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individually, and on behalf of all other
similarly situated employees of Defendants

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SILVIA GARCIA, individually, and on behalf)
of all other similarly situated current and)
former employees of Defendants,)

Plaintiff,)

vs.)

BHA HOSPITALITY, LLC, a Delaware)
limited liability company; and DOES 1)
through 100, inclusive,)

Defendants.)

CASE NO.: 21STCV10883

[Assigned for all purposes to the Honorable
Elihu M. Berle, Department 6]

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
ATTORNEY FEES; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

*[Filed concurrently with Declaration of
Farzad Rastegar, Esq. and Declaration of
Silvia Garcia in Support of Motion for
Preliminary Approval of Class Action
Settlement and Attorney Fees]*

Date: January 25, 2022

Time: 11:00 a.m.

Dept.: 6

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 25, 2022 at 11:00 a.m. in Department 6 of the
3 above-entitled Court, Plaintiff SILVIA GARCIA, individually, and on behalf of all other similarly
4 situated current and former employees of Defendant will move this Court for the following orders:

- 5 1. Conditional certification of the Settlement Class for purposes of settlement;
6 2. Appointment of Silvia Garcia as Class Representative for the Settlement Class;
7 3. Appointment of Rastegar Law Group, APC, as Class Counsel;
8 4. Preliminary approval of the parties' Class Action Settlement Agreement as
9 fundamentally fair, adequate, and reasonable;
10 5. Approval of the form and content of the Notice Packet to the Settlement Class and
11 order directing mailing of the same, as set forth in the Settlement Agreement; and
12 6. Scheduling of a Final Approval Hearing.

13 This Motion is brought in accordance with rule 3.769 of the California Rules of Court and
14 California Code of Civil Procedure section 382 et seq. and is based on the following
15 Memorandum of Points and Authorities, Declaration of Farzad Rastegar, Esq., Declaration of
16 Silvia Garcia, the complete files and records of this case, and any other evidence or oral argument
17 which may be considered by the Court at the time of the hearing.

18
19 Dated: January 20, 2022

RASTEGAR LAW GROUP, APC

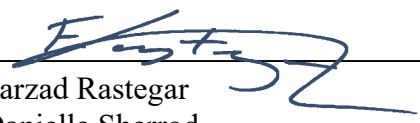
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23 Farzad Rastegar
24 Danielle Sherrod
25 Aja M. Taormina
26 Attorneys for Plaintiff

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2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 Plaintiff SILVIA GARCIA (“Plaintiff”) brings this motion seeking the Court’s preliminary
5 approval of the parties’ class action settlement agreement, including certification of the proposed
6 class. The agreement resolves Plaintiff’s wage and hour class action against Defendant BHA
7 HOSPITALITY, LLC (“Defendant”), owner of the Avra chain of restaurants, for claims for
8 failure to provide meal and rest breaks, failure to pay employees for all hours worked, failure to
9 timely pay wages, and failure to provide accurate, itemized wage statements. After significant
10 discovery and investigation by Plaintiff’s counsel, the parties participated in mediation with an
11 experienced employment law mediator and were able to resolve the litigation. Pursuant to
12 California Labor Code section 2699, subdivision (l)(2), and California Code of Civil Procedure
13 section 382 et seq., Plaintiff requests that the Court grant preliminary approval of the parties’ class
14 action settlement agreement, including certification of the proposed class, and schedule a fairness
15 hearing.

16 **II. STATEMENT OF FACTS**

17 Plaintiff and other class members worked for Defendant in California as hourly,
18 nonexempt employees. (Declaration of Farzad Rastegar, Esq., in support of Motion for
19 Preliminary Approval of Class Action Settlement and Attorneys’ Fees [“Rastegar Decl.”], p. 2, ¶
20 2.) On March 19, 2021, Plaintiff commenced this action on behalf of herself and other similarly
21 situated employees alleging, among other things, that Defendant failed to provide meal and rest
22 periods in accordance with California law, failed to compensate employees for all hours worked,
23 failed to timely pay wages, and failed to provide accurate wage statements. (*Id.*, at p. 2, ¶ 3.)

24 On June 23, 2021, the parties participated in mediation with Tripper Ortman, a well-
25 respected employment law mediator. (Rastegar Decl., *supra*, p. 2, ¶ 4.) Prior thereto, the parties
26 exchanged documents and Defendant produced a sampling of employees’ timecard and payroll
27 data for the period commencing March 19, 2017 through June 21, 2021. (*Id.* at p. 4, ¶ 7.) After a

full day of arm's-length negotiations with the mediator's assistance, the parties were able to resolve the pending litigation. (*Id.* at p. 2, ¶ 4.) The material terms and provisions of the parties' settlement agreement include all of the following:

A. The Settlement Class. The Settlement Class shall consist of all current and former nonexempt individuals who worked for or provided services to Defendant in California at any time between March 1, 2018 and October 1, 2021. The putative class members number eight hundred eighty-six (886) individuals;

B. Settlement Payout. Defendant shall pay the total non-reversionary sum of two hundred eighty-five thousand dollars (\$285,000), which shall include all of the following:

i. To the California Labor Workforce and Development Agency (“LWDA”) and participating class members, the sum of six thousand dollars (\$6,000) for penalties pursuant to the PAGA (payable seventy five percent (75%) to the LWDA and twenty five percent (25%) to participating class members);

ii. To Plaintiff, an enhancement award of seven thousand five hundred dollars (\$7,500) in recognition of her contributions to the action and her service to the Settlement Class;

iii. To Plaintiff's counsel, Rastegar Law Group, APC, thirty-three and one-third percent (33 1/3%) of the Settlement Payout for attorney's fees, plus up to twenty-one thousand dollars (\$21,000) for costs and expenses of suit;

iv. To the settlement administrator, Phoenix Settlement Administrators, up to fifteen thousand dollars (\$15,000) for administration services; and

v. To participating class members, a proportionate share of the remaining Settlement Payout based upon the number of workweeks worked during the class period, the numerator of which is the total number of workweeks worked by the class member during the class period and the denominator of which is the total number of workweeks worked by all participating class members who worked during the class period; and

