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DARLENE TORRES, LEANNA RUVALCABA,
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behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

DARLENE TORRES, LEANNA
RUVALCABA, and MARCELLA BERNAL,
individuals, on their own behalf and on behalf of
all similarly aggrieved employees,

Plaintiffs,

v.

MONETARY MANAGEMENT OF
CALIFORNIA, INC., a foreign corporation;
DFC GLOBAL CORP., a foreign corporation;
and DOES 1through 50, inclusive,

Defendants.

Case No.: 21STCV09917

*[Assigned for all purposes to the Hon. William F.
Highberger, Dept. 10]*

Complex Class Action

**NOTICE OF MOTION AND UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND PAGA REPRESENTATIVE
ACTION SETTLEMENT**

Date: January 17, 2023

Time: 1:30 p.m.

Dept: 10

*[Filed concurrently with the Declaration of Taras
Kick; and Declarations of Plaintiffs Darlene
Torres, Leanna Ruvalcaba, and Marcella Bernal]*

Complaint filed: March 12, 2021

FAC filed: June 9, 2022

Trial date: None set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. INTRODUCTORY INFORMATION**

3 **a. Introduction**

4 This is an Unopposed Motion for Preliminary Approval of Proposed Class and PAGA Action
5 Settlement. It asks this Court to take the first step in the approval process after parties in a class action have
6 reached a proposed class action settlement, by deeming that the proposed settlement preliminarily meets the
7 criteria to allow notice to go out to class members, certifying the Settlement Class, appointing Class Counsel
8 and class representatives, and setting the timing and procedures for the future Motion for Final Approval.

9 The underlying putative class action is a wage-and-hour lawsuit. Plaintiffs Darlene Torres, Leanna
10 Ruvalcaba, and Marcella Bernal (“Plaintiffs”) bring the action on behalf of themselves and a class of 738
11 similarly situated current and former non-exempt employees in California. Plaintiffs allege that they and
12 their fellow Class members and aggrieved employees were deprived of certain rights afforded to them by
13 the Labor Code during their employment with Defendant Monetary Management of California, Inc.

14 The parties reached the proposed Settlement after engaging in a private mediation with experienced
15 wage and hour mediator and accepting a mediator’s recommendation. A true and correct copy of the fully
16 executed Stipulation for Class Action Settlement (“Settlement,” or “SA”) is attached as **Exhibit 1** to the
17 concurrently filed Declaration of Taras Kick (“Kick Decl.”). The proposed Notice of Pendency of Class
18 Action Settlement and Final Hearing (“Class Notice”) is attached as Exhibit 1 to the Settlement.

19 This memorandum attempts to follow the format of the Checklist for Preliminary Approval of Class
20 Action Settlement provided by the LA Superior Court Complex Civil Department. As shown below, all of
21 the criteria for preliminary approval are met here. Accordingly, Plaintiffs respectfully request that the Court
22 preliminarily approve the Settlement so that notice of a final approval hearing may be disseminated.

23 **b. Identity of the Parties**

24 Monetary Management of California, Inc. (“Money Mart” or “Defendant”) is a payday lender,
25 which, at all times relevant herein, conducted business in Los Angeles County, California. Plaintiffs worked
26 for Money Mart during the Class Period. Specifically, Plaintiff Ruvalcaba worked as a non-exempt
27 Customer Service Representative for Money Mart from June 2018 until March 2021. (Declaration of Leanna
28 Ruvalcaba [“Ruvalcaba Decl.”], ¶ 4.) Plaintiff Marcella Bernal worked as a non-exempt Assistant Store
29 Manager and Customer Service Representative for Money Mart from August 2017 to October 2022.

(Declaration of Marcella Bernal [“Bernal Decl.”], ¶ 4.) Plaintiff Darlene Torres worked as a non-exempt Customer Service Representative for Money Mart from March 2018 to September 2022. (Declaration of Darlene Torres [“Torres Decl.”], ¶ 4.)¹

c. Summary of the Litigation

i. Brief Procedural History

On December 17, 2020, pursuant to Labor Code § 2699.3, Plaintiffs submitted notice to the Labor and Workforce Development Agency (“LWDA”) and to Defendants, LWDA Case No. LWDA-CM-815829-20, of their intention to litigate various alleged Labor Code violations. (Kick Decl., ¶ 8, Ex. 2.)

On March 12, 2021, Plaintiffs filed the initial PAGA-only complaint against Defendants on behalf of themselves and others similarly aggrieved to recover civil penalties pursuant to California Labor Code §§ 2698, *et seq.* (“PAGA”) for Defendants’ alleged violations of the California Labor Code (“the Action”).

On June 9, 2022, Plaintiff filed the First Amended Complaint (“FAC”) to add eleven (11) additional causes of action for Labor Code violations and unfair and unlawful business practices on behalf of a class of similarly situated employees. The FAC is the operative complaint. (Kick Decl., ¶ 10.)

Both before and after initiating the Action on behalf of the putative class, Plaintiffs and Class Counsel diligently investigated the claims alleged and conducted legal research regarding Defendants’ potential liability and defenses. (*Id.*, ¶¶ 12-14.) Money Mart retained respected and experienced class action counsel, Bartko Zankel Bunzel & Miller. (*Id.*) Leading up to mediation, counsel for Plaintiffs and Money Mart engaged in numerous meetings and conferences and exchanged informal discovery. (*Id.*) Among other things, Money Mart produced a detailed sample of timekeeping and payroll records, which confirmed substantial violations, including Defendants’ systemic failure to provide employees the opportunity to take timely, duty-free meal periods. (*Id.*) Class Counsel retained an economic expert, Berger Consulting Group, who then analyzed the data and created a damages model. (*Id.*, ¶ 13.)

On October 21, 2021, the Parties engaged in a private, neutral mediation with an experienced wage and hour mediator, Marc Feder, which resulted in the Parties’ acceptance of a mediator’s proposal. (*Id.*, ¶

¹ Money Mart denies that DFC Global Corp. was a properly named defendant, as Money Mart asserts that Plaintiffs were never employed by DFC Global Corp. Plaintiffs and Money Mart (collectively, the “Parties”) have agreed that DFC Global Corp. was not the employer and requested dismissal of the entity without prejudice, which was granted on June 2, 2022. The dismissal of DFC Global Corp. did not lower the dollar amount of the proposed Settlement. (Kick Dec., ¶ 11.)

