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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**
10

11 DEBRA ANDERSON, individually, and on behalf of
12 all similarly situated Class Members, and all
13 “aggrieved employees” pursuant to Labor Code §
2698 et seq.,

14 PLAINTIFFS,

15 v.

16 THE TREATMENT SKIN BOUTIQUE, INC, a
California corporation; RYAN JENSEN, an
17 individual; ERIN MARIE JENSEN, an individual
and DOES 1 - 20, inclusive,

18 DEFENDANTS.
19
20

CASE No.: 21STCV01911

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
PRIVATE ATTORNEYS GENERAL
ACT REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: March 1, 2022
Time: 9:00 a.m.
Dept.: 17

21 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

22 **PLEASE TAKE NOTICE** that on March 1, 2022 at 9:00 a.m., or as soon thereafter as counsel
23 may be heard, in Department SSC 17 of the above-captioned court, located at 312 North Spring Street, Los
24 Angeles, California 90012, the Honorable Maren Nelson presiding, Plaintiff Debra Anderson will, and
25 hereby does, move this Court to:

- 26 1. Preliminarily approve the settlement set forth in the Joint Stipulation of JOINT
27 STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE BETWEEN
28 PLAINITFF AND DEFENDANT, attached as Exhibit 1 to the Declaration of Haroon Manjlai;

2. Conditionally certify the proposed Settlement Class;
3. Appoint Debra Anderson as the representative for the Settlement Class;
4. Appoint Manjlai Law, PC as Class Counsel;
5. Approve distribution of the proposed Notice of Class Action Settlement to the Settlement Class;
6. Appoint Phoenix Settlement Administrators as the Settlement Administrator; and
7. Set a hearing date for final approval of the settlement.

This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of Points and Authorities in support of Motion for Preliminary Approval of Class Action Settlement; (3) the Declaration of Haroon Manjlai; (4) the Joint Stipulation of Class Action Settlement and Release; (5) the Notice of Class Action Settlement; (6) the [Proposed] Order Granting Preliminary Approval of Class Action Settlement; (7) the records, pleadings, and papers filed in this action; and (8) upon such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of this Motion. As this Motion is unopposed, the Parties respectfully request relief from the page limit requirement set by California Rules of Court, Rule 3.1113(d).

DATED: February 3, 2022

Respectfully Submitted,

MANJLAI LAW, PC

By: *Haroon Manjlai*
Haroon Manjlai

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Debra Anderson ("Plaintiff") seeks preliminary approval of the JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE BETWEEN PLAINTIFF AND DEFENDANTS ("Settlement Agreement") which if approved, would provide considerable monetary relief for approximately 45 current and former employees of Defendants The Treatment Skin Boutique, Inc., Ryan Jensen, and Erin Marie Jensen ("Defendants") (collectively with Plaintiff, the "Parties"). The principal terms of the Settlement provide for the following:

(1) Conditional certification of a Settlement Class defined as: All persons who worked for Defendants as a non-exempt, hourly employee at The Treatment Skin Boutique, Inc. locations in California at any time from January 21, 2017 to the date of Preliminary Approval ("Class Members").

(2) A non-reversionary Maximum Settlement Amount of \$218,500. The Maximum Settlement Amount includes:

(a) A Distributable Amount of approximately \$101,395.00 (the Maximum Settlement Amount minus the requested Attorneys' Fees and Costs, Settlement Administration Costs, the payment to the California Labor and Workforce Development Agency ["LWDA"], the Class Representative Enhancement Payment), which will be allocated to all Class Members on a pro-rata basis according to the number of pay periods each Class Member worked during the Class Period. The entire Distributable Amount will be paid to all Class Members who do not opt out of the Settlement Class, and without the need to submit claims for payment.

(b) Attorneys' fees in the amount of one-third of the Maximum Settlement Amount (or \$72,105.00), and litigation costs and expenses not to exceed \$10,000, to Manjlai Law, PC ("Class Counsel").

(c) Settlement Administrator Fees of approximately \$10,000, to be paid to the jointly selected Settlement Administrator, Phoenix Settlement Administrators.

1 (d) A \$7,500 payment to the LWDA pursuant to the Labor Code Private Attorneys General Act
2 of 2004 ("PAGA").

3 (e) A Class Representative Enhancement Payment of \$15,000 to Debra Anderson for her
4 service on behalf of the Settlement Class, the risks she took in bringing the action on behalf of the
5 class, and for a general release of all claims arising out of her employment with Defendants.

6 An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement
7 Class' behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm's length
8 with helpful guidance from Mr. Kelly Knight, an experienced and well-respected PAGA and class action
9 mediator, and the Settlement confers substantial benefits to Class Members. This relief - averaging
10 approximately \$2,253.22 per Class Member from the Distributable Amount - is particularly impressive
11 when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover,
12 by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for
13 relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at
14 trial, or of Plaintiff prevailing at trial but losing on appeal.

15 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
16 approval under California law and falls within the range of reasonableness. Accordingly, Plaintiff
17 respectfully requests that this Court grant preliminary approval of the Settlement Agreement.

