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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

KEVIN BECERRA, on behalf of himself
and others similarly situated,

Plaintiff,

vs.

HUGO BOSS RETAIL, INC., a Delaware
Corporation; and DOES 1 through 50,
inclusive

Defendants.

Case No. 37-2021-00002933-CU-OE-CTL

Judge: Hon. Ronald F. Frazier

Department: C-65

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS ACTION
SETTLEMENT; AND (3) SETTING
HEARING FOR FINAL APPROVAL**

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

Date: November 19, 2021

Time: 8:30 a.m.

Dept.: C-65

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATUS OF THE LITIGATION	2
A.	Procedural History	2
B.	Investigation	2
C.	Settlement Efforts.....	3
III.	SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS	4
IV.	CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE.....	6
A.	There Is A Numerous and Ascertainable Class.....	7
B.	There Is A Well-Defined Community of Interest	7
C.	The Named Plaintiff’s Claims Are Typical	8
D.	Adequacy of Class Counsel and Class Representatives.....	9
E.	Predominance and Superiority	9
V.	THE TWO-STEP APPROVAL PROCESS.....	9
VI.	THE SETTLEMENT IS FAIR AND ADEQUATE	10
A.	The Strength of Plaintiff’s Case.....	11
B.	The Risks Associated with the Merits.....	12
C.	The Risks Associated with Paystub Violations and Waiting Time Penalties.	12
D.	The Risks Associated with the PAGA Penalties.....	14
E.	The Risk, Expense, Complexity and Likely Duration of Any Litigation.	15
F.	The Risk of Maintaining Class Action Status Through Trial.	15
G.	The Amount Offered in Settlement.....	15
VII.	THE CLASS REPRESENTATIVE ENHANCEMENTS ARE FAIR AND REASONABLE	18
VIII.	THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS.....	19
IX.	STANDING TO OBJECT TO PROPOSED SETTLEMENT	20
X.	THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS REASONABLE AND SHOULD BE APPROVED.	20

1
2
3
4
5
6
7
8
9
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12
13
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22
23
24
25
26
27
28

XI.	ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY APPROVAL.....	22
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TABLE OF AUTHORITIES

CASES

<u>B.W.I. Custom Kitchens v. Owens-Illinois, Inc.</u> (1987) 191 Cal.App.3d 1341	8
<u>Cartt v. Superior Court</u> 50 Cal.App.3d 960, 974 (1975).....	19
<u>Class Plaintiffs v. City Of Seattle</u> 955 F.2d 1268, 1276 (1992).....	10
<u>Classen v. Weller</u> (1983)145 Cal.App.3d 27	8
<u>Daar v. Yellow Cab Company</u> 67 Cal. 2d 695, 704 (1967).....	6
<u>Daum v. Claim Jumper Restaurants</u> Orange County Super. Ct. Case No. 02CC10201 (2006)	22
<u>Estrada v. Dr. Pepper/Seven-Up</u> Los Angeles County Super. Ct. Case No. BC 262247 (May 2005).....	22
<u>Evans v. Coca-Cola</u> Los Angeles County Super. Ct. Case No. BC 220525 (Hon. Richard C. Hubbell) (Dec. 2001)	22
<u>Gould v. Alleco, Inc.</u> 883 F.2d 281, 284 (4th Cir. 1998).....	20
<u>Hammon v. Barry</u> 752 F. Supp. 1087 (D.D.C. 1990)	11
<u>In re Activision Securities Litigation</u> (N.D. Cal. 1989) 723 F.Supp. 1373.....	21, 22
<u>In re Ampicillin Antitrust Litigation</u> 526 F.Supp. 494 (D. D.C. 1981)	22
<u>In Re NASDAQ Market-Makers Antitrust Litigation</u> 172 F.R.D. 119, 123 (SDNY 1997)	7
<u>In re Pacific Enterprises Securities Litigation</u> 47 F.3d 373, 378-79 (9th Cir. 1994)	21
<u>In re School Asbestos Litigation</u> 921 F.2d 1330 (3rd Cir. 1990)	20
<u>In re Vitamin Cases</u> 107 Cal.App.4th 820, 828 (2003)	20
<u>In re Wash. Pub. Power Supply Sys. Sec. Litigation</u> 19 F.3d 1291, 1295-96 (9th Cir. 1994)	21
<u>Kimbell v. Abercrombie & Fitch Stores, Inc.</u> Los Angeles County Super. Ct. Case No. BC 277359 (Sept. 2006)	22
<u>Linder v. Thrifty Oil Co.</u> (2000) 23 Cal.4th 429, 439-441	6, 10
<u>Moreno v. Miller Brewing</u> Los Angeles County Super. Ct. Case No. BC 278170 (April 2004).....	22
<u>Mullane v. Central Hanover Bank & Trust Co.</u> 339 U.S. 306 (1950).....	19

