; and,
- 26 7. schedule a final approval and fairness hearing on a date approximately
27 145 days after preliminary approval (June 5, 2023 is proposed, assuming a
28

preliminary approval order issues shortly after January 9, 2023) to consider whether the Agreement should be finally approved as fair, reasonable and adequate under Rule 23(e) of the Federal Rules of Civil Procedure and to rule on the motion for attorney's fees, costs and service payments submitted by Plaintiffs.

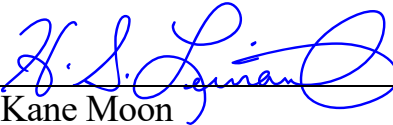
Plaintiffs' motion is based on this Notice, the following Memorandum of Points and Authorities, the Declarations of counsel, Plaintiffs, and the Settlement Administrator submitted herewith, all other pleadings and papers on file in this action, and any oral argument or other matter that may be considered by the Court.

The Parties have conferred extensively about this Motion, and it is not opposed.

Respectfully submitted,

Dated: December 8, 2022

MOON & YANG, APC

By: 
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H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff RUTH RAMIREZ

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	iii
I. INTRODUCTION.....	1
II. SUMMARY OF SETTLEMENT TERMS.....	1
III. BACKGROUND.....	5
A. Plaintiffs' Claims.....	5
B. Pre-Mediation Data Production and Analysis.....	6
C. Settlement.....	6
IV. CLASS DEFINITION	7
V. THE SETTLEMENT MERITS PRELIMINARY APPROVAL	7
A. Plaintiffs' Claims Merit Class Action Treatment for Settlement Purposes	9
1. Numerosity	9
2. Commonality and Predominance of Common Issues	10
3. Typicality.....	11
4. Adequate Representation.....	12
5. Superiority	12
B. At This Stage, Plaintiffs Need Only Establish That the Settlement Falls Within the Range of Reasonableness.....	14
1. The Value of the Settlement to Class Members Is Fair, Reasonable and Adequate	15
2. The Agreed Upon Fees and Costs Are Reasonable.....	21
a) Plaintiffs seek reasonable fees.	21
b) A lodestar crosscheck will support the requested fee.....	21
3. The Service Payments Are Reasonable.....	22

1	4. The Class Notice.....	23
2	VI. THE COURT SHOULD SCHEDULE A FAIRNESS HEARING.....	24
3	VII. CONCLUSION	25

TABLE OF AUTHORITIES

FEDERAL DECISIONAL AUTHORITY

<i>Acosta v. Trans Union LLC</i> , 243 F.R.D. 377 (C.D. Cal. 2007).....	8
<i>Armstrong v. Board of School Directors of the City of Milwaukee</i> , 616 F.2d 305 (6th Cir. 1980).....	8, 9
<i>Baldwin & Flynn v. Nat’l. Safety Associates</i> , 149 F.R.D. 598 (N.D. Cal. 1993)	9
<i>Blackie v. Barrack</i> , 524 F.2d 891 (9th Cir. 1975).....	9, 10, 11
<i>Cal. Rural Legal Assistance, Inc. v. Legal Servs. Corp.</i> , 917 F.2d 1171 (9th cir. 1990).....	12
<i>Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.</i> , 244 F.3d 1152 (9th Cir. 2001).....	11, 13
<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156 (1974)	9
<i>Elkins v. Equitable Life Ins. Of Iowa</i> , 1998 WL 133747 (M.D. Fla. 1998).....	13
<i>Hammon v. Barry</i> , 752 F.Supp 1087 (DDC 1990).....	15
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998).....	passim
<i>Hanon v. Dataproducts Corp.</i> , 976 F.2d 497 (9th Cir. 1992).....	12
<i>In re Armored Car Anti-Trust Litigation</i> , 472 F.Supp 1357 (ND GA 1979).....	15
<i>In re Computer Memories Sec. Litig.</i> , 111 F.R.D. 675 (N.D. Cal. 1986)	10
<i>In re Immune Response Securities Litigation</i> , 497 F.Supp.2d 1166 (S.D. Cal. 2007).....	15, 16
<i>In re Mercury Interactive Securities Litigation</i> , 618 F.3d 988 (9th Cir. 2010)	22
<i>In re Michael Milken & Assocs. Sec. Litig.</i> , 150 F.R.D. 57 (S.D.N.Y. 1993)	24
<i>In re Southern Ohio Correctional Facility</i> , 175 F.R.D. 270 (S.D. Ohio 1997).....	22
<i>Ingram v. The Coca-Cola Co.</i> , 200 F.R.D. 685 (N.D. Ga. 2001).....	22
<i>Lewis v. Gross</i> , 663 F.Supp. 1164 (E.D.N.Y. 1986)	10
<i>Linney v. Cellular Alaska Partnership</i> , 1997 WL 450064 (N.D. Cal. 1997)	15, 16
<i>Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.</i> ,	

1	834 F.2d 677 (7th Cir. 1987)	15
2	<i>Mendoza v. United States</i> , 623 F.2d 1338 (9th Cir. 1980)	24
3	<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306 (1950)	23
4	<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> ,	
5	688 F.2d 615 (9th Cir. 1982)	14
6	<i>Paul, Johnson, Alston & Hunt v. Gaulty</i> , 886 F.2d 268 (9th Cir. 1989)	21
7	<i>Pridd v. Edelman</i> , 883 F.2d 438 (6th Circuit 1989)	15
8	<i>Riordan v. Smith Barney</i> , 113 F.R.D. 60 (N.D. Ill. 1986)	10
9	<i>Silber v. Mabo</i> , 18 F.3d 1449 (9th Cir. 1994)	23
10	<i>Six Mexican Workers v. Arizona Citrus Growers</i> , 904 F.2d 1301 (9th Cir. 1990)	21
11	<i>Sommers v. Abraham Lincoln Federal Savings & Loan Association</i> ,	
12	79 F.R.D. 571 (ED PA 1978)	15
13	<i>Staton v. Boeing Co.</i> , 327 F.3d 938 (9th Cir. 2003)	passim
14	<i>Strube v. American Equity Inv. Life Ins. Co.</i> , 226 F.R.D. 688 (M.D. Fla. 2005)	13
15	<i>Valentino v. Carter-Wallace</i> , 97 F.3d 1227 (9th Cir. 1996)	13
16	<i>Van Bronkhorst v. Safeco Corp.</i> , 529 F.2d 943 (9th Cir. 1976)	8
17	<i>Van Vranken v. Atl. Richfield Co.</i> , 901 F. Supp. 294 (N.D. Cal. 1995)	22
18	<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d 1043 (9th Cir. 2002)	21
19	<i>Wang v. Chinese Daily News</i> , 231 F.R.D. 602 (C.D. Cal. 2005)	10, 11
20	<i>Zinser v. Accufix Research Institute, Inc.</i> , 253 F.3d 1188 (9th Cir. 2001)	11