18 **II. FACTUAL AND PROCEDURAL BACKGROUND**

19 **A. Brief Overview of Litigation**

20 **i. Plaintiff's Factual Allegations**

21 Defendants own and operate skin care clinics in the counties of Los Angeles, Orange, and San
22 Bernardino. Plaintiff is a licensed esthetician who was employed by Defendants from or about January 1,
23 2018 until or about June 19, 2020 at their Los Angeles County location. Defendants set Plaintiff's
24 compensation at 40% of gross revenue generated by Plaintiff ("commission"). Defendants did not require
25 Plaintiff to clock-in or clock-out at the start and/or end of any of her shifts, nor did they provide Plaintiff
26 with the means to track her hours worked, which has made it exceedingly difficult to determine with
27 reasonable accuracy the actual hours worked by Plaintiff, and to differentiate between Plaintiff's productive
28

1 and non-productive time. Defendants required Plaintiff to be present at Defendants' place of business five
2 days per week, for 9 hours per day, regardless of whether Plaintiff had opportunities to earn
3 commission/piece rate. Despite requiring Plaintiff to be at Defendants' place of business, Defendants failed
4 to compensate Plaintiff for her non-productive time. Despite working in excess of 8 hours per day, and 40
5 hours per week, Plaintiff was never paid overtime wages.

6 Defendants did not have a written policy of providing meal breaks or rest periods and failed to
7 authorize the same for their commission-only employees. Plaintiff rarely got her meal breaks or rest
8 periods, which were regularly interrupted Defendants.

9 Furthermore, Defendants employed an arbitrary system of discounting fees charged for services
10 provided by Plaintiff, and price of products sold by Plaintiff, thereby creating an unpredictable and non-
11 uniform system of compensating Plaintiff for services rendered and/or products sold.

12 Defendants issued paystubs to Plaintiff that fail to identify essential information such as her piece-rate, and
13 number of piece rates earned by Plaintiff. Defendants required Plaintiff to attend various trainings and
14 events, unpaid, where Plaintiff had no means to earn her piece rate wages.

15 Plaintiff's experience is illustrative of the experience of Defendants' all non-exempt employees.

16 **ii. Plaintiff's Allegations Regarding Legal Violations**

17 Plaintiff brought this action, individually and as a class action, on behalf of herself and current and
18 former employees of Defendants for various California Labor Code violations and unfair business practices
19 stemming from Defendants' failure to comply with the requirements for piece-rate basis compensation,
20 including failure to compensate for non-productive time and rest and recovery periods separate from any
21 piece-rate compensation, and failure to comply with the wage statement requirements for piece-rate
22 compensation, failure to pay all wages and minimum wages and minimum wage violations, failure to pay
23 overtime wages, improper deductions and paying less than the agreed-upon wage scale, failure to provide
24 meal and rest periods, failure to reimburse expenses or losses incurred as a result of performing work duties,
25 waiting time penalties, inaccurate wage statements, and failure to pay all wages by the appropriate pay
26 period.
27
28

1 The purported class consists of Plaintiff and all other persons who have been employed by any
2 Defendant in California during the statute of limitations period applicable to the claims pleaded in the
3 operative complaint.

4 **iii. Procedural History**

5 On January 14, 2021, Plaintiff's counsel sent a letter to the California Labor & Workforce
6 Development Agency ("LWDA") via online submission and to Defendant via certified mail regarding
7 Defendants' alleged violations. (*See* Manjlai Decl., ¶ 3, Exhibit 1.) The LWDA did not respond to this
8 notice within 65 days, indicating it did not intend to investigate, thus allowing Plaintiff to file the instant
9 lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A). (*See* Manjlai Decl., ¶ 4.)

10 Plaintiff initially filed her Complaint as a class action on January 19, 2021. (*See* Manjlai Decl., ¶ 5,
11 Exhibit 2.) On April 12, 2021, Plaintiff filed her First Amended Complaint adding a claim for Enforcement
12 of the Private Attorneys General Act ("PAGA"). (*See* Manjlai Decl., ¶ 6.) In her FAC, Plaintiff alleges
13 violations of the following:

- 14 1. Failure to Compensate for Non-Productive Time and Rest and Recovery Periods Separate
15 from any Piece-Rate Compensation, and Failure to Comply with the Wage Statement
16 Requirements for Piece-Rate Compensation [Cal. Lab. Code § 226.2]
- 17 2. Failure to Pay Minimum and Straight Time Wages [Cal. Lab. Code §§ 204, 1194, 1194.2,
18 and 1197]
- 19 3. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]
- 20 4. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]
- 21 5. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]
- 22 6. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
- 23 7. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226];
- 24 8. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and
- 25 9. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

26
27 **B. Plaintiff's Counsel Conducted a Thorough Investigation of the Factual and Legal Issues**
28 **and Were Thus Able to Objectively Assess the Settlement's Reasonableness**

1 Plaintiff's Counsel conducted a thorough investigation into the factual and legal issues implicated
2 by Plaintiff's claims, and were able to objectively assess the settlement's reasonableness. For example, prior
3 to filing the action, Plaintiff contacted Plaintiff's Counsel to discuss the factual bases for pursuing an action
4 against Defendants for Labor Code violations. Plaintiff was intimately familiar with Defendants' labor
5 policies and practices, and over the course of multiple interviews, knowledgeably summarized those
6 policies and practices to Plaintiff's Counsel. During those conversations, she explained how the policies
7 and practices were instituted and provided valuable insight into how they gave rise to the alleged Labor
8 Code violations. Based on these interviews with Plaintiff, Plaintiff's Counsel determined that there were
9 legally sufficient grounds for pursuing an action against Defendants. (*See* Manjlai Decl., ¶ 7.)