1	<u>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</u>	
2	27 Cal.App.4th 1085, 1094-195 (1994)	10
3	<u>Parker v. City of Los Angeles</u>	
4	44 Cal.App.3d 556, 557-568 (1974)	22
5	<u>Priddy v. Edelman</u>	
6	883 F.2d 438, 447 (6th Cir. 1989).....	11
7	<u>Prince v. CLS Transp., Inc.</u>	
8	118 Cal. App. 4th 1320, 1328 (2004)	6
9	<u>Reyes v. Board of Supervisors of San Diego County</u>	
10	196 Cal. App. 3d 1263, 1271 (1987).....	6
11	<u>Richmond v. Dart Industries, Inc.</u>	
12	29 Cal. 3d 462 (1981)	6
13	<u>Rodriguez v. West Publ. Corp.</u>	
14	2007 U.S. Dist. LEXIS 74767, 24-25 (C.D. Cal. August 10, 2007).....	11
15	<u>Rosack v. Volvo of America Corp</u>	
16	131 Cal. App. 3d 741, 753 (1982).....	8
17	<u>Van Vranken v. Atlantic Richfield Co.</u>	
18	901 F.Supp. 294 (N.D. Cal. 1995)	18
19	<u>Vasquez v. Superior Court</u>	
20	4 Cal. 3d 800, 805-9 (1971)	6
21	<u>Vincent v. Hughes Air West, Inc.</u>	
22	557 F.2d 759, 769 (9th Cir. 1977).....	21
23	<u>Wershba v. Apple Computer, Inc.</u> (2001). 91 Cal.App.4th 224	8

STATUTES

1	<u>Labor Code</u> § 203	1-2, 13-14
2	<u>Labor Code</u> § 226	1-2, 13
3	<u>Labor Code</u> § 226.7	1
4	<u>Labor Code</u> § 2699	1, 10, 14-15

OTHER AUTHORITIES

1	Judicial Council of California's Deskbook on the Management of Complex Civil	
2	Litigation (Matthew Bender 2003), § 3.74.....	19
3	<u>Manual for Complex Litigation (Second)</u> (1985)	9
4	<u>Newberg</u> , § 11.25	10
5	<u>Newberg</u> , § 12.1	18
6	<u>Newberg</u> , §§ 14-10	21
7	<u>Newberg</u> , §11.47	17
8	<u>Newberg</u> , §11.51	11
9	<u>Newberg</u> , at §14.03	21

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On January 21, 2021, Plaintiff filed a Complaint against Defendant in the Superior Court
4 for the State of California, in San Diego, Case Number 37-2021-00002933-CU-OE-CTL, for
5 penalties under the Private Attorneys' General Act ("PAGA"). On October 12, 2021 Plaintiff
6 amended his complaint in this matter to add Class Action claims and add a Fair Labor Standards
7 Act claim. Specifically, Plaintiff added claims for (1) Failure to Pay Minimum Wages; (2)
8 Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal-Period Liability Under
9 Labor Code § 226.7; (4) Rest-Period Liability Under Labor Code § 226.7; (5) Failure to Keep
10 Required Payroll Records Under Labor Code §§ 1174 and 1174.5; (6) Violation of Labor Code §
11 226(a); (7) Penalties Pursuant to Labor Code § 203; (8) Violation of Business & Professions
12 Code § 17200 *et seq* and (9) Failure to Provide Suitable Seating.¹