CALIFORNIA DECISIONAL AUTHORITY

23	<i>Duran v. US Bank Nat'l Ass'n</i> , 59 Cal. 4th 1 (2014)	16
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STATUTES

26	Labor Code § 2699	16
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OTHER AUTHORITIES

Findings of the Study of California Class Action Litigation, 2000-2006.....20

RULES

Fed. R. Civ. P. 23 passim

TREATISES

Manual for Complex Litigation Second § 30.44 (1985).....8

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a putative wage and hour class action on behalf of non-exempt employees
4 employed by Defendant at any time from November 3, 2016 through October 3, 2022
5 (excluding non-exempt employees who worked at Amazon.com, Inc. (“Amazon”)
6 locations and non-exempt employees who were unionized). The core issues in the case
7 were based on allegations by named Plaintiffs RUTH RAMIREZ and JORGE RUIZ
8 QUEZADA (“Plaintiffs”) that Defendant did not provide legally compliant meal periods
9 and rest breaks, did not reimburse employees for business expenses, did not compensate
10 employees for all time worked, and, as a result, wage statements provided to employees
11 were rendered inaccurate, final wages were not timely paid, and the conduct violated the
12 California Private Attorneys General Act of 2004 (“PAGA”) and the Unfair Competition
13 Law (“UCL”). Defendant disputes these claims.

14 The case was thoroughly investigated by all Parties. Following the production of
15 policy documents, time records, and pay data, and vigorous negotiation at mediation,
16 Plaintiffs and Defendant (Plaintiffs and Defendant collectively referred to herein as the
17 “Parties”) reached a proposed class action settlement valued at \$2,500,000.00 for
18 approximately 3,134 putative class members.

19 The Parties believe the Settlement to be fair and reasonable, to adequately reflect the
20 potential liability and substantial risks in this matter, and to be the result of thorough
21 factual and legal analyses and arms-length negotiations. Through this Motion, Plaintiffs
22 request certification of a Settlement Class pursuant to Fed. R. Civ. P. 23 and preliminary
23 approval of the proposed class action settlement.

24 **II. SUMMARY OF SETTLEMENT TERMS**

25 The full terms of the settlement are set forth in the Stipulation. The primary
26 material terms are as follows:

- 27 (a) The Settlement Class is: All non-exempt employees of Defendant
28 who worked for Defendant in California during the Class Period, (the

“Class Period” is November 3, 2016 through October 3, 2022).

(Settlement, ¶¶ 3-4.) Excluded from the Settlement Class are: non-exempt employees who worked at Amazon.com, Inc. (“Amazon”) locations and non-exempt employees who were unionized.

(Settlement, ¶ 4.)

(b) Defendant agrees not to oppose certification of a Class for purposes of Settlement only (Settlement, ¶ 19);

(c) Settlement Amount: Defendant will pay a maximum of **\$2,500,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** payment per Class Member of over **\$797.70** (Settlement, ¶ 26(c));

(d) Class Size: Approximately **3,134** individuals are Settlement Class Members. (Leviant Decl., ¶ 35.) There are approximately **125,704** work weeks worked by the Settlement Class Members.

(e) No Reversion: The Settlement is a ***non-reversionary*** settlement (Settlement, ¶ 26(e));

(f) Certification: Plaintiffs address certification requisites herein, at Part IV.A., and in the accompanying Declaration of H. Scott Leviant.

(g) No Claim Form: No claim form is required;

(h) Class Release: The Settlement will release specified wage-and-hour claims for Settlement Class Members (those Class Members who do not timely opt out of the Settlement) (Settlement, ¶¶ 4, 37);

(i) PAGA Release: The Class Members will release the PAGA Claims set forth in this Action, that were identified in the Complaint and Plaintiff’s LWDA Notice Letter, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 15, 37);

(j) Net Settlement Amount Available to the Class: After deducting Class Counsels’ attorneys’ fees and costs, service payments to Plaintiffs,

1 estimated Administration costs, and the payment to the LWDA, the
2 remainder will be available for distribution to Class Members who do
3 not opt out, with each Class Member receiving a share based on the
4 number of workweeks each Class Member worked for Defendant in a
5 relevant position within the Class Period. The Net Settlement Amount
6 is estimated to be at least \$1,381,666.67 resulting in an average **net**
7 payment per Class Member of at least **\$440.86**, before any tax
8 withholdings (excluding the aggrieved employees' share of PAGA
9 penalties). (Settlement, ¶ 26(g).)

10 (k) Tax Allocation: One-third (1/3) of all Settlement Class Payments to
11 Settlement Class Members shall be considered wages and shall be
12 subject to the withholding of all applicable local, state and federal
13 taxes, and two-thirds (2/3) of all Settlement Class Payments to
14 Settlement Class Members shall be considered non-wages for the
15 settlement of interest claims, liquidated damages, and statutory and
16 civil penalty claims. (Settlement, ¶ 26(j).) The PAGA Settlement
17 Payment shares to PAGA Employees will be entirely allocated to
18 penalties. (Settlement, ¶ 26(j).)

19 (l) Employer's Portion of Payroll Taxes Paid Separately: Defendant's
20 portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any
21 settlement payments to Class Members that constitute wages will be
22 paid separate and apart from the GSA (Settlement, ¶ 26(h));

23 (m) Settlement Administrator: The notice portion of the Settlement will be
24 administered by a third-party Administrator, Phoenix Settlement
25 Administrators, and actual costs of administration are estimated to be
26 \$16,000 (Settlement, ¶ 26(p));

27 (n) Class Data for Administration: The Administrator will receive the
28 Class List within 14 calendar days of Preliminary Approval Date, use

the NCOA database to update the Class List, and then use skip tracing on returned Notices (Settlement, ¶ 32(a));

- (o) Notice: The Notice will be distributed within 28 calendar days of the Preliminary Approval Date (Settlement, ¶ 32(b)). The Notice describes how to dispute workweeks, submit an objection in writing, in person or through an attorney, or request exclusion (Settlement, ¶ 26(s) and Exhibit A thereto).
- (p) Objections: Written objections must be submitted by the response deadline; oral objections may be presented at the time of hearing (Settlement, ¶ 26(x));
- (q) Exclusion Requests: The procedure for exclusion requests, mailing a request to the Administrator, is the same as the procedure for submitting a written objection (Settlement, ¶¶ 26(w) and 26(x));
- (r) PAGA Allocation: From the GSA, **\$200,000** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.* (“PAGA”). Seventy-five percent (75%) of this amount, or **\$150,000**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶ 10.)
- (s) Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Leviant Declaration.
- (t) Enhancement/Service Awards to Plaintiff: Defendant will not oppose the application for Class Representative Service Payments of up to **\$7,500** for each Plaintiff, to be paid from the GSA (Settlement, ¶ 26(g));
- (u) Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to exceed 33 1/3% of the GSA (**\$833,333.33**), and actual costs, in an amount not to exceed **\$30,000**, to be paid out of the GSA; (Settlement, ¶ 26(m)).