10 Plaintiff's Counsel also prepared a detailed letter to notify the LWDA of Plaintiff's intent to seek
11 civil penalties and other available relief recoverable under PAGA for Labor Code violations. Significant
12 research and effort were expended to prepare a PAGA notice that was consistent with the developing legal
13 requirements so as to withstand any challenge from Defendants regarding the notice's sufficiency. In
14 preparation for drafting the complaint, Plaintiff's Counsel conducted their own preliminary investigation
15 into the factual bases for Plaintiff's claims, which entailed, *inter alia*, a careful examination of Plaintiff's
16 personnel file and associated records. (*See* Id.)

17 Following the filing of the operative Complaint, and in response to Plaintiff's evidentiary requests,
18 Plaintiff's Counsel received a considerable amount of documents and data, including employee
19 demographic data, raw data consisting of all of then-current Class Members' time and pay records, and
20 Defendants' policies and procedures manuals which covered a broad range of topics including, *inter alia*,
21 employee clock-in policies and procedures, meal periods/rest periods, overtime & premium pay, etc. The
22 document and data exchanges allowed Plaintiff's Counsel to fully assess the nature and magnitude of the
23 claims being settled, as well as the impediments to recovery, and ultimately enabled Plaintiff's Counsel so
24 as to make an independent assessment of the reasonableness of the settlement's terms. (*See* Manjlai Decl.,
25 ¶ 8.)

26 In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue, which
27 included: (1) determining Plaintiff's suitability as a private attorney general and class representative
28 through interviews, background investigations, and analyses of her employment files and related records;

(2) evaluating all of Plaintiff's potential representative claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing employees' time and wage records; (5) reviewing Defendants' employment policies and practices; (6) researching settlements in similar cases; (7) evaluating Plaintiff's claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. (*See* Manjlai Decl., ¶ 9.)

By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, and various defenses asserted by Defendants. (*See* Manjlai Decl., ¶ 10.)

C. The Parties Settled After Mediation

The parties attended mediation on August 26, 2021, with Kelly A. Knight, a respected class action and PAGA action mediator. (*See* Manjlai Decl., ¶ 11.) The parties reached an agreement at mediation to settle for \$218,500. (*See* Id.)

Around January 3, 2022, the parties finalized the terms of the Settlement Agreement, which is now presented to this Court for approval. (*See* Manjlai Decl., ¶ 12, Exhibit 3.) Plaintiff provided notice of the Settlement and served a copy of the motion on the LWDA on February 3, 2022. (*See* Manjlai Decl., ¶ 12, Exhibit 4.)

i. Composition of the Settlement Class

The proposed Settlement Class consists of all persons who worked for Defendants as a non-exempt employee at Defendants' locations in California at any time from January 21, 2017 to the date of Preliminary Approval. (Settlement Agreement, pg 3 ln 23-25; pg 4 ln 15-16.) There are approximately 45 Class Members.

ii. Settlement Consideration

Plaintiff and Defendants have agreed to settle the underlying class claims in exchange for the Maximum Settlement Amount of \$218,500. The Maximum Settlement Amount includes: (1) automatic

1 payments to all Participating Class Members-meaning, all Class Members except those who submit timely
2 and valid Requests for Exclusion from the Net Settlement Amount (exclusive of employer taxes); (2)
3 \$72,105 in attorneys' fees (*i.e.*, one-third of the common fund) and up to \$10,000 in litigation costs to
4 Plaintiff's Counsel; (3) Settlement Administration Costs of approximately \$10,000; (4) a \$7,500 payment
5 to the LWDA; and (5) a Class Representative Enhancement Payment of \$15,000 for Plaintiff's service on
6 behalf of the Settlement Class, the risks she took in bringing her representative claims, and for a release of
7 all claims arising out of her employment with Defendants. (Settlement Agreement, pg. 20 ln 27 – pg. 21 ln
8 10.)

9 **iii. Formula for Calculating Payments from the Net Settlement Amount**

10 Each Class Member's share of the Net Settlement Amount will be proportional to the number of
11 weeks he or she worked during the Class Period. (Settlement Agreement, pg. 22 ln 11 – pg. 23 ln 6.) The
12 Settlement Administrator will calculate Individual Settlement Payments as follows:

13 **Class Calculations:** The Settlement Administrator will calculate the total number of pay periods
14 that all Class Members were employed by Defendants during the Class Period. The value of each Pay
15 Period shall be determined by the Settlement Administrator by dividing the Net Settlement Proceeds (less
16 the PAGA Payment(s)) by the total number of Pay Periods available to the Class Members during the
17 Class Period (“Class Pay Period Value”).

18 **PAGA Calculations:** For PAGA Employees, the Settlement Administrator will calculate the total
19 number of pay periods that each PAGA Employee was employed by Defendants during the applicable
20 PAGA Period (“Total PAGA Pay Periods”). The value of each PAGA Pay Period shall be determined by
21 the Settlement Administrator by dividing the PAGA Payment by the Total PAGA Pay Periods for all
22 PAGA Employees (“PAGA Pay Period Value”).

23 **Individual Settlement Payments:** To determine the Individual Settlement Payment for each Class
24 Member, the Settlement Administrator will multiply the Authorized Claimant's Total Pay Periods by
25 Class Pay Period Value and add the total to the product of the PAGA Employee's Total PAGA Pay Periods
26 multiplied by the PAGA Pay Period Value, if the Class Member qualifies as a PAGA Employee. Not all
27 Authorized Claimants will receive the PAGA Payment. The Individual Settlement Payment will be
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1 reduced by any required legal tax deduction, pursuant to Section IV(J)(2) herein.