13 Pursuant to the proposed Joint Stipulation of Class Action and PAGA Settlement and
14 Release Settlement ("Settlement Agreement" or "Settlement"), filed concurrently herewith, the
15 class consists of all current and former non-exempt employees of Defendant, who worked in
16 California during the Class Period from May 21, 2018 through the earlier of the date of
17 preliminary approval of the Settlement Agreement or December 21, 2021. After engaging in
18 substantial investigation and extensive negotiations with the assistance of a respected third-party
19 neutral, Ann Kotlarski, Esq., the parties have agreed to settle all claims alleged in the lawsuit on a
20 class-wide non-reversionary basis for \$350,000, inclusive of all fees and costs. All approximately
21 450 Class Members shall receive a settlement share unless they opt out.

22 The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and
23 adequate, and in the best interests of the Class. Consequently, Plaintiff, with the consent of
24 Defendant, hereby move this Court for an order: (1) granting preliminary approval of the
25 proposed class action settlement, as embodied in the Joint Stipulation of Class Action Settlement
26 ("Settlement" or "Settlement Agreement") filed concurrently herewith; (2) approving the Notice

27 ¹ Plaintiff originally filed a separate Class Action asserting the same claims on November 3, 2020 in the Superior
28 Court for the State of California, in San Diego, Case Number 37-2020-00040096-CU-OE-CTL. Plaintiff will
voluntarily dismiss that action due to the overlap since all claims are now encompassed in the instant action.

1 of Class Action Settlement to be sent to Class Members, and the notification schedule as set forth
2 in the Settlement Agreement and the Proposed Order, also filed concurrently herewith; and (3)
3 setting a hearing for final approval of the class action settlement.

4 **II. STATUS OF THE LITIGATION**

5 **A. Procedural History**

6 On November 3, 2020, Plaintiff filed a class action complaint against Defendant in the
7 Superior Court for the State of California, in San Diego, Case Number 37-2020-00040096-CU-
8 OE-CTL, alleging: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime
9 Under Labor Code § 510; (3) Meal-Period Liability Under Labor Code § 226.7; (4) Rest-Period
10 Liability Under Labor Code § 226.7; (5) Failure to Keep Required Payroll Records Under Labor
11 Code §§ 1174 and 1174.5; (6) Violation of Labor Code § 226(a); (7) Penalties Pursuant to Labor
12 Code § 203; (8) Violation of Business & Professions Code § 17200 *et seq* and (9) Failure to
13 Provide Suitable Seating. On January 21, 2021, Plaintiff filed a Complaint against Defendant in
14 the Superior Court for the State of California, in San Diego, Case Number 37-2021-00002933-
15 CU-OE-CTL, for penalties under the Private Attorneys' General Act ("PAGA"). Plaintiff will
16 voluntarily dismiss his claims in the original class case (Case No. 37-2020-00040096-CU-OE-
17 CTL) due to the overlap since all claims are not encompassed in the instant action and on October
18 12, 2021 Plaintiff amended his complaint in this matter to add the Class Action claims and add a
19 Fair Labor Standards Act claim.

20 **B. Investigation**

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

1 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
2 claims giving rise to the action, including: (1) conducting informal and formal discovery, and
3 meeting and conferring with defense counsel about same; (2) reviewing and analyzing time and
4 pay records as well as employment handbooks, Plaintiff's personnel files, relevant policies and
5 other documentation; (3) researching the applicable law and potential defenses; (4) constructing
6 damage models based on interpretations of California law; and (5) reviewing information
7 provided by Defendant at the mediation. (Yeremian Decl., ¶ 12.) The Class enumerated in this
8 action is ascertainable because the Class Members may be readily identified by reference to
9 Defendant's records. (*Id.*) Defendant agreed to share information from these records with the
10 Class Action Administrator in order to identify and contact the Class Members. (*Id.*) There are
11 approximately 450 total Class Members. (*Id.*)