- (v) Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of each Class Member who failed to cash their Settlement Payment check prior to the void date (Settlement, ¶ 35);
- (w) Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 34);
- (x) Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ 58).

(Leviant Decl., ¶ 11.) A true and correct copy of the JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT is attached thereto as Exhibit "1."

III. BACKGROUND

A. Plaintiffs' Claims

On November 3, 2020, Plaintiff RUTH RAMIREZ filed a putative Class Action alleging the following labelled causes of action: (1) Failure to Pay Minimum Wage and Straight Time Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]. The *Ramirez* matter was subsequently removed to federal court. On November 20, 2020, Plaintiff JORGE RUIZ QUEZADA filed a putative Class Action alleging claims for relief substantially similar to the claims asserted in the *Ramirez* matter. On April 20, 2021, the District Court for the Northern District of California granted a motion to transfer the *Quezada* action to the United States District Court, Central District of California, which,

1 on April 26, 2021, issued Notice of Receipt of Case Transfer, assigning the action Case
2 No. 2:21-cv-03458-JVS-PLA. The Parties subsequently stipulated to consolidate the
3 *Ramirez* and *Quezada* matters. On June 3, 2021, the Court issued an Order consolidating
4 the *Ramirez* and *Quezada* matters (the “Action”). (Declaration of H. Scott Leviant
5 [“Leviant Decl.”], at ¶ 4.)

6 On June 16, 2021, Plaintiffs filed a Consolidated Class Action Complaint that
7 incorporated the claims for relief asserted in both the *Ramirez* and *Quezada* matters,
8 including a cause of action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et
9 seq.]. (Leviant Decl., at ¶ 5.)

10 **B. Pre-Mediation Data Production and Analysis**

11 The Parties have conducted significant investigation of the facts and law during the
12 prosecution of this Litigation. (Leviant Decl., at ¶ 6.) Such investigation has included
13 informal written discovery; the pre-mediation exchange of information and voluminous
14 data; and, numerous communications between the Parties. (*Id.*) The Parties have further
15 investigated the applicable law as applied to the alleged claims of Plaintiffs and potential
16 defenses thereto, and the damages claimed by Plaintiffs. (*Id.*)

17 After reviewing documents regarding Defendant’s wage and hour policies and
18 practices and other information obtained during the informal exchange of discovery, Class
19 Counsel were able to evaluate the probability of class certification, success on the merits,
20 and the reasonably obtainable maximum monetary exposure for all claims. Class Counsel
21 reviewed these records and prepared a damage analysis prior to mediation. Class Counsel
22 also investigated the applicable law regarding the claims and defenses asserted in the
23 litigation. (Leviant Decl., at ¶ 7.)

24 **C. Settlement**

25 On May 11, 2022, the Parties participated in a day-long mediation before Tripper
26 Ortman, a well-regarded mediator who has mediated many wage and hour class actions.
27 (Leviant Decl., ¶ 8.) At the mediation, the Parties discussed at length the burdens and risks
28 of continuing with the litigation as well as the merits of the claims and defenses. (*Id.*) The

1 Parties agreed to the basic terms of a proposed settlement and ultimately signed a long
2 form settlement agreement (the Agreement). (*Id.*)

3 Plaintiffs and Class Counsel are aware of the burdens of proof necessary to establish
4 liability for the claims asserted in the Action, both generally and in response to
5 Defendant's defenses thereto. (Leviant Decl., ¶ 9.) Plaintiffs and Class Counsel have also
6 taken into account Defendant's agreement to enter into a Settlement that confers
7 substantial relief upon the Class.

8 Based on the foregoing, Plaintiffs and Class Counsel have determined that the
9 Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is
10 in the best interests of the Class. (Leviant Decl., ¶ 10.) Solely for the purpose of settling
11 this case, the Parties stipulate to class certification. (*Id.*) If this Settlement is not approved
12 by the Court for any reason, Defendant reserves its rights to contest class certification.
13 (*Id.*) This Settlement, if approved by the Court, will result in the termination with
14 prejudice of the litigation through the entry of the Judgment and the release of all Released
15 Claims for all Class Members, including all within the class definition who have not
16 elected to exclude themselves from the Class. (*Id.*)

17 **IV. CLASS DEFINITION**

18 The Class is defined as follows:

19 All non-exempt employees of Defendant who worked for Defendant in
20 California during the Class Period, (the "Class Period" is November 3,
21 2016 through October 3, 2022). (Settlement, ¶¶ 3-4.) Excluded from the
22 Settlement Class are: non-exempt employees who worked at
23 Amazon.com, Inc. ("Amazon") locations and non-exempt employees who
24 were unionized. (Settlement, ¶ 4.)

25 (Leviant Decl., ¶ 34 and Exhibit 1.)

26 **V. THE SETTLEMENT MERITS PRELIMINARY APPROVAL**

27 The law favors settlement, particularly in class actions and other complex cases,
28 where substantial resources can be conserved by avoiding the time, cost, and the rigors of

1 formal litigation. *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).
2 These concerns apply in a case such as this, where allegedly wrongful practices potentially
3 affected numerous employees, in relatively small amounts.

4 Any settlement of class litigation must be reviewed and approved by the court. This
5 is done in two steps: (1) an early (preliminary) review by the court, and (2) a final review
6 after notice has been distributed to the class for their comment or objections. The *Manual*
7 *for Complex Litigation Second* states at § 30.44 (1985):

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

16 When parties reach a settlement agreement prior to class certification, “courts must peruse
17 the proposed compromise to ratify both the propriety of the certification and the fairness of
18 the settlement.” *Acosta v. Trans Union LLC*, 243 F.R.D. 377, 383 (C.D. Cal. 2007).

19 “The first step is a preliminary, pre-notification hearing to determine whether the
20 proposed settlement is ‘within the range of possible approval.’ This hearing is not a
21 fairness hearing; its purpose, rather is to ascertain whether there is any reason to notify the
22 class members of the proposed settlement and to proceed with a fairness hearing.”
23 *Armstrong v. Board of School Directors of the City of Milwaukee*, 616 F.2d 305, 314 (6th
24 Cir. 1980) [quoting *Manual for Complex Litigation* s 1.46, at 53-55 (West 1977)]. “[T]he
25 district court must assess whether a class exists,” *Staton v. Boeing Co.*, 327 F.3d 938, 952
26 (9th Cir. 2003), *i.e.*, whether the lawsuit qualifies as a class action under Rule 23. *See*,
27 *e.g.*, *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998) (reviewing settlement
28 to ensure compliance with requirements of Rule 23(a) and Rule 23(b)(3)).