15.) Based on Plaintiffs’ substantial investigation and analysis, Class Counsel was able to act intelligently and effectively in negotiating at arm’s-length and evaluating the mediator’s recommendation. (*Id.*, ¶¶ 12-15.) Plaintiffs now seek preliminary approval of the Settlement.

ii. Claims Asserted and General Factual Basis for the Claims

This is a wage-and-hour class and PAGA action. Plaintiffs bring twelve (12) causes of action against Money Mart on behalf of themselves and a class of 738 similarly situated non-exempt employees in California. Plaintiffs allege that they and their fellow Class members and aggrieved employees were deprived of certain rights afforded to them by the Labor Code during their employment. For instance, Plaintiffs allege that throughout the Class Period, Money Mart maintained a policy and practice of requiring its employees to perform work “off-the-clock” when opening and closing the store each day. Plaintiffs also allege that, among other violations, Money Mart had a facially unlawful rest break policy and consistently denied Class Members the ability to take 10-minute rest breaks during the Class Period. (*See Complaint.*)

The operative complaint, the FAC, alleges the following causes of action: 1) failure to pay minimum wage; 2) failure to pay overtime wages; 3) failure to provide meal periods; 4) failure to provide rest periods; 5) failure to indemnify employees for necessary business expenses; 6) failure to provide accurate itemized wage statements; 7) failure to timely to pay all wages due at separation; and 8) unfair and unlawful business practices in violation of Bus & Prof. Code § 17200, *et seq.*; 9) failure to pay timely wages during employment 10) failure to maintain required records; 11) failure to comply with other Labor Code provisions specified in PAGA Notice; and 12) civil penalties pursuant to PAGA.

B. DUNK/KULLAR ANALYSIS

a. Summary of the Case, Including the Legal and Factual Basis for Each Claim

Plaintiffs’ claims are summarized as follows:

1. Failure to Pay Rest Period Premiums

Labor Code § 226.7 and Wage Order 4 require employers to provide employees timely, duty-free rest periods of not less than ten (10) minutes for every major fraction of four hours worked or pay an additional hour of pay at the employee’s regulate rate in lieu thereof. 8 Cal. Code Regs. § 11090(12); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1029 (holding that “major fraction” of a four-hour work period means “any amount of time in excess of two hours.”)

Here, Plaintiffs allege that they and other Class Members were not authorized and permitted to take

uninterrupted rest breaks due to Defendant's policy and practice of failing to relieve them of their work demands. (FAC, ¶ 23.) Further, Plaintiffs allege that Defendant's Employee Handbook contains a facially unlawful provision, which does not authorize and permit rest breaks for employees who work more than two hours but less than four hours. (Kick Decl., ¶ 14.) Moreover, Plaintiffs allege there is no evidence that Defendant paid premium wages for missed or short rest periods or had any process for auditing records to identify violations, and this issue is also easily certifiable. *See, e.g., Safeway, Inc., supra*, 238 Cal.App.4th at 1153 (finding that the failure to pay statutory premium wage payments for years may constitute a "dominant common issue [that makes] certification proper.") (internal quotations omitted).

2. Failure to Pay Meal Period Premiums

Labor Code § 512 and Wage Order 4 require employers to provide duty-free meal periods of not less than 30 minutes within the employee's first 5 hours of work or pay a meal break premium of an hour of additional pay at the employee's regulate rate in lieu thereof. 8 Cal. Code Regs. § 11090(11); *see also Brinker, supra*, 53 Cal.4th at 1033, 1036-37. Liability arises when an employer adopts a uniform meal period policy that results in violations. Furthermore, "[a]n on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing." *Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.

Here, the FAC alleges that during the Class Period, Plaintiffs and the Class were routinely denied 30-minute meal breaks, without being paid meal premiums. (FAC, ¶¶ 21-22.) Plaintiffs contend that analysis of Defendant's records confirmed that employees were frequently denied the opportunity to take compliant meal periods, as defined by statute. (Kick Decl., ¶ 14.) Plaintiffs' experts found that the data provided by Money Mart demonstrates an approximately 25 percent rate of meal period violations. (*Id.*)

3. Failure to Pay Minimum Wages

The Labor Code requires employers to pay employees at least minimum wage for each hour worked. *See Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323 ("all hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation.") Labor Code §§ 1194 and 1197 make unlawful payments of less than minimum wages fixed by the IWC "for all hours worked." In California, all time an employee spends subject to the employer's control is compensable "hours worked." *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 583. Furthermore, when the employer fails to pay at least minimum wage, the employee is entitled to recover unpaid minimum wages,

1 liquidated damages, and interest. Labor Code § 1194.2. The California Supreme Court has also held that
2 “the relevant wage order and statutes do not permit application of the de minimis rule.” *Troester v. Starbucks*
3 *Corp.* (2018) 5 Cal.5th 829, 835. Accordingly, the failure to pay wages for *all* hours worked by an employee
4 necessarily results in a minimum-wage violation.

5 Plaintiffs alleged that Money Mart required Plaintiffs and the Class to perform off-the-clock work
6 on a daily basis, including at the start and end of their workdays to communicate with “Four Star,” to sanitize
7 the work area, vacuum entryways and high traffic areas, remove trash, clean restrooms, and various other
8 tasks. (FAC, ¶¶ 17-18.) Plaintiffs alleged Defendant’s systemic failure to pay at least minimum wages for
9 all hours worked, as not all hours worked were recorded. (Id.) Defendant denies the allegations.

10 4. Failure to Pay All Wages Due Upon Discharge of Employment

11 Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who
12 is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days.
13 Labor Code § 203; *Mamika v. Barca*, 68 Cal. App. 4th 487, 492 (1998).

14 Plaintiffs alleged Defendant failed to pay non-exempt California employees all wages due upon
15 separation, in violation of Labor Code §§ 201-203. (FAC ¶¶ 29-30.) As Defendant allegedly failed to pay
16 Class members all meal and rest period penalties and minimum wages due during their employment,
17 Plaintiffs asserted that Defendant is subject to waiting time penalties.

18 5. Failure to Furnish Accurate Wage Statements

19 Labor Code § 226(a) requires employers to provide accurate itemized wage statements, including:
20 (1) gross wages earned; (2) total hours worked; (3) the number of piece-rate units earned and any applicable
21 piece rate; ... (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly
22 rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. *See*
23 *also* 8 Cal. Code Regs. § 11090, Sec. 7 (A-C).

24 In addition to alleging that Plaintiffs and the Class were denied all wages due by virtue of the asserted
25 Labor Code violations, Plaintiffs alleged Defendant failed to furnish wage statements that accurately state
26 all gross wages earned, total hours worked, net wages earned during the pay period, in violation of Labor
27 Code § 226(a)(1)-(9), as many hours worked were unpaid and not recorded. (FAC, ¶¶ 59-60.)