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

17 **C. Settlement Efforts**

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

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

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

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

10 Under the terms of the proposed Settlement Agreement, the Defendant has agreed to pay
11 \$350,000 ("Gross Fund") on a non-reversionary basis to settle and release all claims asserted by
12 Plaintiff in the operative complaint on behalf of the proposed Class. (Yeremian Decl., ¶ 15; Exh.
13 1, ¶12, 3:22-23.) The Settlement Agreement defines the "Class Members" as "all non-exempt
14 hourly employees who were employed by Defendant in California during the Class Period." The
15 Class Period is the period from May 21, 2018 through the earlier of the date of preliminary
16 approval of the Settlement Agreement or December 21, 2021. (Yeremian Decl., ¶ 16; Exh. 1, ¶5,
17 2:28, 3:1) The "Net Settlement Amount," available for distribution to Class Members, shall be the
18 Gross Fund, less the Class Representative Enhancement Payments, Attorneys' Fees and Costs,
19 Settlement Administration Costs, and seventy-five percent (75%) of the PAGA Payment.
20 (Yeremian Decl., ¶ 17; Exh. 1, ¶15, 4:15-19.) These amounts are detailed as follows:

21 • not more than One Hundred and Fifteen Thousand and Five Dollars (\$115,500) to
22 Class Counsel for attorneys' fees, and not more than Fifteen Thousand Dollars (\$15,000) in costs;
23 (Yeremian Decl., ¶ 17; Exh. 1, ¶2, 2:11-19);

24 • not more than Seven Thousand Five Hundred dollars (\$7,500) to the Class
25 Representative for Service Enhancement Payment; (Yeremian Decl., ¶ 17; Exh. 1, ¶7, 3:4-9);

26 • up to \$9,664.91 for the Settlement Administration Costs; (Yeremian Decl., ¶ 17;
27 Exh. 1, ¶37, 9:3-9);

28 • Twenty-Five Thousand dollars (\$25,000.00) shall be allocated for settlement of

1 claims for civil penalties under PAGA, where 75% (\$18,750) will be paid to the LWDA and 25%
2 (\$6,250) will be included in the Net Settlement Amount and distributed to Settlement Class
3 Members); (Exh. 1, ¶38, 9:10-17)

4 The “Individual Settlement Payment,” which is each Class Member’s share of the Net
5 Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on
6 the number of Workweeks a Class Member worked during the Class Period as a non-exempt
7 employee in California. (Yeremian Decl., Exh. 1, ¶15, 4:15-19.)

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

12 Attached to the Settlement Agreement as **Exhibit B** is the Notice of Class Action
13 Settlement (the “Class Notice”). Class Members shall each receive a notice packet which will
14 include the Class Notice, via first class mail (after the Settlement Administrator conducts a
15 national change of address search). (Yeremian Decl., ¶ 20; Exh. 1, ¶¶ 17,44, 4:25-26, 10:27-28,
16 11:1-2.) Class Members will have an opportunity to dispute the information provided in their
17 Notices of Class Action Settlement and they may produce evidence to support the information is
18 inaccurate. (Yeremian Decl., ¶ 21; Exh. 1, ¶47, 11:24-28, 12:1-3; *see also* Class Notice, **Exhibit**
19 **B** attached to the Settlement Agreement.) The Settlement Administrator shall decide the dispute
20 and may ask Defendant to produce the personnel and payroll files of the Class Member disputing
21 their credited workweeks in order to resolve the dispute. (Yeremian Decl., ¶ 21; Exh. 1, ¶47,
22 11:24-28, 12:1-3.) Class Members wishing to opt-out from the Settlement Agreement must sign
23 and postmark a written Request for Exclusion to the Settlement Administrator within the
24 Response Deadline. (Yeremian Decl., ¶ 22; ¶49, 12:13-22.) The Response Deadline will be forty-
25 five (45) calendar days from the initial mailing of the Notice of Class Action Settlement.
26 (Yeremian Decl., ¶ 22; ¶29, 6:22-27.) If a Class Member’s Request for Exclusion is defective as
27 to the requirements, the Class Member will be given an opportunity to cure the defect(s).
28 (Yeremian Decl., ¶ 22; Exh. 1, ¶48, 12:4-12.)

1 Class Members will also have the opportunity to object to the Settlement Agreement, by
2 filing a valid Objection with the Court and serving copies of the Notice of Objection on the
3 Parties before the Response Deadline. (Yeremian Decl., ¶ 23; Exh. 1, ¶52, 13:7-15.)