At the second stage of the approval process, after class members have had an opportunity to object to the settlement, the court makes a final determination whether the settlement is “fair, reasonable and adequate” under Rule 23(e). *Armstrong*, 616 F.2d at 314; *see Staton*, 327 F.3d at 952; *see also* Rule 23(e)(C)(1), which provides that a court may finally approve a settlement of a class action if it finds after a hearing that the settlement is “fair, reasonable, and adequate” and Rule 23(e)(C)(4), which provides that any class member may object to a proposed settlement.

A. Plaintiffs’ Claims Merit Class Action Treatment for Settlement Purposes

At the preliminary approval stage, a plaintiff need only make a “prima facie showing” of the requirements of Rule 23.¹ In determining the propriety of class certification, a court may not delve into the underlying merits of the claims. The fundamental question “is not whether . . . plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974).

The Ninth Circuit has established that, when ruling on the propriety of class certification, a district court “is bound to take the substantive allegations of the complaint as true.” *Blackie v. Barrack*, 524 F.2d 891, 901 n.17 (9th Cir. 1975). A court “may not require plaintiffs to make a preliminary proof of their claim; it requires only sufficient information to form a reasonable judgment.” *Baldwin & Flynn v. Nat’l. Safety Associates*, 149 F.R.D. 598, 600 (N.D. Cal. 1993). Under these standards, this action meets the requirements for certification under Rule 23(a) and Rule 23(b)(3).

1. Numerosity

Under Rule 23(a)(1), a class action may be maintained where “the class is so numerous that joinder of all members is impracticable.” In determining whether joinder would be impracticable, a court may consider not only the sheer number of class members,

¹ *See*, Schwarzer, Tashima & Wagstaffe, Cal. Prac. Guide: Fed. Civ. Pro. Before Trial § 10:573 (The Rutter Group 2006).

1 *Riordan v. Smith Barney*, 113 F.R.D. 60, 62 (N.D. Ill. 1986) (numbers alone may be
2 dispositive), but also “the nature of the action, the size of the individual claims, [and] the
3 inconvenience of trying individual suits.” *Wang v. Chinese Daily News*, 231 F.R.D. 602,
4 606 (C.D. Cal. 2005). “A class action may proceed upon estimates as to the size of the
5 proposed class.” *Lewis v. Gross*, 663 F. Supp. 1164, 1169 (E.D.N.Y. 1986). *See also, In*
6 *re Computer Memories Sec. Litig.*, 111 F.R.D. 675, 679 (N.D. Cal. 1986) (class certified
7 where plaintiffs did not establish exact size, but demonstrated that class would “obviously
8 be sufficiently numerous”).

9 In this action, the Class is composed of approximately 3,134 individuals. (Leviant
10 Decl., ¶ 35.) It is sufficiently numerous that the individual joinder of all members is
11 impracticable.

12 2. Commonality and Predominance of Common Issues

13 Rule 23(a)(2) requires that there be “questions of law or fact common to the class.”
14 This commonality requirement is “construed permissively.” *Hanlon v. Chrysler Corp.*,
15 150 F.3d 1011, 1019 (9th Cir. 1998). Plaintiffs need not demonstrate that all questions of
16 fact and law are common. “The existence of shared legal issues with divergent factual
17 predicates is sufficient.” *Id.* Where a class is united by a common interest in determining
18 whether a defendant’s broad course of conduct is actionable, commonality is not defeated
19 “by slight differences in class members’ positions.” *Blackie*, 524 F.2d at 901 n.17.

20 In this litigation, all Class Members have shared a common interest in determining:
21 whether Defendant provided legally compliant meal periods and rest breaks to Class
22 Members; whether Defendant paid employees for all time worked; whether Defendant
23 violated the itemized wage statement provisions of Labor Code § 226 by not providing
24 accurate information as to wages; and whether Defendant’s policies and practices violated
25 California Business & Professions Code §§ 17200 *et seq.*, PAGA, and the FLSA.

26 Given the permissive standard that courts in the Ninth Circuit employ when
27 determining commonality, certification of the Class for settlement purposes is appropriate
28 as Rule 23(a)(2) is satisfied.

1 Once it is established that common issues of law or fact exist, for Rule 23(b)(3)
2 purposes, the Court next examines whether those common issues predominate. The
3 predominance inquiry focuses on whether the class is “sufficiently cohesive to warrant
4 adjudication by representation.” *Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*,
5 244 F.3d 1152, 1162 (9th Cir. 2001). Central to predominance is “the notion that the
6 adjudication of common issues will help achieve judicial economy.” *Zinser v. Accufix*
7 *Research Institute, Inc.*, 253 F.3d 1188, 1189 (9th Cir. 2001). When common questions
8 represent a significant aspect of the case and they can be resolved for all members of the
9 class in a single adjudication, there is clear justification for handling the dispute on a
10 representative rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022. It is well
11 settled that the need for determining differing amounts of damages suffered by different
12 class members does not preclude class certification. *See, Blackie*, 524 F.2d at 905; *Wang*,
13 231 F.R.D. at 613.

14 There are common issues that may predominate over individual issues in this
15 litigation. For example: (1) whether Defendant uniformly failed to provide Class
16 Members with legally compliant meal periods and rest breaks; (2) whether Defendant
17 required or permitted employees to work off the clock; (3) whether Defendant provided
18 putative Class Members with itemized wage statements that were inaccurate in violation of
19 Labor Code § 226; and (4) whether Defendant failed to pay all overtime wages due and
20 payable to former employees within the times specified under the California Labor Code.

21 **3. Typicality**

22 Rule 23(a)(3) requires that the representative plaintiff have claims “typical of the
23 claims . . . of the class.” This factor is also construed permissively. *See Hanlon*, 150 F.3d
24 at 1019-20. Representative claims are typical “if they are reasonably co-extensive with
25 those of absent class members; they need not be identical.” *Id.* at 1020. In other words,
26 named plaintiffs need not be “identically situated” with all other class members. “It is
27 enough if their situations share a common issue of law or fact and are sufficiently parallel
28 to insure a vigorous and full presentation of all claims for relief.” *Cal. Rural Legal*

1 *Assistance, Inc. v. Legal Servs. Corp.*, 917 F.2d 1171, 1175 (9th Cir. 1990).