2 Payments from the Distributable Amount shall be made only to Authorized Claimants and PAGA
3 Employees, pursuant to the manner provided in this Agreement and this section, in particular. Within a
4 reasonable time but no later than ten (10) business days after the Preliminary Approval Date, Defendants
5 shall provide to the Settlement Administrator a list containing the Class Members' names, last known
6 addresses, dates of employment, and social security numbers.

7 Defendants' employment records used to calculate each Class Members' Settlement Payment shall
8 be presumed to be correct. However, each Class Member shall be given an opportunity to dispute the
9 number of Total Class Pay Periods and/or Total PAGA Pay Periods as provided in their Notice of
10 Settlement Award. Any such dispute shall be sent in writing to the Settlement Administrator postmarked
11 on or before the Opt-Out Period deadline, and the Class Member shall provide any information he/she
12 deems proper to support his/her claim. The Settlement Administrator shall send the dispute information
13 to Defendants' Counsel and Class Counsel within five business days of receiving the dispute. Defense
14 and Class Counsel shall meet and confer to determine if they can agree to a resolution regarding the Class
15 Member's challenge. The Settlement Administrator will inform the Class Member. Defense and Class
16 Counsel will inform the Settlement Administrator to approve payment to the Class Member, as revised by
17 the evidence submitted by the Class Member. Any Party, including the Class Member, may present the
18 issue to the Court for resolution, if the dispute cannot be resolved.

19 Payment to each Authorized Claimant shall be allocated as follows: Twenty Percent (20 %) of any
20 settlement funds paid to any Class Member shall be attributed to wages, to be reported on an IRS Form
21 W-2 with legally required tax deductions; Eighty Percent (80%) of any settlement funds paid to any Class
22 Member shall be treated as statutory penalties and interest, to be reportable on IRS Form 1099 with no
23 withholding. Each Authorized Claimant shall be responsible for any tax consequences of the Settlement
24 or payment of funds pursuant to this Agreement, including the payment of any applicable tax deductions
25 or obligation as if paying through payroll. Any payroll tax payable from the payment of any settlement
26 funds to any Class Member pursuant to the terms of this Agreement shall not be made from the
27 Distributable Amount. However, Defendants will only be responsible for employer side payroll taxes,
28 separate and apart from the Maximum Settlement Amount.

Given that there are approximately 45 Class Members, the average net recovery will be approximately \$2,253.22. This average net recovery is significantly greater than many other wage and hour class action settlements approved by California state and federal courts. See, e.g., *Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80).

iv. Release by the Settlement Class

In exchange for the Class Settlement Amount, Plaintiff and Participating Class Members will agree to release the Released Claims during the Class Period:

It is the desire of the Representative Plaintiff, Class Members, and Defendants to fully, finally, and forever settle, compromise, and discharge disputes and claims arising from or related to this Action. After Final Approval by the Court of this Agreement, after Defendants have made both installment payments so as to fully fund the Maximum Settlement Amount, and by operation of the Agreement's terms, and except as to such rights or claims as may be created by this Agreement, all Authorized Claimants fully release and discharge the Released Persons from all Released Class Claims, whether known or unknown

1 *during the Class Period. All PAGA Employees and the State will fully release*
2 *and discharge the Released Persons from all Released PAGA Claims upon*
3 *approval of the settlement of PAGA Claims in this Action. Plaintiff and*
4 *Defendants stipulate and agree that the consideration paid to the Class*
5 *Members pursuant to this Agreement compensates the Class Members for all*
6 *wages and penalties due to them arising from the claims alleged in the operative*
7 *Complaint. (Settlement Agreement, pg. 30, lns. 15-26.)*

8 9 **III. ARGUMENT**

10 **A. The Court Should Preliminarily Approve the Proposed Class Action Settlement**

11 **i. Courts Review Class Action Settlements to Ensure that the Terms Are Fair,** 12 **Adequate, and Reasonable**

13 California Rule of Court ("Rule"), Rule 3.769 requires litigants to obtain court approval of class
14 action settlements. Approval occurs in two steps: (1) an early "preliminary" review by the trial court; and
15 (2) a subsequent "final" review after notice of the settlement has been distributed to class members for their
16 comments and objections. Cal. R Ct. 3. 769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th
17 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final
18 approval hearing to inquire into the fairness of the proposed settlement"). The motion for preliminary
19 approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3)
20 the proposed order. *Id* at 3.769(c). The motion must also identify any agreement concerning the payment
21 of attorneys' fees. *Id* at 3. 769(b).

22 If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to (1)
23 schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to
24 the class of the hearing and "an explanation of the proposed settlement." The court must also approve a
25 procedure for class members to file objections to the settlement. *Id* at 3.769(f). At the final approval
26 hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id* at 3.769(g).

27 Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement,
28 preliminary approval is warranted if the settlement falls within a "reasonable range." See *North County*

1 *Contractor's Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Conte &*
2 *Newberg, Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) ("*Newberg*").