4 The parties have also agreed that Simpluris shall handle the notice and claims
5 administration (Exh. 1, ¶31, 7:7-11.), and the parties respectfully request this Court to appoint
6 Simpluris to handle those procedures. The procedures for mailing notice and processing
7 exclusions and objections as well as distribution of the Net Settlement fund is detailed in the
8 Stipulation. (Exh. 1, ¶¶ 42-46.)

9 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

10 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince*
11 *v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.*
12 (1981) 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved
13 in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at
14 473-75.) The decision to certify a class is a procedural one, and should be based on the allegations
15 in the operative complaint, and not in the perceived factual or legal merit of the class claims.
16 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

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

22 **A. There Is A Numerous and Ascertainable Class**

23 Whether a class is ascertainable is determined by examining the class definition, the size
24 of the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d
25 at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263,
26 1271.) Class members are “ascertainable” where they may be readily identified without
27 unreasonable expense or time.

28 Plaintiff contends, and Defendant do not dispute for settlement purposes only, this

1 requirement and the requirement of numerosity is met. Class Members are “all current and former
2 non-exempt employees of Defendant, who worked in California during the Class Period.” The
3 Class Period is the period from May 21, 2018 through the earlier of the date of preliminary
4 approval of the Settlement Agreement or December 21, 2021. (Yeremian Decl., ¶ 64(a).)
5 Documents and information exchanged between the parties reflect a class of approximately 450
6 Class Members. (Yeremian Decl., ¶ 64(a).) The Class Members have already been identified by
7 reference to Defendant’s payroll and personnel records. (Yeremian Decl., ¶ 64(b).)

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

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

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

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

22 *Id.* at 809.

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

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

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

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

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

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

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

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

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

14 **E. Predominance and Superiority**

15 Individual issues do not predominate over those common to the class. (Yeremian Decl.,
16 ¶66(f).) The class action mechanism is superior to individualized actions because Class Members
17 have little incentive to bring claims that are small. (*Id.*)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Risks Associated with the Merits.

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

Plaintiff alleged that Defendant failed to pay Plaintiff and Class Members minimum wages for all hours worked, in violation of minimum wage laws. (Yeremian Decl., ¶ 26.) Plaintiff contended that he and other Class Members were not paid proper overtime and minimum wages. Specifically, Plaintiff contended that he and Employees were not paid for the time that they were required to clean up the store and throw away trash at the end of the day. Moreover, Plaintiff contended that he and Employees were not paid off-the-clock work for the time they spent going through lengthy bag checks after clocking out at the end of their shifts.

1 Defendant contended that it paid for all reported hours worked, that Class Members were
2 trained to record all hours worked, and that they paid proper minimum wages. (*Id.* at 29.)
3 Additionally, Defendant also maintained that the allegations regarding failure to pay wages for
4 hours worked in excess of eight hours in a day did not constitute a basis for violation of Labor
5 Code § 510. Defendant argued that given their written policies and practices, any unrecorded
6 hours were likely subject to individualized inquiry and unlikely to be certified. Given the
7 difficulty in certifying this claim, Class Counsel had to apply a significant discount to damages
8 based on this theory.

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

10 In order to establish liability for these penalties, Plaintiff would first have to establish
11 liability for the underlying claims. Moreover, Defendant argued that certain wage violations, even
12 if established, could not be the predicate for a Labor Code § 226 wage statement or § 203 waiting
13 time claim. (Yeremian Decl., ¶¶ 35, 39.) Defendant further contended that wage claim violations,
14 even if established, could not be the predicate for a Labor Code § 226 wage statement claims.
15 *See, e.g. Culley v. Lincare Inc.* (E.D. Cal. 2017) 236 F.Supp.3d 1184, 1195-96; *Soto v. Motel 6*
16 *Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393 (noting wage statement need only document
17 compensation actually received and the hours used to calculate that compensation). In *Maldonado*
18 *v. Epsilon Plastics, Inc.*, (2018) 22 Cal. App. 5th 1308, 1336-37, the court explained that the
19 purpose of Labor Code § 226 is to penalize the employer if the wage statement fails to show the
20 employer's calculation of the hours and rates used in making the payment - distinct from showing
21 what should have been used. Thus, imposing a Labor Code § 226 penalty merely because the
22 values used to calculate the wages that were shown in the wage statement were wrong, but were
23 in fact the figures used by the employer in calculating pay, would permit an impermissible
24 “double recovery.” *Id.* at 1336. Finally, because the damages for this cause of action are
25 penalties, the statute of limitations only runs from one year prior to the filing of the original
26 complaint. *See* Cal. Civ. Pro. § 340.