2 Typicality refers to the “nature of the claim . . . of the class representative, and not
3 to the specific facts from which it arose.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497,
4 508 (9th Cir. 1992). The typicality requirement is satisfied where “the named Plaintiffs
5 raise the same Labor Code violations as other putative class members.” *Id.* Here,
6 Plaintiffs are raising the same claims as the putative class members and have alleged no
7 other individual claims in this matter. (Leviant Decl., ¶ 36; Declaration of Ramirez, ¶¶ 5-
8 11; Declaration of Quezada, ¶¶ 4-10.)

9 **4. Adequate Representation**

10 Rule 23(a)(4) requires that “the representative parties will fairly and adequately
11 protect the interests of the class.” Adequate representation turns on whether the named
12 plaintiff and his counsel “have any conflicts of interest with other class members,” and
13 whether the named plaintiff and his counsel will “prosecute the action vigorously on behalf
14 of the class.” Adequacy may be established by the mere fact that counsel are experienced
15 practitioners. *Hanlon*, 150 F.3d at 1020.

16 There are no conflicts of interest between Plaintiffs and Class Members, and
17 Plaintiffs have both shown and expressed their willingness to represent Class Members.
18 (Declaration of Ramirez, ¶¶ 5-11; Declaration of Quezada, ¶¶ 4-10.) The similarity of the
19 claims asserted and remedies sought by Class Members and Plaintiffs do not suggest any
20 divergent interests held by Plaintiffs. Defendant did not assert unique defenses against
21 Plaintiffs that it could not assert against any other Class Member. Also, there are no
22 conflicts with Plaintiffs’ counsel.

23 Plaintiffs’ counsel have substantial class action experience and can adequately
24 represent the Class. They have been appointed class counsel in many wage and hour class
25 actions against major employers. (Leviant Decl., ¶¶ 21-26; Melmed Decl., ¶¶ 7-11.)

26 **5. Superiority**

27 In deciding whether to certify a class for settlement purposes, a court considers the
28 following factors to determine whether a class action is superior: (a) class members’

1 interests in individually controlling the prosecution or defense of separate actions; (b) the
2 extent and nature of any litigation concerning the controversy already commenced by or
3 against members of the class; and (c) the desirability or undesirability of concentrating the
4 litigation of the claims in the particular forum.² Some courts have found that the third
5 Rule 23(b)(3) factor is “conceptually irrelevant in the context of a settlement.” See *Strube*
6 *v. American Equity Inv. Life Ins. Co.*, 226 F.R.D. 688, 697 (M.D. Fla. 2005). “With the
7 settlement in hand, the desirability of concentrating the litigation in one forum is obvious.”
8 *Elkins v. Equitable Life Ins. Of Iowa*, 1998 WL 133747, at *19 (M.D. Fla. 1998).

9 To determine whether the superiority requirements of Rule 23(b)(3) are satisfied, a
10 court compares a class action with alternative methods for adjudicating the parties’ claims.
11 Lack of a viable alternative to a class action necessarily means that it satisfies the
12 superiority requirement. See *Valentino v. Carter-Wallace*, 97 F.3d 1227, 1235-36 (9th Cir.
13 1996) (“a class action is a superior method for managing litigation if no realistic alternative
14 exists”). “[I]f a comparable evaluation of other procedures reveals no other realistic
15 possibilities, [the] superiority portion of Rule 23(b)(3) has been satisfied.”
16 *Culinary/Bartender Trust Fund*, 244 F.3d at 1163. In *Culinary/ Bartender Trust Fund*, the
17 Ninth Circuit held that the “case involve[d] multiple claims for relatively small sums” and
18 that the class action clearly served as the only method that would ““permit the plaintiffs to
19 pool claims which would be uneconomical to litigate individually.”” *Id.* at 1163.

20 The class action is superior here as it is on the only method that will allow Class
21 Members “to pool [their individual] claims which would be uneconomical to litigate
22 individually.” *Id.*

23 The factors articulated in Rule 23(b)(3)(A), (B) and (C) also favor class
24 certification. It is difficult to believe that any Class Members have an interest in
25

26 ² Rule 23(b)(3)(A)-(C). When a court reviews a class action settlement, it does *not*
27 consider Rule 23(b)(3)(D), the fourth factor, regarding difficulties of managing a class
28 action. *Amchem Products Inc. v. Woodward* (1997) 521 U.S. 591, 620 (in deciding
whether to certify a class for settlement purposes, a district court “need not inquire
whether the case, if tried, would present intractable management problems”).

1 individually controlling the prosecution of separate actions, given the relatively small sums
2 involved for any one Class Member. Any Class Member who wants to pursue a separate
3 action can opt out of the Settlement.

4 Also, it is desirable to concentrate the issues in this forum. The Settlement allows
5 all individuals to resolve similar claims against Defendant through a process that does not
6 even require the submission of a claim form.

7 **B. At This Stage, Plaintiffs Need Only Establish That the Settlement Falls**
8 **Within the Range of Reasonableness**

9 No single criterion determines whether a class action settlement meets the
10 requirements of Rule 23(e). The Ninth Circuit has directed district courts to consider a
11 variety of factors without providing an “exhaustive list” or suggesting which factors are
12 most important. *See, Staton*, 327 F.3d at 959. “The relative degree of importance to be
13 attached to any particular factor will depend upon and be dictated by the nature of the
14 claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances
15 presented by each individual case.” *Officers for Justice v. Civil Service Commission of*
16 *City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

17 Due to the impossibility of predicting any litigation result with certainty, a district
18 court’s evaluation of a settlement essentially amounts to “an amalgam of delicate
19 balancing, gross approximations and rough justice.” *Id.* at 625. The ultimate touchstone,
20 however, is whether “class counsel adequately pursued the interests of the class as a
21 whole.” *Staton*, 327 F.3d at 961.

22 As the Ninth Circuit explained in *Officers for Justice*, the district court’s role in
23 evaluating a class action settlement is therefore tailored to meet that narrow objective.
24 *Officers for Justice*, 688 F.2d at 625. Review under Rule 23(e) “must be limited to the
25 extent necessary to reach a reasoned judgment that the agreement is not the product of
26 fraud or overreaching by, or collusion between, the negotiating parties.” *Id.* Accordingly,
27 the Ninth Circuit will not reverse a district court’s approval of a class action settlement
28 “unless the fees and relief provisions clearly suggest the possibility that class interests gave

1 way to self interest.” *Staton*, 327 F.3d at 961.