3 Reasonableness and fairness are presumed where, as here: (1) the settlement is reached through
4 "arms-length bargaining;" (2) investigation and discovery are "sufficient to allow counsel and the court to
5 act intelligently;" (3) counsel is "experienced in similar litigation;" and (4) the percentage of objectors "is
6 small" (collectively, "Dunk Factors"). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).¹

7 **ii. Plaintiff's Counsel Conducted a Thorough Investigation of the Factual and Legal**
8 **Issues and Were Thus Able to Objectively Assess the Settlement's Reasonableness**

9 As set forth in greater detail above, based on their analysis of documents and class data produced
10 by Defendants (including Defendants' written labor policies and procedures), Plaintiff's Counsel were able
11 to realistically assess the value of Plaintiffs claims and intelligently engage defense counsel in settlement
12 discussions that culminated in the proposed settlement now before the Court. (*See* Manjlai Decl., ¶ 8-9.)

13 By engaging in a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's Counsel
14 can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement,
15 is fair, reasonable, and adequate, and is in the best interests of Class Members in light of all known facts
16 and circumstances, including the risk of significant delay and uncertainty associated with litigation, various
17 defenses asserted by Defendants. (*See* Manjlai Decl., ¶ 10.)

18 **iii. The Settlement Was Reached Through Arm's-Length Bargaining in which All**
19 **Parties Were Represented by Experienced Counsel**

20
21 "[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
22 settlement's fairness." *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the

23
24
25 ¹ The presumption of fairness is consistent with California's public policy goal of favoring settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d
26 231,236 (1976) ("the law wisely favors settlements"); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 ("public policy generally favors the
27 compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("voluntary
28 conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action litigation"); *Skulnick v. Roberts*
Express, Inc., 2 Cal. App. 4th 884, 891 (1992) ("public policy strongly discourages litigation and encourages settlement [because settlements] can produce
peace and goodwill in the community while reducing the expense and persistency of litigation"). Additionally, in reviewing the fairness of a class action
settlement, due regard should be given to what is "otherwise a private consensual agreement between the parties." *Cellphone Termination Fee Cases*, 180 Cal.
App. 4th at 1117. The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id*
at 1118.

1 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered;
2 thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, § 11.51.

3 As explained above, the Parties participated in a mediation with Mr. Kelly Knight, an experienced
4 mediator of wage and hour class actions. Mr. Knight helped manage the Parties' expectations and provided
5 a useful, neutral analysis of the issues and risks to both sides. See *In re Bluetooth Headset Prod Liab. Litig.*,
6 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of
7 finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 WL
8 4820784, at *3 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any
9 inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a
10 "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings
11 were free of collusion and undue pressure."); *Villegas v. JP. Morgan Chase & Co.*, No. 09---00261, 2012
12 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation "tends to support the conclusion
13 that the settlement process was not collusive"); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon,*
14 *Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (accord). At all times, the Parties' negotiations were adversarial
15 and non-collusive. (See Manjlai Decl., ¶ 11.)

16 The Parties were represented by experienced class action counsel throughout the negotiations
17 resulting in this Settlement. Plaintiff is represented by Manjlai Law PC. Plaintiff's Counsel regularly
18 litigates wage and hour claims and has experience settling wage and hour class actions. (See Manjlai Decl.,
19 ¶ 13.) Defendants are represented by Adam Y. Siegel and J. Andrew Schaffer of Jackson Lewis P.C., two
20 seasoned class action defense attorneys from a well-respected defense firm.

21 **iv. The Consideration Provided for the Class Claims Is Fair and Reasonable in Light**
22 **of the Amount in Controversy Discounted by the Risks of Continued Litigation.**

23 In seeking approval, a settling party must provide sufficient information to "enable the court to
24 make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker Retail,*
25 *Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law that a cash settlement
26 amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or
27 unfair." See *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 628
28

(9th Cir. 1982). "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id.* at 625. "Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.* -- Fair & Accurate Credit Transactions Act (FACTA) Litig., 295 F.R.D. 438,453 (C.D. Cal. 2014). In other words, in valuing the claims within a realistic range of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.²

Settling parties are not, however, required to partake in a hypothetical accounting exercise: "**Kullar does not ... require any such explicit statement of [maximum] value**; it requires a record which allows 'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.'" *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, "the most important factor" in determining "whether a settlement is fair and reasonable" is the "strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement." *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As explained in detail below, the Class Settlement Amount is within the range of reasonableness in light of the nature and magnitude of the claims being settled and the various potential impediments to recovery.

Defendant's Exposure for the Class Claims	
Meal Period Claim	\$59,240
Rest Period Claim	\$59,240
Off-the-Clock Claim	\$100,000
Business Expense Reimbursement Claim	\$25,000

² Federal district courts also recognize that there is an inherent "range of reasonableness" in determining whether to approve a settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 66 F. Supp. 3d 477,482 (S.D.N.Y. 2015); see also *Nat'l Rural Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523,527 (C.D. Cal. 2004) ("well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery"); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436,461 (S.D.N.Y. 2004) ("settlement amount's ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlement's fairness"); *In re IKON Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166□ 184 (E.D. Pa. 2000) ("the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims"); *Officers for Just. v. Civ. Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982) (it is "the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness").

Wage Statement Claim	\$104,600
Final Pay Claim	\$118,480
Total	\$452,680

This estimate assumes that each and every one of Plaintiff's claims would have been certified for class-wide resolution, that Plaintiff's would have prevailed at trial, and that the jury's verdict would have been affirmed on appeal. In other words, this estimate assumes complete and total victory. Understandably, for purposes of evaluating the settlement's reasonable, this estimate must be "tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).