27 In addition, Plaintiff would have to establish that Defendant’s conduct was willful to
28 recover waiting time penalties. (Labor Code § 203.) With these penalties, there is always the risk

1 that the trier of fact would not have held that Defendant's actions were done "willfully." A good
2 faith belief in a legal defense can preclude a finding of willfulness. (*Gonzalez v. Downtown LA*
3 *Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleges
4 that Defendant failed to pay for all hours worked. Plaintiff contends the Class Members are
5 entitled to these wages and premiums, which he alleges were not paid at the time of their
6 termination or resignation. If Plaintiff is successful on his claims, the penalties pursuant to Labor
7 Code § 203 shall attach. As such, there was some risk associated with waiting time penalties that
8 Class Counsel had to consider. (Yeremian Decl., ¶¶ 37-39.)

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

10 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
11 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
12 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
13 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
14 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount
15 by the Labor Code section relating to the underlying alleged Labor Code violation, that amount
16 shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
17 maximum civil penalty. (*Id.* ["...a court may award a lesser amount than the maximum civil
18 penalty amount specified by this part if, based on the facts and circumstances of the particular
19 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
20 confiscatory."]); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112,
21 1135 [reducing PAGA award on this basis].)

22 Plaintiff discounted potential penalties under this claim given this authority, and for other
23 reasons. The PAGA claims are premised on the same underlying failure to provide meal and rest
24 breaks, wage statement, and waiting time claims, and thus subject to the same disputes and
25 defenses. There is also a dispute as to whether violations in later pay periods trigger the \$200
26 penalty under PAGA as a "subsequent violation." (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App.
27 4th 1157, 1203 (2008).) As such, there is a fair amount of risk associated with PAGA claims.
28 (Yeremian Decl., ¶¶ 44-44.) The parties also considered that the purpose of PAGA is to "achieve

1 maximum compliance with state labor laws,” and that through the proposed settlement,
2 Defendant has agreed to ensure policies comply with California law. (*Iskanian v. CLS Transp.*
3 *Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379.) This makes the settlement’s contemplated PAGA
4 payment of \$25,000 appropriate.

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

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

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

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

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

16 In class actions, decertification is always a possibility. There is always a risk that a trial of
17 this magnitude can become unmanageable. (*Id.*) Given cases like *Duran v. U.S. Bank Nat. Assn.*,
18 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples in class actions,
19 decertification is a real risk that Class Counsel must take into account.

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

21 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-
22 collusive, and arms-length negotiations between the parties with an experienced mediator. In
23 order to determine the approximate potential damages which would be owed to each of the Class
24 Members, Class Counsel analyzed the time records for Plaintiff and Defendant provided Class
25 Counsel with records for a sampling of the class members. By analyzing this information, Class
26 Counsel was able to estimate the full value of the case if Plaintiff was to prevail at trial.

27 There are approximately 450 total Class Members. Class Counsel estimated the maximum
28 exposure for the meal period claim is \$230,667. (Yeremian Decl., ¶¶ 31.) Class Counsel

1 estimated the maximum exposure for the rest period claim is \$230,667. (Yeremian Decl., ¶¶ 33.)
2 The maximum exposure on the unpaid wage claim is \$720,835.50. (*Id.* at ¶ 27.) The maximum
3 exposure for the wage statement claim is \$671,300. (*Id.* at ¶ 36.) The maximum exposure for the
4 waiting time penalties claim is \$820,512. (*Id.* at ¶ 40.) On the PAGA claim, Plaintiff's estimated
5 maximum exposure is \$671,300. (*Id.* at ¶ 44.)