28 6. Failure to Reimburse Necessary Business Expenses

29 Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures

1 incurred by the employee in direct consequence of the discharge of his or her duties. Plaintiffs alleged that
2 Defendant violated section 2802 by failing to reimburse class members for multiple expenses, including
3 travel expenses to attend required training sessions and cell phone costs to comply with Defendant's
4 requirement to call into "Four Star" before each shift to request authorization to enter the store. (FAC, ¶ 25.)

5 7. Failure to Pay Overtime Wages

6 California Labor Code §§ 510, 1194, and IWC Wage Order No. 4-2001, § 3 require that employers
7 pay one and one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per
8 day and/or forty (40) hours per week. Plaintiffs alleged Money Mart failed to compensate Plaintiffs and the
9 Class for overtime wages at the applicable rate, including by requiring off-the-clock work. (FAC, ¶ 42.)

10 8. Failure to Pay Timely Wages During Employment

11 California Labor Code §§ 201(a) and 204 prescribes timing requirements that employers must abide
12 by when paying their employees all wages due for all labor performed each month and/or pay period. By
13 virtue of the asserted Labor Code violations, including requiring off-the-clock work, Plaintiffs alleged
14 Defendant failed to pay all wages in a timely manner pursuant to Labor Code §§ 201(a), 204, and other
15 applicable provisions.

16 9. Failure to Maintain Required Records

17 Pursuant to California Labor Code §§ 226, 1174(d) and IWC Wage Order No. 4-2001, § 7,
18 employers must maintain accurate records including, but not limited to, time records showing when
19 employees began and ended each work and meal period, the total daily hours worked, payroll records
20 showing the total wages paid, and records showing the total worked during the payroll period and applicable
21 rates of pay as required. By failing to record all hours worked by Plaintiffs and the Class, Plaintiffs contend
22 Defendant failed to pay maintain required records pursuant to Labor Code §§ 226, 1174(d), and other
23 applicable provisions.

24 10. Unfair Business Practices

25 The Labor Code and Wage Orders violations are actionable under Bus. and Prof. Code § 17200.
26 Plaintiffs' unfair business practices claim requires only the showing of an unfair, unlawful, or fraudulent
27 business practice by Defendant, which is clearly satisfied by the above-described claims. *See Cortez v.*
28 *Purolator Air Filtration Products Co.* (2000) 23 Cal. 4th 163, 178-179 ("We recognize that any business
29 act or practice that violates the Labor Code through failure to pay wages is, by definition, an unfair business

practice”). Here, if proven, Defendant’s repeated practice of Labor Code and Wage Order violations would be a violation of section 17200. Once a showing has been made, Plaintiffs are entitled to restitution going back four years from the filing of the lawsuit, per the four-year statute of limitations. Thus, Plaintiffs sought restitution of unpaid wages from March 12, 2017, to the last date of employment for each Class Member.

11. PAGA Penalties

The Private Attorneys General Act (PAGA) permits aggrieved employees to recover civil penalties specified by the Labor Code that previously only the Labor Commissioner could recover. Labor Code § 2699(e)(1). Labor Code § 558 provides: “(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty ...” Here, if proven, Defendant’s repeated practice of Labor Code and Wage Order violations, including meal and rest break violations, would give rise to potential PAGA penalties.

b. Summary of the Investigation and Discovery Conducted, Including the Specific Documents Reviewed Prior to Agreeing to Settle the Case

Plaintiffs and Class Counsel vigorously prosecuted this case, and Defendant vigorously contested liability. Prior to attending private mediation, the Parties exchanged substantial informal discovery to gather facts and data necessary to reach a fair and reasonable settlement. (Kick Decl., ¶¶ 12-15.) Among other things, Plaintiffs received and reviewed hundreds of pages of data and documents, including Defendant’s written policies and a detailed sample of its non-exempt employees’ timekeeping and payroll records for 111 employees, comprising 15% of the putative Class. (*Id.*) Class Counsel retained an economic expert specializing in analysis of California wage and hour issues, Berger Consulting Group, which then analyzed the data and created a damages model. (*Id.*) Class Counsel carefully considered the class claims at issue and its expert’s analysis of violation rates for Defendant’s timekeeping and payroll data. (*Id.*) Plaintiffs determined Defendant’s records show that employees were frequently denied the opportunity to take compliant meal and rest periods. (*Id.*)

The investigation and informal discovery conducted in this matter have been adequate to give Plaintiffs and Class Counsel a sound understanding of the merits of their position, Defendant’s defenses, and to evaluate the reasonable value range of the claims of the Class. (*Id.*) The law makes clear that exhaustive, protracted, and costly discovery need not be conducted in a class action before a settlement can

1 be reached. *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th 1135, 1150 (2000); *see also Linney v.*
2 *Cellular Alaska P'ship*, 151 F.3d 1234, 1239–40 (9th Cir. 1998) (“In the context of class action settlements,
3 ‘formal discovery is not a necessary ticket to the bargaining table’ where the parties have sufficient
4 information to make an informed decision about settlement...”). Here, the informal discovery conducted
5 and information exchanged through negotiations allowed Class Counsel to reliably assess the merits of each
6 side’s position and compromise the issues on a fair and equitable basis, with the mediator’s assistance.

7 **c. Summary of Settlement Negotiations, Including When the Settlement Was Reached, and**
8 **Whether the Parties Were Assisted by a Mediator**

9 The Settlement was reached with the assistance of an experienced mediator, Marc Feder, Esq., of
10 Frank & Feder at a mediation on October 21, 2021. (*Id.*, ¶ 15.) Prior to mediation, counsel for the Parties
11 engaged in sufficient investigation and discovery to assess the relative merits of Plaintiffs’ claims and of
12 Defendant’s defenses to them. (*Id.*, ¶¶ 12-14.) At mediation, the Parties negotiated at arm’s-length with the
13 assistance of Mr. Feder, and ultimately, both Parties accepted a mediator’s proposal. (*Id.*, ¶ 15.) Following
14 the successful mediation, the Parties drafted and executed a long form agreement. (*Id.*, Ex. 1, Settlement.)