Ultimately, Plaintiff's Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendants' maximum theoretical liability by: (i) the strength of the defenses to the merits of Plaintiff's claims; (ii) the risk of class certification being denied; (iii) the risk of losing on any of a number of dispositive motions that could have been brought between certification and trial (e.g., motions to decertify the class, motions for summary judgment, and/or motions in limine) that might have eliminated all or some of Plaintiff's claims, or barred evidence/testimony in support of the claims; (iv) the risk of losing at trial; (v) the chances of a favorable verdict being reversed on appeal; and (vi) the difficulties attendant to collecting on a judgment (collectively, the "Discount Factors").

After taking into account the Discount Factors, Plaintiff's Counsel determined that it would be reasonable to settle for a fraction of Defendants' maximum potential exposure for the class claims (PAGA discussed in the following section), or approximately 10%, which is essentially the product of the probability of: (i) certification being granted on all claims (≈50%); (ii) prevailing on summary judgment/motions in limine/renewed motions to deny certification on all claims (≈50%);(iii) prevailing at trial on all of Plaintiff's claims (≈40%); i.e., 50% x 50% x 40%.

Such a discount is inherently reasonable given that Plaintiff would have had to overcome multiple, dependent contingencies to prevail on her claims. If anything, the projected odds for each of the above contingencies is generous to the class' position, since plaintiffs in employment cases rarely prevail on all

of the claims at any of these dispositive stages. Courts routinely approve settlements that provide a similar discounted range of the maximum potential recovery. See, e.g., *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1 % to 8% of the estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery "[fell] within the range of possible initial approval based on the strength of plaintiff's case and the risk and expense of continued litigation."); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).³

B. The Court Should Preliminarily Approve the Proposed PAGA Settlement

Pursuant to the Settlement Agreement, \$10,000 from the Class Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% (\$7,500) will be paid directly to the LWDA, and the remaining 25% (\$2,500) will be paid to Participating Class Members. (Settlement Agreement, pg. 24, lines 18-22.)

This result was reached after good-faith negotiation between the parties. The amount was valued as follows: Based on information and evidence produced by Defendants during informal discovery, Plaintiff's Counsel determined that aggrieved employees worked a combined total of approximately 1,046 pay periods during the PAGA statute of limitations period ("PAGA Period"). Statutory penalties would be calculated

³ See also *In re Uber FCRA Litig.*, No. 14-CV-05200-EMC, 2017 WL 2806698, at *7 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys' fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-CV-02198-EMC, 2016 WL 5907869, at *7 (N.D. Cal. Oct 11, 2016) (granting preliminary approval to class action settlement representing "8.1 % of the full verdict value" with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. WW Granger, Inc.*, No. B-cv-02540- HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705- DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys' fees and other deductions represented approximately 6.1 % of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where "[t]he proposed settlement amount is[...] only about five percent of the estimated damages before fee and costs-even before any reduction thereof for attorney's fees and costs.").

1 according to Labor Code 2699(f)(2): If, at the time of the alleged violation, the person employs one or more
2 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for
3 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
4 subsequent violation.

5 However, a number of courts have found that the "subsequent" penalty under PAGA applies only
6 after a court, or the Labor Commissioner determines that the employer has violated the Labor Code. See
7 *Vieyara-Flores v. Sika Corp.*, No. EDCV19606NSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June 10,
8 2019) ("employers are not subject to heightened penalties ... until a court or commissioner notifies the
9 employer that it is in violation of the Labor Code ... [Plaintiff] has not offered evidence that the Labor
10 Commission or a court has notified them of PAGA violations [thus] PAGA's heightened penalty of \$200
11 for subsequent violations will not be calculated to determine the amount in controversy"); *Steenhuyse v.*
12 *UBS Fin Servs., Inc.*, 317 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) (same); *Chen v. Morgan Stanley Smith*
13 *Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014) ("Under
14 the Labor Code, if an employer does not have notice that they are committing a violation, they are not
15 subject to the heightened penalties."); *Trang v. Turbine Engine Components Technologies Corp.*, No. CV
16 12-07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) ("courts have held that employers are
17 not subject to heightened penalties for subsequent violations unless and until a court or commissioner
18 notifies the employer that it is in violation of the Labor Code"), citing *Amaral v. Cintas Corp.* No. 2, 163
19 Cal. App. 4th 1157 (2008). Under this line of cases, Defendants' exposure would be approximately
20 \$1,046,000 = 1,046 violative pay periods x \$100.

21 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil penalties
22 "based on the facts and circumstances of a particular case" when "to do otherwise would result in an award
23 that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code§ 2699(h). In reducing PAGA
24 penalties, courts have considered issues including whether the employees suffered actual injury from the
25 violations, whether the defendant was aware of the violations, and the employer's willingness to fix the
26 violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504,528 (2018) (awarding PAGA penalties of
27 only 0.2% of the maximum); see also *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016);

1 *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK(OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12,
2 2011).

3 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA penalties
4 in the amount of approximately \$70 million. The trial court instead awarded only \$150,000-- or 0.21 % of
5 the maximum--and stated that this reduction was warranted because imposing the maximum penalty would
6 be "unjust, arbitrary, and oppressive" based on Starbucks's "good faith attempts" to comply with meal
7 period obligations and because the court found the violations were minimal. *Carrington*, 30 Cal. App. 5th
8 at 517. The Court of Appeal affirmed the lower court's reduced award of a \$150,000 penalty under PAGA.
9 *Id* at 529. If a similar reduction had been applied here, Plaintiff would have recovered only approximately
10 \$2,196.60 (\$1,046,000 x 0.0021 reduction).