6 Once Class Counsel was able to determine the maximum potential damages, it was able to
7 determine a fair and reasonable settlement for the Class. (*Id.* at ¶¶ 48-53.) Class Counsel analyzed
8 the likelihood of success on the merits. (*Id.*) It believes that the Class had a reasonable likelihood
9 of success on the core claims. (*Id.*) However, Defendant disputes this contention, denies all
10 wrongdoing in this matter and is confident it has strong legal and factual defenses to Plaintiff's
11 claims. Moreover, Class Counsel determined that the likelihood of success on the claims for
12 unpaid wages and waiting time penalties were not as strong, because various defenses including
13 issues not suitable for class treatment, no detriment to the class members over time, and *de*
14 *minimis* defenses. Defendant may have had the opportunity to establish that they had a good faith
15 belief that they were complying with law. (*Id.*) After taking into account the likelihood of success
16 on each claim and the challenges faced with certifying these claims, Class Counsel determined
17 that the settlement amount of \$350,000 was fair and reasonable.

18 Under the Settlement, each of the approximately 450 Class Members will receive on
19 average \$405.75 after expenses. (*Id.* at ¶ 47.) Plaintiff feels that this Settlement is fair, reasonable,
20 and advantageous to the class. (*Id.*)

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

25 As detailed at length in the accompanying Declaration of David Yeremian, the settlement
26 is the result of extensive settlement negotiations between the parties, conducted at arm's length,
27 and informed by substantial factual and legal investigations. (Yeremian Decl., *passim*.)
28 Throughout this case, Class Members have been represented by experienced counsel with many

1 years of experience in employment class action litigation. (Yeremian Decl., ¶¶ 3-9.)

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

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

16 These factors each indicated that the interests of Class Members are best served by a
17 settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.
18 The Settlement Agreement confers a substantial benefit on the class of up to \$350,000. Moreover,
19 the settlement awards for each Class Member will be tailored to their workweeks during the class
20 period. (*Id.* at ¶ 18.) In addition Class Counsel secured prospective relief for the class in that
21 Defendant will ensure their policies comply with California law.

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

28 ///

1 **VII. THE CLASS REPRESENTATIVE ENHANCEMENTS ARE FAIR AND**
2 **REASONABLE**

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

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

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

19 But Plaintiff did not allow his fear of the potential repercussions of being class
20 representatives deter him from acting for the benefit of Class Members. (*Id.*) To the contrary,
21 Plaintiff has been intimately involved in this case since its inception. (*Id.*) He has devoted a
22 substantial amount of time to helping Class Counsel effectively develop and prosecute this action
23 at every stage of the litigation. (*Id.*) Both before and after the filing of this lawsuit, Plaintiff
24 conferred with Class Counsel to discuss every aspect of this case; Plaintiff has provided Class
25 Counsel with information about Defendant and about the industry generally, reviewed documents,
26 identified witnesses, consulted Class Counsel throughout the litigation, participated in the
27 mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and
28 signed the settlement agreement. (*Id.*)

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

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

8 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE**
9 **CLASS MEMBERS.**

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

17 The Notice meets constitutional standards because it provides all the information a
18 reasonable person would need to make a fully informed decision about the settlement. It will
19 notify all class members of the terms of the settlement, of its effect on their rights, of their options
20 as class members (i.e., participate, object, opt out, do nothing), and of the consequences of
21 exercising those options. (Yeremian Decl., ¶¶ 52-54.) Moreover, the Notice will specifically
22 direct any class members who have questions or concerns to contact the Class Action
23 Administrator, Simpluris, or Class Counsel. (*Id.*)

24 The standard for determining the adequacy of notice is whether the notice has "a
25 reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior*
26 *Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California's Deskbook on the
27 Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual
28 notice by mail is preferred when possible and dissemination of combined certification/settlement

1 notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820,
2 828.)

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

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

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

12 Non-settling parties and third parties periodically may attempt to object to proposed class
13 action settlements, but the right of non-settling parties to object at the final settlement approval
14 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
15 members have standing to object to a proposed settlement. “Beginning from the unassailable
16 premise that settlements are to be encouraged, it follows that to routinely allow non-class
17 members to inject their concerns via objection at the settlement stage would tend to frustrate this
18 goal.” (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being
19 filed to obtain a good faith determination, no persons other than class members have standing to
20 object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d
21 1330.)