15 **d. Summary of the Risks, Expenses, Complexity, and Duration of Further Litigation if the**
16 **Settlement is Not Approved**

17 Were litigation to proceed, there is a strong likelihood it would be protracted and contentious, as
18 Defendant disputes all aspects of Plaintiffs’ claims. Plaintiffs would have to prepare and file a motion for
19 class certification, which outcome is uncertain based on Defendant’s contentions, *inter alia*, that individual
20 questions of fact predominate, and that Plaintiffs cannot show the “willfulness” requirement for Section 203
21 penalties. (*Id.*, ¶ 17.) If the motion were granted, Defendant would likely move for decertification, appeal
22 certification, or move for Summary Judgment. (*Id.*)

23 To succeed on the merits, Plaintiffs would have to prove that Defendant actually engaged in the
24 practices and policies alleged and that those practices and policies violated the law. (*Id.*, ¶ 18.) While Class
25 Counsel believe strong evidence exists showing Defendant’s liability, there remains a risk that the trier of
26 fact might find otherwise. (*Id.*) If the case were to proceed to trial, additional discovery would be needed
27 and the Parties would thus incur significant additional expenses, which money could go instead to fund a
28 settlement for the benefit of the Class as a whole. (*Id.*) For instance, Plaintiffs would need to analyze all the
29 rest of Defendant’s time and payroll data and prepare comprehensive damages models with their experts’

assistance to present at trial. (*Id.*) Moreover, discovery disputes would have certainly arisen, which would have cost the Parties additional time and money. (*Id.*) Further, regardless of which Party prevailed, appellate practice would no doubt ensue, further delaying any possible recovery by Class Members. (*Id.*) In other words, both Parties would likely incur substantial attorneys' fees and costs from continued litigation, likely approaching hundreds of thousands of dollars. (*Id.*)

e. Summary of the Risks of Achieving and Maintaining Class Action Status

As stated above, the risks of achieving and maintaining class action status include, among others, facing challenges to class certification and liability, the outcome of which is uncertain. (*Id.*, ¶ 16.) Moreover, even though Class Counsel believe strong evidence exists showing Defendant's liability, the costs of continued discovery, law and motion, and trial preparation would be substantial for all Parties. (*Id.*)

f. Specific Information Sufficient for the Court to Independently Determine that the Settlement Is Reasonable

Plaintiffs hereby provide specific information sufficient for the court to make an independent determination that the consideration being received for the release of Class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation. *Kullar, supra*, 168 Cal.App.4th at 129. Below, Plaintiffs set forth the maximum potential recovery of Plaintiffs' claims leading up to mediation, with the assistance of Plaintiffs' experts, as well as the defenses asserted by Defendant and any other relevant factors justifying the amount offered in settlement.

<i>Figures used for calculations</i>	
733	Number of Employees Included in Class (Provided by Defense Counsel)
267,633	Number of Estimated Shifts in Class (Provided by Defense Counsel)
7.5	Average Number of Hours per Shift
59,097	Number of Workweeks in the Class (Provided by Defense Counsel)
30,128	Number of Pay Periods in the Class (Provided by Defense Counsel)
\$16.64	Average Rate of Pay
<i>DAMAGES, RESTITUTION & REIMBURSEMENT</i>	
<i>Meal Break Violations - as Compensatory Damages or Restitution</i>	
25.2%	Violation Rate
\$16.64	Penalty per Violation
67,470	Number of Meal Break Violations
\$1,122,374	Premiums Due to Meal Break Violations
\$202,693	Interest Due to Meal Break Violations
\$1,325,068	Maximum Damages for Meal Break Violations
<i>Rest Break Violations – as Compensatory Damages or Restitution</i>	
100%	Violation Assumption Rate

\$16.64	Penalty per Violation
264,936	Number of Rest Break Violations
\$4,407,275	Premiums Due to Rest Break Violations
\$810,493	Interest Due to Rest Break Violations
\$5,217,768	Maximum Damages for Rest Break Violations
<i>Unpaid Minimum Wages – as Compensatory Damages & Restitution</i>	
0.5	Estimated Unpaid (Off-the-Clock) Hours per Shift
133,817	Sum of Unpaid Off-the-Clock Hours
\$2,726,931	Unpaid Wages Due to Off-the-Clock Work (assuming 45% overtime rate)
\$716,860	Interest Due to Unpaid Off-the-Clock Work
\$3,433,791	Maximum Damages for Unpaid Minimum Wages
<i>Business Expenses - Compensatory Damages or Restitution</i>	
\$20	Estimated Unreimbursed Expenses per Month
733	Number of Employees Included in Class (Provided by Defense Counsel)
\$281,920	Sum of Unreimbursed Business Expenses
\$73,935	Interest Due to Unreimbursed Business Expenses
\$355,855	Maximum Damages for Unreimbursed Expenses
STATUTORY PENALTIES	
<i>Final Wage Waiting Time Penalties (Labor Code § 203)</i>	
448	Terminated Employees Three Years Prior to Complaint
7.5	Average Number of Hours Per Shift
30	Maximum Penalty Days per Employee
\$1,674,113	Maximum Labor Code § 203 Final Wage Statutory Penalties
<i>Accurate Wage Statement Violation Statutory Penalties (Labor Code § 226(e))</i>	
268	Class Members from One Year Prior to Complaint
6,915	Number of Pay Periods in Wage Statement Date Range
\$662,350	Maximum Labor Code § 226(e) Accurate Wage Statement Penalties
PAGA PENALTIES	
283	Total Aggrieved Employees (from 1/12/20 to 10/21/21)
7,788	Number of Pay Periods in PAGA Date Range
\$764,650	Max PAGA for Unpaid Wages (assuming \$100 per penalty)
\$603,650	PAGA for Meal Breaks (assuming \$100 per penalty)
\$764,650	PAGA for Rest Breaks (assuming \$100 per penalty)
\$757,575	Max PAGA for Wage Statements (assuming \$100 per penalty)
\$764,650	Max PAGA for Business Expenses (assuming \$100 per penalty)
\$3,655,175	Maximum Total PAGA Penalties
MAXIMUM TOTAL DAMAGES	
\$8,538,500	Maximum Total Damages
\$5,991,638	Maximum Waiting Time, Wage Statement, and PAGA Penalties
\$14,530,138	Maximum Total Damages and Penalties

Plaintiffs' experts quantified PAGA penalties for unpaid wages, meal breaks, rest breaks, and business expenses under PAGA, Lab. Code § 2699(f)(2), assuming a \$200 penalty per employee per pay period for each subsequent violation, for a total of \$5,795,200. (Kick Decl., ¶ 20.) However, under current law, the enhanced penalties of \$200 would not be applicable as there was not yet a finding that the alleged

conduct was wrongful. *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 356 (citing *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021); *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209, 78 Cal.Rptr.3d 572). Therefore, the total exposure of Defendant for 100% PAGA penalties for unpaid wages, meal breaks, rest breaks, and business expenses was about half of that, or \$2,897,600. Further, for non-compliant wage statements, Plaintiffs' experts assumed heightened initial and subsequent penalties of \$250 and \$1,000 per employee per pay period. However, under current law, these heightened penalties are arguably not applicable in this case. *See Gunther, supra*, 72 Cal.App.5th at 354-355 (holding that heightened penalties for wage statement violations under Labor Code section 226.3 are only available where employer fails to provide wage statement or keep records at all, not merely when the wage statement is inaccurate). Accordingly, total exposure for these PAGA penalties would be about 90% lower, or \$757,575.