2 There is a presumption that the negotiations were conducted in good faith.
3 Newberg, §11.51; *Pridd v. Edelman*, 883 F.2d 438, 447 (6th Circuit 1989); *Mars Steel*
4 *Corp. v. Continental Illinois National Bank and Trust Co.*, 834 F.2d 677, 682 (7th Cir.
5 1987). Courts do not substitute their judgment for that of the proponents, particularly
6 where, as here, settlement has been reached with the participation of experienced counsel
7 familiar with the litigation. *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *In re*
8 *Armored Car Anti-Trust Litigation*, 472 F. Supp. 1357 (N.D. GA 1979); *Sommers v.*
9 *Abraham Lincoln Federal Savings & Loan Association*, 79 F.R.D. 571 (E.D. PA 1978).
10 The fact that settlement results from arms-length negotiations following “relevant
11 discovery” creates “a presumption that the agreement is fair.” *Linney v. Cellular Alaska*
12 *Partnership*, 1997 WL 450064, *5 (N.D. Cal. 1997); *See In re Immune Response*
13 *Securities Litigation*, 497 F. Supp. 2d 1166, 1174 (S.D. Cal. 2007) (settlement approved
14 where informal discovery gave parties clear view of strengths and weaknesses of cases).

15 Here, the Parties reached a non-collusive settlement after discovery and extended
16 negotiations. The settlement was finally reached after a day of arm’s length negotiations
17 before Steve Rottman, a highly-respected mediator skilled at helping parties attempting to
18 negotiate reasonable settlements in wage and hour class actions. Obtaining class
19 certification and establishing liability posed significant hurdles for the class that justified
20 the settlement. The Stipulation falls within the range of reasonable outcomes and merits
21 approval under Rule 23(e). (Leviant Decl., ¶¶ 8-9, 11, 13-20; Melmed Decl., ¶¶ 12-19.)

22 **1. The Value of the Settlement to Class Members Is Fair, Reasonable**
23 **and Adequate**

24 The Parties reached a Settlement in good faith after negotiating at arm’s length with
25 a professional mediator. (Leviant Decl., ¶ 8.) Settlement occurred only after discovery
26 commenced and additional information was shared prior to mediation (including detailed
27 time records for a sample of putative class members). The information produced in
28 discovery, and the additional data about class composition produced for mediation, were

1 sufficient to permit Plaintiff's counsel to adequately evaluate the settlement. And, notably,
2 approval of a class action settlement does not require that discovery be exhaustive. *See*,
3 *e.g.*, *In re Immune Response Securities Litigation*, 497 F. Supp. 2d 1166, 1174 (S.D. Cal.
4 2007) (settlement approved where informal discovery gave the parties a clear view of the
5 strength and weaknesses of their cases). The fact that settlement results from arms length
6 negotiations following "relevant discovery" creates "a presumption that the agreement is
7 fair." *Linney v. Cellular Alaska Partnership*, 1997 WL 450064, at *5 (N.D. Cal. 1997).

8 With respect to the claims asserted on behalf of the Settlement Class in this case,
9 there are significant risks that support the reduced compromise amount. These risks
10 include, but are not limited to: (i) the risk that Plaintiffs would be unable to establish
11 liability for allegedly unpaid straight time or overtime wages, *see Duran v. US Bank Nat'l*
12 *Ass'n*, 59 Cal. 4th 1, 39 & fn. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC*
13 *2014 WL 205039* (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on
14 proof at trial); (ii) the risk that Defendant's challenged employment policies might not
15 ultimately support class certification or a class-wide liability finding, *see, Duran*, 59 Cal.
16 4th at 14 & fn. 28 (citing Court of Appeal decisions favorable on class certification issue
17 without expressing opinion as to ultimate viability of proposition); (iii) the risk that
18 uncertainties pertaining to the ultimate legality of Defendant's policies and practices could
19 preclude class-wide awards of statutory penalties under Labor Code §§ 203 and 226(e);
20 (iv) the risk that individual differences between Settlement Class Members could be
21 construed as pertaining to liability, and not solely to damages, *see, Duran*, 59 Cal. 4th at
22 19; (v) the risk that any civil penalties award under the PAGA could be reduced
23 substantially by the Court in its discretion, *see Labor Code § 2699(e)(1)*; (vi) the risk that
24 class treatment could be deemed improper as to one or more claims except for settlement
25 purposes; (vii) the risk that lengthy appellate litigation could ensue, (viii) the substantial
26 risk that differences in the work experiences of employees assigned to different client
27 locations would make both certification and proof of liability prohibitively unlikely.

28 Defendant strongly denies any liability and the propriety of class certification for any

1 reason other than settlement. (Leviant Decl., ¶ 16.) Continued litigation of this lawsuit
2 presented Plaintiffs and Defendant with substantial legal risks that were (and continue to
3 be) very difficult to assess.

4 In light of the uncertainties of protracted litigation, the settlement amount reflects a
5 fair and reasonable recovery for the Settlement Class Members. (Leviant Decl. ¶¶ 13-20;
6 Melmed Decl., ¶ 15-18.) The settlement amount is, of course, a compromise figure.
7 (Leviant Decl. ¶ 17; Melmed Decl., ¶ 19.) By necessity it took into account risks related to
8 liability, damages, and all the defenses asserted by the Defendant. (*Id.*) Moreover, each
9 Settlement Class Member will be given the opportunity to opt out of the Settlement,
10 allowing those who feel they have claims that are greater than the benefits they can receive
11 under this Settlement, to pursue their own claims. (*Id.*) For the approximately 3,134
12 members of the Class, the average *gross* recovery before deductions for taxes, fees, and
13 other costs, is approximately **\$797.70** per class member. (*Id.*) The value of this amount
14 reflects a fair compromise well within the range of reasonableness. Given the strong case
15 that Defendant could bring to bear to challenge certification and liability, this is not an
16 inconsequential sum. And, confirming the fundamental fairness of the settlement, each
17 Class Member will be compensated ratably based on the number of weeks they that they
18 worked in a relevant position during the class period (the Class members worked full time
19 schedules, rendering allocation by work week equitable). (*Id.*)

20 The Gross Settlement Amount of **\$2,500,000.00** is about **75%** of the **\$3,354,098.69**
21 estimate of *risk-adjusted* recovery (excluding interest) at *this* stage in the litigation. While
22 Plaintiffs would certainly have preferred to recover more (and Defendant would have
23 preferred to pay less), this outcome is in line with a carefully constructed estimate of the
24 current fair value of the case. (Leviant Decl., ¶ 18.) On that basis, it would be unwise to
25 pass up this settlement opportunity. The maximum damage values are estimates based on
26 average wage rates, numbers of employees, and the amount of time covered by the class
27 period. (*Id.*)

28 After analyzing the claims in this matter, Plaintiffs have concluded that the value of

1 this Settlement is fair, adequate and reasonable. (*Id.*) The maximum calculated reasonable
2 exposure, after removing the *most* implausible or extreme estimated recoveries, is
3 **\$25,883,398.45**, including PAGA penalties (which, nevertheless, includes a highly
4 optimistic view of what could be proven in this matter). (*Id.*) The risk-adjusted value of
5 each claim, on a claim-by-claim basis, is as follows:

- 6 • The estimated exposure for off the clock work over the class period was
7 calculated to be **\$2,947,585.25** (assuming 5 minutes of off-the-clock work
8 each shift due to Covid screenings). With risk factor discounts for
9 certification (estimated at 0.25) and liability proof (estimated at 0.3), the
10 current value of that claim is estimated by Plaintiff's counsel to be only
11 **\$221,068.89**.
- 12 • The reasonably estimated exposure for rest break violations over the class
13 period was calculated at **\$4,882,273.40**, but with low chances of certification
14 and proof of liability (20% and 20% respectively) for a risk-adjusted
15 exposure of **\$195,290.94** (based on an extreme estimate of one rest period
16 violation for *every* Class Member in **100%** of their work weeks).
- 17 • The reasonably estimated exposure for meal break violations over the class
18 period was calculated at **\$2,304,454.80** before any risk reductions, but with
19 low chances of certification and proof of liability (25% and 30%
20 respectively) for a risk-adjusted exposure of \$172,834.11 (based on an
21 estimate of one meal period violation for *every* Class Member in **50%** of their
22 work weeks).
- 23 • The reasonably estimated exposure for unreimbursed expenses over the class
24 period was calculated at **\$729,387.50** before any risk reductions, but with low
25 chances of certification and proof of liability (25% and 20% respectively) for
26 a risk-adjusted exposure of \$36,469.38 (based on an assumption of \$12.50 in
27 unreimbursed expenses every single month).

- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **\$44,100.00** and **\$50,576.25**, respectively, on maximum exposures of **\$882,000.00** and **\$1,011.535.00**, respectively (not only are the Section 203 and 226 penalties entirely dependent on the success of the off-the-clock claim, they both must also overcome the defense that Defendant did not intend any underpayment; additionally, the 226 penalty has a one-year statute).
- Performing risk-adjusted valuations for all claims yields a total value in the range of only **\$762,970.69**, excluding PAGA.³ (*Id.*) PAGA penalties were calculated as having a maximum realistic exposure of **\$12,955,640.00**, but a risk adjusted value of **\$2,591.128.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees. (Leviant Decl., ¶ 18.)

This result here is fully supportable as reasonable. First, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*.⁴ (Leviant Decl., ¶ 19.) Second, off-the-clock claims have proven to be extremely difficult to certify by their very nature. In this case, the difficulty of certifying and proving off-the-clock and meal period claims is compounded by the practice of having employees enter their own times manually in a timekeeping system which they confirm as accurate each week. Third, certification rates are lower than conventional wisdom holds. *See, e.g., H. Scott Leviant, Second Interim Report on class actions in California sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at

³ In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of “very high risk” or “high risk” to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel.

⁴ Furthermore, here, Defendant’s meal and rest period policies are facially lawful after 2018, Defendant has a method to pay premiums, and there is a record of premium payments made, including to Plaintiff. (Leviant Decl., ¶ 18.)

1 <http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class->
2 [actions-in-california-sheds-n.html](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-); *see also*, *Findings of the Study of California Class*
3 *Action Litigation*, 2000-2006, available at
4 <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, as
5 part of a study conducted by the Judicial Council of California, at page 5, and in Table 9,
6 at page 15, that only 21.4% of all class actions were certified either as part of a settlement
7 *or* as part of a contested certification motion). In estimating risk adjustments here,
8 Plaintiff's counsel has assumed estimated certification probabilities of 20% - 25%,
9 depending on the claim, assumptions that equal or substantially *exceed* the average rate at
10 which cases were certified in California over the study years, based upon data available
11 through the California Courts website. (*Id.*) And those certification risk estimates are
12 likely high, given the factual challenges present in this case in particular (for example, the
13 myriad of work locations for class members). Given that well under 20% of all cases filed
14 in California as proposed class actions are ultimately certified by way of a contested
15 motion, and a similar trend is seen in federal courts, it is fair to say that, if anything, the use
16 of high estimates for certification *overstates* the realistic current claim value. (*Id.*) It
17 would also be appropriate to evaluate the result by examining only the premium wages at
18 issue, excluding penalties and interest.⁵ Under that metric, the settlement recovered an
19 amount approximately equal to 25% of the realistic unreduced claim value for the
20 premium wages at issue (wages, and meal and rest period premiums). Viewed either way,
21 this Settlement achieves the goals of the litigation.

22 By obtaining reasonable value for their claims in light of the substantial risks of
23

24 ⁵ The exclusion of interest and penalties from the fairness evaluation is proper
25 because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in
26 its discretion "may award a lesser amount than the maximum civil penalty amount
27 specified by this part...")), and, second, courts evaluate the strength of a proposed
28 settlement without taking potential penalties or interest into consideration. *See Rodriguez*
v. West Publishing Corp., 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA*
Logistics U.S.A., Inc., 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized
calculation of a defendant's exposure exclusive of interest and penalties to determine
whether the settlement fell within the range of possible approval).

1 litigation, Plaintiffs clearly achieved a fair settlement that merits approval, particularly in
2 light of the risks posed by further litigation.

3 **2. The Agreed Upon Fees and Costs Are Reasonable**

4 *a) Plaintiffs seek reasonable fees.*

5 The compensation sought for Plaintiffs' counsel is also fair and reasonable. The
6 Ninth Circuit has directed that, to determine what constitutes a fair and reasonable
7 percentage of the settlement for purposes of calculating common fund attorneys' fees, the
8 courts should begin with a "benchmark" percentage of the total fund. *Paul, Johnson,*
9 *Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989); *Vizcaino v. Microsoft Corp.*,
10 290 F.3d 1043, 1047 (9th Cir. 2002); *Six Mexican Workers v. Arizona Citrus Growers*, 904
11 F.2d 1301, 1311 (9th Cir. 1990). The percentage can be adjusted upwards where the risks
12 overcome, the benefits obtained and the work necessary to achieve those results supports
13 such an adjustment of the benchmark. The results here fully support the requested fee.

14 The Gross Settlement Amount is \$2,500,000.00. Plaintiff's counsel has agreed to
15 seek no more than **\$833,333.33**. (Leviant Decl., ¶ 11; Melmed Decl., ¶ 23; *Staton*, 327
16 F.3d at 968 [“ ‘This circuit has established 25% of the common fund as a benchmark
17 award for attorney fees.’ ”], quoting *Hanlon*, 150 F.3d at 1029.) Plaintiffs' counsel also
18 requests actual costs incurred and paid without reimbursement in the litigation of this
19 Action, not to exceed \$30,000.00.