11 **C. The Court Should Preliminarily Approve the Negotiated Class Representative**
12 **Enhancement Payment**

13 Enhancement payments "are fairly typical in class action cases." *Cellphone Termination Fee Cases*,
14 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000); *Rodriguez v. West*
15 *Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) §
16 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA
17 L. Rev. 1303 (2006). Enhancement payments "are intended to compensate class representatives for work
18 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
19 and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez*, 563 F.3d at
20 958-59. "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they
21 should be compensated for the expense or risk they have incurred in conferring a benefit on other members
22 of the class." *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 806 (2009).

23 Approximately 45 current and former employees will share a \$218,500 settlement fund due entirely
24 to the effort and commitment of Sonja Pollard. Subject to Court approval, therefore, the Settlement
25 provides for a Class Representative Enhancement Payment of \$15,000. The Class Representative
26 Enhancement Payment is fair and reasonable compensation for Plaintiff's effort in pursuing the action,
27 serving as a private attorney general under PAGA, assisting counsel with the litigation and settlement,
28

1 regularly conferring with counsel on the status of her case and the strategies for prosecuting the claims,
2 and reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the
3 Settlement Class.

4 Plaintiff and Class Counsel will request, and Defendants agree not to oppose, payments by
5 Defendants from the Class Settlement Amount of \$15,000 to Plaintiff as a service payment. The named
6 Plaintiff is entitled to an enhancement award for her service as Class Representative and the risks in
7 connection with that role. Enhancement awards in overtime cases typically range from \$5,000.00 to
8 \$40,000.00, although some awards are higher. Often, multiple class representatives receive awards in the
9 higher range. (See e.g., *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,
10 412). Here, the requested enhancement is relatively modest, reasonable, and should be preliminarily approved.
11 The requested award of \$15,000 is less than 10 percent, 6.86 percent, of the total settlement. Plaintiff has
12 performed considerable services on behalf of the Class during the litigation by seeking an attorney, participating
13 throughout litigation, searching for and providing information relating to her employment and the employment
14 conditions, spending time in meetings with counsel to get a better understanding of her work environment and
15 requirements, provided needed information for mediation, settlement discussions, and potential class
16 certification, and approved the settlement on behalf of all class members.

17 Plaintiff will file a formal motion for the negotiated Class Representative Enhancement
18 Payment once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the
19 above showing is sufficient for preliminary approval of the negotiated Class Representative Enhancement
20 Payment.

21 **D. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and Costs**

22 The purpose of an attorneys' fee award in class action litigation is to reward counsel who took
23 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
24 California courts routinely award attorneys' fees equaling one-third or more of the potential value of the
25 common fund. See *Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing
26 one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical
27 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in
28

1 class actions average around one-third of the recovery."). At final approval, Plaintiff will seek Court
2 approval of attorneys' fees of \$72,105.00 (one-third of the Class Settlement Amount) and less than \$10,000
3 in litigation costs

4 **E. California Law Authorizes Provisional Certification for Settlement Purposes**

5 **i. The California Standard for Class Certification**

6 Class actions are statutorily authorized "when the question is one of common or general
7 interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before
8 the court." Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class
9 certification is appropriate when there is an "ascertainable class and a well-defined community of interest
10 among class members." *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class
11 treatment is appropriate even if class members at some point may be required to make an individual
12 showing as to eligibility for recovery. *Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207
13 (2008); *Sav-On*, 34 Cal. 4th at 333.

14 Conditional certification of the proposed Settlement Class is particularly warranted here
15 given the relatively relaxed standard for certification at the preliminary approval stage. See *Dunk v. Ford*
16 *Motor Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a "lesser standard of scrutiny" for class
17 certification in settlement cases).⁸ In *Dunk*, the California Court of Appeal specifically rejected the
18 argument that the standard for certifying a class for purposes of settlement is identical to the standard for
19 certifying the same class for purposes of litigation:

20
21 Geer argues the court must use the same standard under Federal Rules of Civil
22 Procedure, rule 23 (28 U.S.C.) to determine the propriety of both settlement and
23 litigation class certifications ... That rule is contrary to the Ninth Circuit rule, stated
24 in *Officers for Justice v. Civil Service Com.* supra, 688 F.2d at p. 633, and the
25 position of the leading commentators (Newberg & Conte, supra, § 11.28 at p. U-58),
26 which allow a lesser standard of scrutiny for settlement cases ... We agree with the
27 latter. The two basic purposes for the Rule 23 certification requirements, as they
28 relate to questions of a nationwide class, are: (1) to keep the lawsuit manageable for
trial; and (2) to protect the interests of the non-representative class members. The
first purpose is inapposite in the settlement context, and the second, as it relates to
commonality of issues, only makes a difference if the non-representative class
members would do much better by litigating on their own or in their own
jurisdiction. The second category concerns are protected by the trial court's fairness
review of the settlement.