With these reductions, the maximum total waiting time, wage statement and PAGA penalties is reduced from \$15,707,413 to \$5,991,638.² (Kick Decl., ¶ 21.) Combined with damages, this amounts to a maximum damages and penalties of \$14,530,138. (*Id.*) Therefore, if Plaintiffs were to prevail on all these liability issues, as well as on class certification, and if no discounts were applied for risk of success, the proposed settlement of \$1,500,000 equals approximately 10.3% of Defendant's maximum possible exposure for damages and penalties.³ (*Id.*) This represents a reasonable percentage of the estimated recovery that could potentially be awarded at trial. *See, e.g., Behrens v. Wometco Enters., Inc.* (S.D. Fla. 1988) 118 F.R.D. 534, 542, *aff'd*, (11th Cir. 1990) 899 F.2d 21 ("[T]he fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate."); *see also Martel v. Valderamma* (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 49830 * 17 (approving \$75,000 settlement when potential damages were \$1.2 million, or about 6%). As this Court knows, the inquiry is not whether the settlement agreement represents the maximum potential recovery for class members at trial, but whether the settlement, taken as a whole in light of the risks and delays of litigation, is "fair, adequate, and reasonable." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55.

As discussed below, accounting for real litigation risks, relative strengths and weaknesses of Plaintiffs' claims, and other factors, this is a favorable result for Class Members and aggrieved employees.

² Adjusted Waiting Time, Wage Statement, and PAGA Penalties = \$15,707,413 - \$12,809,813 - \$6,818,175 = \$5,991,638

³ If one applies reasonable risk discounts as discussed in the next section, the maximum likely damages and penalties equal \$1,888,918, meaning \$1,500,000 represents about 79.4% of that number.

1 1. Risks and Defenses.

2 There were numerous risks to continuing to litigate, including potentially viable defenses that
3 Defendant asserted or could have asserted as outlined below:

4 **Non-Certification and Liability.** Had the Action not settled, Defendant would have challenged
5 class certification and liability, as Defendant vigorously disputes all of Plaintiffs’ contentions. For instance,
6 Defendant denied the allegations that Class Members were required to work off-the-clock and not timely
7 paid all wages due. (*Id.*, ¶ 19(a).) Plaintiffs’ expert economic consultants assumed 30 minutes of off-the-
8 clock time per shift, and then extrapolated that to all class members, to equal approximately \$3,433,791 in
9 damages. (*Id.*) However, Defendant, while denying violations, also provided counter-evidence that even if
10 such off-the-clock time occurred at all, it was a small fraction of what had been contended by Plaintiffs.
11 (*Id.*) Plaintiffs also faced the risk Defendant would successfully argue that individualized questions of fact
12 predominate over any common issues, and that such issues would preclude certification. (*Id.*) Defendant
13 argued that the Class is uncertifiable due to hundreds of individual inquiries as to each Class Member’s
14 experience with supposedly working off the clock and logging time worked. (*Id.*)

15 **No Derivative Penalties.** Plaintiffs also faced the risk Defendant could successfully argue that
16 Plaintiffs’ claims for wage statement and waiting time penalties claims are entirely derivative of Plaintiffs’
17 rest period and wage claims, and therefore suffered from not only the same litigation risks as the rest break
18 claims, but also additional risks unique to these claims. (*Id.*, ¶ 19(b).) For example, with respect to Plaintiffs’
19 waiting time penalty claim, Plaintiffs would also be required to establish Defendant’s *willfulness*. However,
20 Defendant denies any willful failure to pay any alleged compensation. (*Id.*) Moreover, “an employer’s
21 reasonable, good faith belief that wages are not owed may negate a finding of willfulness.” *Choate v. Celite*
22 *Corp.* (2013) 215 Cal.App.4th 1460, 1468. Indeed, Plaintiffs faced a significant risk that Money Mart would
23 have been able to avoid liability due to a defense that it did not engage in a “knowing and intentional”
24 violation—arguing that it should not be penalized for mere technical violations that do not result in any
25 injury. (Kick Decl., ¶ 19(b).); see *Price v. Starbucks Corp.*, 192 Cal. App. 4th 1136, 1142-43 (2011).

26 With respect to Plaintiffs’ wage statement claim, even if non-certification was not a bar to recovery,
27 Plaintiffs faced the risk Defendant could rely on *Maldonado, et al. v. Epsilon Plastics, Inc.*, 22 Cal.App.5th
28 1308, 1334-37 (April 18, 2018) where the Court reversed an award for penalties for inaccurate wage
29 statements because the Court found that inaccurate wage statements alone based on derivative Labor Code

violations do not justify penalties, and that the plaintiff arguably might need to establish injury from the inaccuracy and independent inaccuracies different from underpayments or derivative claims. This defense could call into question whether the Class could recover derivative penalties under Labor Code §§ 201-203 and 226 based on underlying rest break premium claims. While Plaintiffs remain confident and prepared to zealously pursue the claims, they recognize the possible risks of losing on the merits. (Kick Decl., ¶ 19(b).)

Arbitration Agreement. Regarding the class claims, Plaintiffs faced the risk Defendant would successfully argue that Plaintiffs and the Class were subject to arbitration agreements and that this would preclude a class action. (*Id.*, ¶ 19(c).) While Plaintiffs contend these agreements are not enforceable, Plaintiffs face the substantial risk that a Court find otherwise, precluding a class action and dramatically reducing the maximum potential value of Plaintiffs' claims. (*Id.*)

Other Risk Factors. Plaintiffs also had to take into account other risks, including, without limitation, the risks of losing on appeal, the possibility of the law changing, the time value of money, and the inability to collect on a large judgment, among other things. (*Id.*, ¶ 19(d).)

Costs. The Action clearly involves complex legal issues, including class certification. With regard to expected duration, litigating Plaintiffs' claims through trial could last two or more years if the proposed settlement is not approved. This would be expensive for all parties and delay or jeopardize what is now a certain recovery for the putative class. (*Id.*, ¶ 19(e).)