20 *b) A lodestar crosscheck will support the requested fee.*

21 Plaintiffs will provide the Court with information for the purposes of calculating
22 attorney's fees under the lodestar method should the Court so desire for ruling on
23 Plaintiffs' fee application at the final fairness hearing.

24 The Ninth Circuit has recognized that the lodestar method “creates incentives for
25 counsel to spend more hours than may be necessary on litigating a case so as to recover a
26 reasonable fee, since the lodestar method does not reward early settlement.” *Vizcaino v.*
27 *Microsoft Corp.*, 290 F.3d 1043, 1050, n.5 (9th Cir. 2002). The Ninth Circuit has thus
28 cautioned that, while a lodestar method can be used as a cross check on the reasonableness

1 of fees based on a percentage of recovery method if a district court in its discretion chooses
2 to do so, a lodestar calculation is not required and it did “not mean to imply that class
3 counsel should necessarily receive a lesser fee for settling a case quickly.” *Id.*

4 The fee requested by Plaintiffs’ counsel represents the fair market value of their
5 labor, and it *is* fair that every class member who benefits from the opportunity to claim a
6 share of the settlement pay his or her pro rata share of attorney’s fees. The regular
7 contingent fee contract of Plaintiffs’ counsel provides for attorney’s fees between 35% and
8 40% of any recovery obtained for the client. It would be unfair to compensate Plaintiffs’
9 counsel at any lesser rate than the amount requested because the value of their labor is
10 consistent with the requested fee.

11 Finally, as required by *In re Mercury Interactive*, 816 F.3d 988 (9th Cir. 2010),
12 Plaintiffs will file a motion for fees and costs after the Court sets a hearing date for
13 Plaintiffs’ Motion for Final Approval of Class Action Settlement.

14 **3. The Service Payments Are Reasonable**

15 Service payment awards serve to reward the named plaintiff for the time and effort
16 expended on behalf of the class, and for exposing herself to the significant risks of
17 litigation. “Courts routinely approve incentive awards to compensate named plaintiffs for
18 the services they provided and the risks they incurred during the course of the class action
19 litigation.” *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001); *In re*
20 *Southern Ohio Correctional Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997). In *Coca-*
21 *Cola*, for example, the court approved incentive awards of \$300,000 to each named
22 plaintiff in recognition of the services they provided to the class by responding to
23 discovery, participating in the mediation process and taking the risk of stepping forward on
24 behalf of the class. *Coca-Cola*, 200 F.R.D. at 694; *see also Van Vranken v. Atl. Richfield*
25 *Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (approving \$50,000 participation award).

26 Here, Plaintiffs’ counsel requests that the Court grant Plaintiffs a service award of
27 \$7,500 each. The amount of the service award is reasonable given the risks undertaken by
28 Plaintiffs. Taking the risk of filing a lawsuit against an employer deserves reward.

1 Additionally, Plaintiffs were actively involved in the litigation and settlement negotiations
2 of this Action. And Plaintiffs worked diligently with counsel to prepare the action and
3 conferred with counsel regarding settlement negotiations. (Declaration of Ramirez, ¶¶ 5-
4 19; Declaration of Quezada, ¶¶ 4-18; Leviant Decl., ¶ 32; Melmed Decl., ¶¶ 20-21.) The
5 requested amount is reasonable. Plaintiffs will also provide a general release as a
6 condition of the enhancement, which further supports reasonableness.

7 **4. The Class Notice**

8 Rule 23(c)(2)(B) provides that, in any case certified under Rule 23(b)(3), the court
9 must direct to class members the “best notice practicable” under the circumstances. Rule
10 23(c)(2)(B) does not require “actual notice” or that a notice be “actually received.” *Silber*
11 *v. Mabo*, 18 F.3d 1449, 1454 (9th Cir. 1994). Notice need only be given in a manner
12 “reasonably calculated, under all the circumstances, to apprise interested parties of the
13 pendency of the action and afford them an opportunity to present their objections.”
14 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

15 Here, the Parties have agreed to provide notice through first class mail to class
16 members, whose last known addresses are known to Defendant. If any notices are
17 returned with new forwarding addresses, the administrator will re-mail the Notice to the
18 current address. This method of notice clearly suffices.

19 Rule 23(c)(2)(B) also sets forth requirements regarding the content of the notice.
20 The notice must concisely and clearly state in plain, easily understood language:

- 21 • the nature of the action;
- 22 • the definition of the class certified;
- 23 • the class claims, issues, or defenses;
- 24 • that class member may enter an appearance through counsel;
- 25 • that the court will exclude from the class any member who requests exclusion,
26 stating when and how members may elect to be excluded; and
- 27 • the binding effect of a class judgment on class members under Rule 23(c)(3).

28 The proposed notice attached as Exhibit A to the Stipulation complies fully with Rule

23(c)(2)(B). (Leviant Decl., Exhibit “A” attached to Exhibit “1”.) Courts routinely approve class notices even when they provide only general information about a settlement. *See, e.g., Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (“very general description of the proposed settlement” sufficient); *In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 60 (S.D.N.Y. 1993) (notice “need only describe the terms of the settlement generally.”) The class notices drafted by the Parties exceed the “general information” threshold, providing more than adequate notice about the Settlement.

VI. THE COURT SHOULD SCHEDULE A FAIRNESS HEARING

The last step in the settlement approval process is the fairness hearing, where the Court makes a final determination about the propriety of settlement. Plaintiffs request that the fairness hearing in this case be scheduled for a date approximately 145 days after issuance of the Court’s Order granting preliminary approval of the Settlement. Under the Settlement, the Settlement Administrator will mail out class notices approximately 28 days after preliminary approval, and class members have 60 days after mailing of the notice to submit exclusions or objections. Since the final approval hearing must be held at least 28 days after the filing of the final approval motion, Plaintiffs propose that the final approval hearing should be scheduled for June 5, 2023, or the first available hearing date thereafter that is at least 145 days after the issuance of an Order granting preliminary approval.

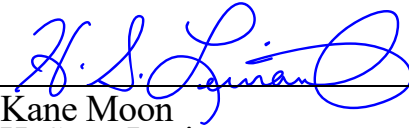
1 **VII. CONCLUSION**

2 Plaintiffs negotiated a settlement that resolves claims and recovers money for the
3 approximately 3,134 Settlement Class Members. This settlement is fair and reasonable,
4 especially given the claims and the potential defenses to them and the daunting hurdles
5 presenting substantial risks for class certification. Plaintiffs ask the Court to grant
6 preliminary approval of the settlement and adopt the proposed order submitted herewith.

7 Respectfully submitted,

8 Dated: December 8, 2022

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