1 Id. at n19.

2 **ii. The Proposed Settlement Class Is Ascertainable and There Is a Well-Defined**
3 **Community of Interest Among Class Members**

4 Whether a class is "ascertainable" within the meaning of Code of Civil Procedure section 382 is
5 "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for
6 identifying class members." *Lee*, 166 Cal. App. 4th at 1334. Class members are ascertainable where they
7 may be readily identified without unreasonable expense or time by reference to official records. *Id*

8 The community of interest requirement embodies three factors: (1) predominant common questions
9 of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a class
10 representative and counsel who can adequately represent the class. Cal. Civ. Proc. Code § 382.

11 In April of 2012, the California Supreme Court expounded on the element of predominance:

12 The "ultimate question" the element of predominance presents is whether "the issues which
13 may be jointly tried, when compared with those requiring separate adjudication, are so
14 numerous or substantial that the maintenance of a class action would be advantageous to the
judicial process and to the litigants."

15 *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012) (citations omitted).

16 The proposed Settlement Class consists of all persons who worked for Defendants as a non-exempt,
17 hourly or commission employee at The Treatment Skin Boutique, Inc. locations in California at any time
18 from January 21, 2017 to the date of Preliminary Approval, approximately 45 individuals. Because all
19 Class Members are either current or former employees of Defendants, the class is readily ascertainable
20 from Defendants' regular business records.

21 Here, common issues of fact and law predominate because the California statutes relating to each
22 of Plaintiff's claims, and Defendants' defenses thereto, apply with equal force and effect to all Class
23 Members. Factually, Plaintiff contends that Defendants' policies and practices apply class-wide and
24 Defendants' liability can be determined by facts common to all members of the class. The wage and hour
25 issues are both numerous and substantial, and a class action is the most advantageous method of dealing
26 with the claims of the Settlement Class Members.

27 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise
28 from the same factual bases and are based on the same legal theories applicable to the other Class Members.

1 Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff maintains
2 that she was injured by the same company-wide practices to which the proposed Settlement Class was
3 subject and seeks the same relief. Plaintiff has already demonstrated her ability to advocate for the interests
4 of the Class by initiating this litigation, undertaking representative discovery, and evaluating the proposed
5 settlement to assure that it is fair.

6 Additionally, Plaintiff is represented by competent counsel who have extensive experience in
7 litigating wage and hour class action cases. (See Manjlai Decl., ¶ 13.) Plaintiff's Counsel's wage and hour
8 class action expertise establishes that they are well qualified to represent the interests of this Class.

9 A class action is superior to a multitude of individual lawsuits. Given the size and amount of each
10 individual Class Member's claim, Class Members likely have little incentive to litigate their claims on an
11 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
12 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
13 adjudication.

14 **iii. The Proposed Notice Properly Informs Class Members about the Case and the**
15 **Settlement**

16 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67
17 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to
18 decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to
19 the settlement. *Trotsky v. Los Angeles Fed Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975). The
20 notice must advise class members "that they may be excluded from the class if they so request and that
21 they will be bound by the judgment, whether favorable or not, if they do not request exclusion." *Kass*, 67
22 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California
23 authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super.*
24 *Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).⁴

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26
27
28 ⁴ Due process does not require that each Class Member actually receive a notice, but rather a procedure reasonably certain to reach Class
Members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class Members will be
bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir. 1987).

1 The Parties have jointly drafted the Notice of Class Action Settlement ("Class Notice") which fairly
2 and neutrally informs Class Members of their rights and remedies in this action. The proposed Class Notice
3 will be mailed to all Class Members by First Class mail and will include information regarding the nature
4 of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure and
5 time period within which to submit Requests for Exclusions or objections to the Settlement, the date for
6 the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of
7 the Released Claims. (See Settlement Agreement, attached as Exhibit 3 to Declaration of Haroon Manjlai.)

8 In the event Class Notices are returned as undeliverable, the Settlement Administrator will attempt
9 to locate a current address using, among other resources, a skip-trace search. (Settlement Agreement, pg.
10 17, Ins. 17-23.)

11 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
12 satisfy due process and the requirements of California law. *See* Cal. R. Ct. 3.776(e)-(t); *State of Cal. v. Levi*
13 *Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must "fairly apprise the class members of the terms
14 of the proposed compromise and of the options open to dissenting class members.").

15 The notice will be given English only. This is sufficient because as per the Defendants' counsel, it
16 is understood that all of Defendants' current and former employees are about to read, write, and speak
17 English. However, the notice contains a paragraph in Spanish on the with instruction as to how notice
18 recipients can request a Spanish version of the notice.

19 **IV. THE COURT SHOULD APPOINT PHOENIX SETTLEMENT ADMINISTRATORS AS**
20 **THE SETTLEMENT ADMINISTRATOR AND APPROVE THE COSTS OF**
21 **SETTLEMENT ADMINISTRATION.**

22 The settlement contemplates that the parties would jointly select a Settlement Administrator who
23 will be responsible for mailing and re-mailing class notices, processing claim forms and requests for
24 exclusion, calculating settlement awards, preparing reports, and verifying payments. Phoenix Settlement
25 Administrators is well qualified to serve as the Administrator and has numerous years of experience in
26 providing notice and settlement class action administration services. The parties nominate Phoenix
27 Settlement Administrators to be the Settlement Administrator and request that the Court preliminarily
28 approve the payment of up to \$10,000 to Phoenix Settlement Administrators to administer the settlement,

The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately presented the materials and information necessary for preliminary approval, the Parties request that the Court preliminarily approve the settlement.

Respectfully Submitted,
MANJLAI LAW, PC

By: Haroon Manjlai
Haroon Manjlai