Discretionary PAGA Penalties. Under Labor Code § 2699(e)(2), a court may award a lesser amount than the maximum civil penalty specified under PAGA, if based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive or confiscatory. Courts have exercised their discretion to reduce the amount of PAGA penalties awarded to as little as \$5.00 per pay period. *See e.g., Kileigh Carrington v. Starbucks Corporation, et al.*, San Diego Superior Court Case No. 37-2014-00018637-CU-OE-CTL (Apr. 3, 2017) (holding that the plaintiff was only entitled to collect the reduced penalty amount of \$5.00 for each pay period in which a meal period violation occurred); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties by 82%).

2. Discounts Applied

Plaintiffs believe it is reasonable when assessing the value of the settlement to consider applying the following discounts: 50% for the risk of Defendant enforcing its arbitration agreement; 35% for the risk of

1 non-certification; 20% discount on penalty claims under *Maldonado*; and 50% discount on PAGA claims
2 for the Court’s discretion on reducing penalties and underlying risks. (Kick Decl., ¶ 22.) If one applies these
3 discounts, this reduces the maximum possible damages and penalties to \$1,888,918.⁴ The negotiated gross
4 settlement amount of \$1,500,000 thus represents about 79.4% of the realistic valuation of the claims. (*Id.*)

5 **g. If Approval of the Settlement of Class Claims is Requested Together with Approval of**
6 **Non-Class Claims (Such as Claims Under PAGA) Discuss Why the Amount Allocated to**
7 **the Non-Class Claims is Fair to Those Affected.**

8 When PAGA claims are settled, the trial court must “review and approve” the settlement. Labor
9 Code § 2699(l). In so doing, the court must consider whether the proposed “PAGA settlement is fair and
10 adequate in view of the purposes and policies of the statute.” *O’Connor v. Uber Techs., Inc.*, 201 F. Supp.
11 3d 1110, 1135 (N.D. Cal. 2016).

12 The \$50,000 amount allocated towards PAGA penalties here is fair and reasonable given the nature
13 of the PAGA claims, which has a limited 1-year statute of limitations. Further, as discussed above, the
14 availability of PAGA penalties here rely on contested factual issues. Moreover, the PAGA statute provides
15 the Court with broad discretion to adjust and reduce the amount of penalties awarded, if any. Courts
16 “repeatedly approve[] PAGA allocations of both smaller amounts and that comprised a smaller portion of
17 the total settlement consideration in the agreements at issue.” *See Davis v. Cox Commc’ns California, LLC*,
18 No. 16cv989 BAS (BLM), 2017 WL 1496407, at *1 (S.D. Cal. Apr. 26, 2017 (preliminarily approving
19 \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int’l, LLC*, No. 12cv1551 LAB (NLS),
20 2014 WL 12571448, at *5 (S.D. Cal. Jan. 22, 2014) (approving \$2,500 PAGA allocation when attorneys’
21 fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011
22 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement);
23 *Singer v. Becton Dickinson & Co.*, No. 08cv821 IEG (BLM), 2010 WL 2196104, at *2 (S.D. Cal. June 1,
24 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement).

25 Given these factors, the proposed PAGA allocation is well within a fair and reasonable range.

26 **C. CLASS CERTIFICATION**

27 California Rule of Court 3.769(d) provides that the Court may make an order approving certification
28 of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts
29 should use a “lesser standard of scrutiny” for determining the propriety of certifying a settlement class, as

⁴ \$14,530,138 x 0.5 x 0.65 x 0.8 x 0.5 = \$1,888,917.94

opposed to a litigation class. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) at 1807 n.19. The reasons include that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted; and the trial court's fairness review of the settlement protects the interests of the non-representative Class Members. (*Id.*); see also *Officers for Justice*, 690 F.2d at 633 ("Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process ... [C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1987)("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems ... for the proposal is that there be no trial.") As discussed below, for the purposes of this settlement only, the parties ask this Court to provisionally certify the Class, as defined above, under Cal. Civ. Proc. Code § 382.

a. Numerosity

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. Code Civ. Proc. § 382. Numerosity is readily satisfied here because there are approximately 738 Class members. (Kick Decl., ¶ 5.) See, *Vasquez v. Superior Court*, 4 Cal.App.3d 800, 811 (1971); *Newberg on Class Actions*, § 3.5 (4th Ed. 2004) (40 class members is sufficient to satisfy numerosity).

b. Ascertainability

A test for ascertainability is whether the class definition "identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828; *Block v. Major League Baseball* (1998) 65 Cal.App.4th 538, 541-42. In this case, although ascertainability does not require it, Defendant has already identified members of the Settlement Class from its records. (Kick Decl., ¶ 5.) This far exceeds the requirement for ascertainability.

c. Community of Interest

The community of interest requirement has three essential elements: "(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Linder v. Thrifty Oil Co.*, 23 Cal.App.4th 429, 435 (2000). As shown below, these elements are met.

1 1. Commonality

2 To justify certification, the class proponent must show that questions of law or fact common to the
3 class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc.*,
4 183 Cal. App. 4th 723, 732 (2010) (citing *Wash. Mut. Bank v. Sup. Ct.*, 24 Cal. 4th 906, 913 (2001)). Here,
5 Defendants' own records showed that all Class members were subject to common policies and practices and
6 paid according to uniform formulae. (Kick Decl., ¶ 19(a).) Commonality is therefore satisfied.

7 2. Plaintiffs' Claims Are Typical of the Class

8 Typicality "focuses on whether there exists a relationship between the plaintiff's claims and the
9 claims alleged on behalf of the class." *Newberg*, § 3:13. Plaintiffs are not aware of any characteristics that
10 do not satisfy this. Plaintiffs are members of the proposed class and were subject to the same employment
11 policies and practices as all other Class members. (Kick Decl., ¶ 23.) Typicality is satisfied here.

12 3. Plaintiffs Adequately Represent the Class

13 Class representatives must establish that they will adequately represent the proposed class. *See*,
14 *Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009). This adequacy analysis
15 focuses on any conflicts that would appear between the named Plaintiffs and putative class members.
16 *Richmond v. Dart Industries*, 29 Cal.App.3d 462, 470 (1981). The Court must also consider the competency
17 of Plaintiffs' counsel in determining whether to certify a class. *Cal. Pak Delivery v. United Parcel Service,*
18 *Inc.* 52 Cal.App.4th 1, 12 (1997); *General Tel. Co. v. Falcon*, 457 U.S. 147, 157-8, n. 13 (1982). Here, Class
19 Counsel and the class representatives meet the adequacy requirement. The claims of the Class Members and
20 the named Plaintiffs are coextensive and there is no conflict between Plaintiffs and their counsel, on the one
21 hand, and any other Class Member. (Kick Decl., ¶ 23.) In this case, not only is there no conflict of interest,
22 but Plaintiffs' interests are essentially identical, if not entirely identical, to the interests of all the members
23 of the Settlement Class. (*Id.*) Therefore, Plaintiffs are adequate.