22 **X. THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS** 23 **REASONABLE AND SHOULD BE APPROVED.**

24 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will
25 seek an award of fees of no more than \$115,500.00, approximately one-third of the Gross Fund,
26 and not more than \$15,000 in costs. The requested fees are fair compensation for a law firm
27 involved in undertaking complex, risky, expensive, and time-consuming litigation solely on a
28 contingent basis. (Yeremian Decl. ¶¶ 56-58.) Defendant will not oppose Class Counsel’s fees and

1 cost request.

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

10 Several courts have, however, expressed frustration with the "lodestar" approach for
11 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
12 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns
13 the interests of class counsel and absent class members; (2) it encourages efficient resolution of
14 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
15 demands on judicial resources. (*In re Activision Securities Litigation*, (N.D. Cal. 1989) 723
16 F.Supp. 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach
17 to determine the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir.
18 1994) 47 F.3d 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).)

19 Class Counsel's application for attorneys' fees in light of the facts and circumstances
20 surrounding this case is well within the range of reasonableness. Historically, courts have
21 awarded percentage fees in the range of 20% to 50% of the common fund, depending on the
22 circumstances of the case. (*Newberg*, at §14.03; *see also In re Activision Securities Litigation*,
23 723 F. Supp. at 1378.) *Newberg* further notes: "[A]chievement of a substantial recovery with
24 modest hours expended should not be penalized but should be rewarded for considerations of
25 time saved by superior services performed." (*Id.* at §§ 14-10:14-11.)

26 The attorneys' fees request provided for in the Settlement Agreement is commensurate
27 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or
28 greater than the percentage requested in this case. (*See, e.g., In re Pacific Enterprises Securities*

1 *Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common
2 fund); *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding
3 plaintiffs' counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin*
4 *Antitrust Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement
5 fund); *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to
6 counsel of one-third (1/3) of recovery achieved.)

7 In wage and hour class actions in particular, California trial courts have customarily
8 approved attorney's fees consistent with or greater than the percentage of the common fund
9 requested in this case. (See *Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC
10 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at least
11 33-1/3% of the settlement); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
12 Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
13 Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*
14 *Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon.
15 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County
16 Super.Ct. Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper*
17 *Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).)

18 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive
19 any compensation until recovery is obtained. (See *Yeremian Decl.*, ¶¶ 56-58.) The Court should
20 also consider the benefit obtained by Class Counsel on behalf of class members. Thus, the
21 requested award for Class Counsel is reasonable.

22 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY** 23 **APPROVAL**

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

- 26 1. Review and approve the Settlement Agreement;
- 27 2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit

28 2;

1 3. Consider and determine that the proposed class action settlement as set forth in the
2 Settlement Agreement preliminarily appears fair, reasonable, and adequate;

3 4. Enter an order conditionally certifying the action as a class action for settlement
4 purposes only and preliminarily approving the proposed class action settlement and the
5 Settlement Agreement;

6 5. Approve and appoint David Yeremian of David Yeremian & Associates, Inc. and Emil
7 Davtyan of Davtyan Law Firm, Inc. to serve as Class Counsel for settlement purposes;

8 6. Approve and appoint Simpluris as the Class Action Administrator to handle the notice
9 and claims procedures as set forth in the Settlement Agreement;

10 7. Approve the proposed settlement's allocation of funds to claims made under PAGA;

11 8. Order Defendant to disclose to Simpluris the names, last-known addresses, dates of
12 employment, and social security numbers of class members as set forth in the Settlement
13 Agreement;

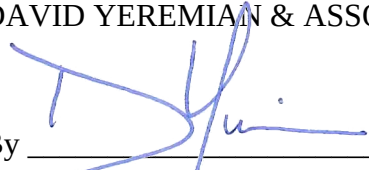
14 9. Order that Simpluris mail the Class Notice to class members; and

15 10. Set a date for the Final Approval Hearing.

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17 Dated: October 27, 2021

Respectfully submitted,

18 DAVID YEREMIAN & ASSOCIATES, INC.

19
20 By 

David Yeremian
Attorneys for Plaintiff
Kevin Becerra and, on behalf
of himself and others similarly situated

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