24 4. Superiority

25 Certification of the Class for settlement purposes also is superior here because there will be a global
26 resolution of all claims at once, which fosters judicial economy. Class certification is also vastly superior to
27 litigation of numerous individual claims because most of the claims are too small to litigate outside of the
28 class context. *Richmond, supra*, 29 Cal.3d at 469. Thus, the superiority of the class action mechanism is
29 demonstrable in this case because, through the class action device, Plaintiffs' counsel was able to negotiate

1 a Settlement that, if approved, will provide a sizeable Class with immediate monetary relief.

2 **d. Adequacy**

3 To satisfy the requirement that a class representative and his or her counsel fairly and adequately
4 represent absent class members, the named plaintiffs must be represented by counsel experienced and
5 qualified to conduct the pending litigation, and the named plaintiffs' interests cannot be antagonistic to those
6 of the class. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450. The adequacy requirement is
7 clearly satisfied on both counts. Class Counsel, The Kick Law Firm, APC, has significant experience in
8 complex litigation, including wage and hour class actions, and has been diligent in representing the putative
9 Settlement Class. (Kick Decl., ¶¶ 2-4, 23.) The Settlement itself speaks to Class Counsel's adequacy,
10 evidencing the arm's-length negotiating by which Class Counsel secured a favorable proposed settlement
11 that provides substantial benefits to absent Class Members without incurring unnecessary costs or risking
12 the delays and uncertainty of further, protracted litigation.

13 Plaintiffs Darlene Torres, Leanna Ruvalcaba, and Marcella Bernal, the proposed Class
14 Representatives, have participated actively at all stages of the litigation, and their interests are not in conflict
15 with the absent class members. (*Id.*, ¶ 23.) Plaintiffs agreed to act as Class Representatives and understand
16 their responsibility to assist Class Counsel in prosecuting the action on behalf of the Class. (*Id.*)

17 **D. CLAIM REQUIREMENT (IF APPLICABLE)**

18 Not applicable. Class members will not be required to submit a claim. (SA, ¶ VII.7.) All unclaimed
19 Settlement Payments shall become null and void one hundred and eighty (180) days following the issuance
20 date on the settlement checks. The funds associated with any checks not properly or timely negotiated shall
21 be deposited with the State Controller of the State of California, pursuant to applicable law. (*Id.*, ¶ VII.9(e).)

22 **E. MISCELLANEOUS**

23 **a. If Appropriate, Explain Why the Settlement Includes Terms That Are Outside the Scope**
24 **of the Operative Complaint. (Citation omitted.) If Approval of Settlement of a PAGA**
Claim is Requested Provide a Copy of Plaintiff's Notice Letter to the LWDA.

25 The Settlement does not include terms that are outside the scope of the operative complaint. (SA, ¶
26 VII.3.) A copy of the Notice Letter to the LWDA is attached as **Exhibit 2** to the Kick Declaration.

27 **b. If Notice Will Be Given in English Only, Explain Why This Is Sufficient**

28 Not applicable. Class Notice will be given in both English and Spanish. (SA, Ex. 1, pg. 1.)
29

1 c. **A Statement of Any Affirmative Obligations to Be Undertaken by the Class Member or**
2 **Class Counsel and the Reason for Such Obligations**

3 Other than fulfilling their duties as Class Representatives and Class Counsel, the Settlement does
4 not create any affirmative obligations to be undertaken by them.

5 d. **Provide Information Regarding Any Fee Splitting Agreement and Whether the Client Has**
6 **Given Written Approval. (Citations omitted.)**

7 Not applicable, as no fee splitting agreement is at issue here. (Kick Decl., ¶ 26.) Pursuant to the
8 Settlement, Class Counsel will request, and Defendant will not oppose, attorneys' fees equal to one-third
9 (1/3) of the GSA, or \$500,000, and reimbursement of necessary litigation costs not to exceed \$10,000.
10 (Settlement, ¶ VII.6.)

11 e. **Any Agreement That Has Injunctive Relief Against a Class Representative or Absent**
12 **Class Member Generally Is Not Appropriate in a Class Action Case. Provide the**
13 **Authority and Factual Reasons Why this Case is an Exception**

14 Not applicable, as the Settlement does not provide for any such injunctive relief.

15 f. **Explain Why Any Proposed Class Representative Enhancement is Reasonable, Including**
16 **What the Class Representative Did Beyond the Expected Services of Any Class**
17 **Representative**

18 The Settlement provides proposed service awards of \$7,500.00 each to the three Plaintiffs (\$22,500
19 in total), which is intended to recognize the time, effort, and risk they undertook in bringing this case and
20 helping to secure the relief obtained for the members of the Class. *See Bell v. Farmers Ins. Exchange*, 115
21 Cal.App.4th 715, 726 (2004) (upholding "service payment" to named plaintiff for his efforts in bringing
22 class case); *Rodriguez v. West Publishing*, 563 F.3d 948, 959 (9th Cir. 2009) (stating that incentive awards
23 are "intended to compensate class representatives for work done on behalf of the class, to make up for
24 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
25 willingness to act as a private attorney general.") To evaluate a service award, courts consider the actions
26 protecting class interests, the benefit provided to the class based on those actions, and the amount of time
27 and effort expended by the plaintiff. *Staton v. Boeing Co.*, 327 F.3d 938, 976-7 (9th Cir. 1993).

28 Here, Plaintiffs should be compensated for their significant contributions provided to the Class, the
29 reputational risks they undertook, their time and efforts expended on behalf of the Class, Plaintiffs' entering
into a broader waiver of claims beyond those released by the Class in the Settlement, and the significant
accomplishments of this case. (Kick Decl., ¶¶ 23-24; Torres Decl., ¶¶ 6-8, Ruvalcaba Decl., ¶¶ 6-8; Bernal

Decl., ¶¶ 6-8.) Among other things, Plaintiffs stepped forward with willingness to serve the Class, provided essential information for the prosecution of this action and in connection with mediation and settlement, gathered and provided pertinent documents, took time to participate in phone calls with counsel, were available during the all-day mediation, and reviewed the settlement documents. (*Id.*) At no time did Plaintiffs ever have a guarantee of any personal benefit as a result of this case. (*Id.*)

The proposed service award also falls well within the range of reasonable payments awarded to Class Representatives in similar class actions. Other courts in California also regularly award service awards higher than those requested here. *See e.g. Ross v. US Bank National Association*, No. C 07-02951 SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving \$20,000 service award to Class Representative in California wage-and-hour class action settlement); *Louie v. Kaiser Found. Health Plan, Inc.*, CASE NO. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (S.D. Cal. Oct. 6, 2008) (approving “\$25,000 incentive award for each Class Representative” in wage and hour settlement); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) (“Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of \$20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class”).

Finally, at the time of the filing of the Motion for Final Approval, the Named Plaintiffs intend to file further detail for this Court’s consideration regarding the time and effort they have expended on behalf of the absent class members as a result of having stepped forward to be the class representatives.

F. THE SETTLEMENT AGREEMENT

The second half of the LA Superior Court Checklist (“Checklist”) indicates a number of items that the Settlement should address. Class Counsel has confirmed each item in the Checklist is in the proposed Settlement and Notice, including the Class definition (SA, ¶ VII.1(b)), Class Claims Period (SA, ¶ VII.1(e)), Release terms (SA, ¶¶ VII.3-5), and details of Notice administration (SA, ¶ VII.16). (Kick Decl., ¶ 28.)

G. ATTORNEYS’ FEES AND COSTS

Pursuant to Labor Code § 1194 and Code of Civil Procedure § 1021.5, Class Counsel will request, and Defendant will not oppose, attorneys’ fees in an amount equal to one-third (1/3) of the GSA, or \$500,000, and reimbursement of necessary litigation costs in an amount not to exceed \$20,000.⁵ Class

⁵ Class Counsel’s litigation costs, which will be itemized with the final approval motion, are currently approaching \$20,000. Though the Settlement provides for \$10,000, Class Counsel respectfully requests for the Notice to indicate costs not to exceed \$20,000. Defense counsel has no objection. (Kick Decl., ¶ 27).

Notice will provide that Class Counsel may request up to this amount in fees in costs and that Class Members will have an opportunity to object. Considering both the risks and potential value of the litigation, the requested fee, calculated as a percentage of the common fund, is reasonable, as the amount is well-within the range of fees generally sought and approved in similar class action cases. *Chavez*, 162 Cal.App.4th at 66 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used fee awards in class actions average around one-third of the recovery.”) (citation omitted).

“[T]he court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.” *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal. 5th 480, 503. In *Laffitte*, a \$19 million employment class action case involving an objection to a one-third percent-based recovery, the California Supreme Court held that “the trial courts have discretion to conduct a lodestar cross-check on a percentage fee ... [and] also *retain the discretion to forego a lodestar cross-check* and use other means to evaluate the reasonableness of a requested percentage fee.” *Id.* at 506 (emphasis added).

Counsel also will present their lodestar with the Motion for Final Approval should this Court wish to perform a lodestar cross-check.

H. EXHIBITS TO THE MOTION (PER THE CHECKLIST)

- **Exhibit 1** to the Kick Decl. is the Settlement, and **Exhibit 1** to the Settlement is the proposed Notice.
- **Exhibit 2** to the Kick Decl. is Plaintiffs’ PAGA Notice Letter and proof of submission to the LWDA.
- **Exhibit 3** to the Kick Decl. is a copy of the Settlement Administration bid from Simpluris, Inc., an experienced administrator, whose qualifications are discussed in the Settlement at ¶ VII.16(a).
- **Exhibit 4** to the Kick Decl. is a Proposed Judgment not including a dismissal pursuant to CRC 3.769.
- **Exhibit 5** to the Kick Decl. is proof of submission of the Settlement to the LWDA.

I. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING

Plaintiffs propose the following schedule, subject to the convenience of the Court’s calendar:

Last Day for Defendants to deliver Class List to the Settlement Administrator	February 16, 2023 [Within 30 days of entry of the Order Granting Preliminary Approval (SA, ¶ VII.12)]
Last Day for Settlement Administrator to send Notice by First-Class Mail	March 18, 2023 [Within 30 days of receiving Class List (SA, ¶ VII.16(b))]

Last Day for Plaintiff to file Motion for Final Approval / Fee Motion	April 17, 2023 [30 days after Notice is mailed]
Last Day for Class Members to submit objection or opt out request (“Objection/ Exclusion/Dispute Deadline”)	May 2, 2023 [45 days after original Notice is mailed or 21 days after remailing, whichever is later (SA, ¶ VII.1(m))]
Last Day for Parties to Respond to Objections and Provide Final Report on Notice Administration	May 9, 2023 [7 Days After Objection Deadline]
Hearing on Motion for Final Approval / Fee Motion	May 31, 2023, at _____ a.m./p.m. [16 court days after deadline for response to objections]
Last Day to file Final Accounting	December 18, 2023 [About 200 days after entry of Order Granting Final Approval]

J. CONCLUSION

For the stated reasons, Plaintiffs’ Unopposed Motion for Preliminary Approval should be granted.

Dated: December 21, 2022

Respectfully submitted,
THE KICK LAW FIRM, APC

By: /s/ Taras Kick
Taras Kick
Greg Taylor
Attorneys for Plaintiffs and all others similarly
situated

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to this action. My business address is 815 Moraga Drive, Los Angeles, California 90049. On the date of execution below, I served the following document or documents:

- **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT;**
- **DECLARATION OF TARAS KICK IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT; EXHIBITS**
- **DECLARATION OF DARLENE TORRES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**
- **DECLARATION OF LEANNA RUVALCABA IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**
- **DECLARATION OF MARCELLA BERNAL IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT.**

☒ **By e-mail or electronic transmission.** Based on an agreement of the parties to accept service by e-mail transmission or a request that the party or parties, who have appeared and are represented by counsel identified below I caused the documents to be sent to the person(s) at the address(es) at the e-mail address(es) listed below in keeping with California Rules of Court, Appendix I (Emergency Rules Related to COVID-19), Emergency rule 12 (Electronic service). The transmission was either reported as being sent, complete and without error, or I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful, to the addressees as stated below.

An Nguyen Ruda aruda@bzbm.com Ben Schnayerson eferguson@bzbm.com BARTKO ZANKEL BUNZEL & MILLER A Professional Law Corporation One Embarcadero Center, Suite 8 San Francisco, California 94111	Attorneys for Defendants MONETARY MANAGEMENT OF CALIFORNIA, INC.
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **December 21, 2022**.

/s/ Greg Taylor

Greg Taylor