1 C. Release by Settlement Class and Plaintiff. Plaintiff and class members
2 (other than those who opt-out) shall fully release Defendant of all claims, demands, rights,
3 liabilities, and causes of action arising out of the factual allegations set forth in the complaint that
4 arose during the class period with respect to all of the following: (i) failure to pay all wages due;
5 (ii) failure to pay overtime compensation; (iii) failure to provide required meal periods; (iv) failure
6 to provide required rest breaks; (v) failure to provide accurate pay statements; (vi) failure to pay
7 all wages due to discharged employees; (vii) unlawful business practices; and (viii) representative
8 action for civil penalties pursuant to the PAGA. (*Id.* at pp. 2-3, ¶ 4.)

9 Pursuant to California Rules of Court, rule 3.769, and California Code of Civil Procedure
10 section 382 et seq., Plaintiff seeks the Court’s preliminary approval of the proposed class action
11 settlement agreement (hereinafter “Settlement Agreement” or “Agreement”).

12 III. ARGUMENT

13 A. The Court Should Grant (1) Certification Of The Proposed Class For 14 Settlement Purposes And (2) Approval Of The Proposed Settlement 15 Agreement

16 Review and approval of a proposed class action settlement is a two-step process.
17 (*Armstrong v. Board of School Directors* (7th Cir. 1980) 616 F.2d 305, 314 [disapproved on other
18 grounds in *Felzen v. Andreas* (7th Cir. 1998) 134 F.3d 873, 875].) The first step is a preliminary,
19 pre-notification hearing to determine whether the proposed settlement is “within the range of
20 possible approval.” (*Ibid.*) The preliminary hearing “is not a fairness hearing; its purpose, rather,
21 is to ascertain whether there is any reason to notify the class members of the proposed settlement
22 and to proceed with a fairness hearing.” (*Ibid.*) If the court finds the proposed settlement to be
23 “within the range of possible approval,” it then proceeds to the second step in the review process,
24 the fairness hearing. (*Ibid.*) Class members are notified of the proposed settlement and of the
25 fairness hearing at which they and all interested parties have an opportunity to be heard. (*Ibid.*)

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27 ///

1 **1. THE PROPOSED CLASS IS ASCERTAINABLE AND**
2 **SUFFICIENTLY NUMEROUS, THERE IS A WELL-**
3 **DEFINED COMMUNITY OF INTEREST, AND THE CLASS**
4 **ACTION DEVICE IS THE SUPERIOR METHOD OF**
5 **ADJUDICATION**

6 California Code of Civil Procedure section 382 authorizes class actions whenever the
7 question in a case is one “of a common or general interest, of many persons, or when the parties
8 are numerous, and it is impracticable to bring them all before the court....” (California Code of
9 Civil Procedure, § 382; *Brinker Restaurant Corp. v. Superior Court* (“Brinker”) (2012) 53 Cal.4th
10 1004, 1021.) Drawing on the language of California Code of Civil Procedure section 382 and
11 federal precedent, the California Supreme Court has articulated clear requirements for the
12 certification of a class. (*Brinker, supra*, 53 Cal.4th at p. 1021.) “The party advocating class
13 treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a
14 well-defined community of interest, and substantial benefits from certification that render
15 proceeding as a class superior to the alternatives.” (*Ibid.*; *Fireside Bank v. Superior Court*
16 [“Fireside”] (2007) 40 Cal.4th 1069, 1089.) “In turn, the ‘community of interest’ requirement
17 embodies three factors: (1) predominant common questions of law or fact; (2) class
18 representatives with claims or defenses typical of the class; and (3) class representatives who can
19 adequately represent the class.” (*Brinker, supra*, 53 Cal.4th at p. 1021; *Fireside, supra*, 40 Cal.4th
20 at p. 1089.)

21 **a. The Proposed Class Is Ascertainable And Sufficiently**
22 **Numerous To Warrant Class Certification**

23 Ascertainability is required in order to give notice to putative class members as to whom
24 the judgment in the action will be res judicata. (*Hicks v. Kaufman Broad Home Corp.* (2001) 89
25 Cal.App.4th 908, 914.) In determining whether a class is ascertainable, the trial court examines
26 the class definition, the size of the class, and the means of identifying class members. (*Bufl v.*
27 *Dollar Financial Group, Inc.* [“Bufl”] (2008) 162 Cal.App.4th 1193, 1207; *Miller v. Woods*
28 (1983) 148 Cal.App.3d 862, 873.) A class is ascertainable “if it identifies a group of unnamed
plaintiffs by describing a set of common characteristics sufficient to allow a member of that group

1 to identify himself as having a right to recover based on the description.” (*Estrada v. FedEx*
2 *Ground Package System, Inc.* [“Estrada”] (2007) 154 Cal.App.4th 1, 14.) Class members are
3 ascertainable where they may be readily identified without unreasonable expense or time by
4 reference to official records. (*Bufil, supra*, 162 Cal.App.4th at pp. 1206-1207; *Aguiar v. Cintas*
5 *Corp. No. 2* [“Aguiar”] (2006) 144 Cal.App.4th 121, 135.)

6 The numerosity requirement requires examination of the specific facts of each case and
7 imposes no absolute limitations. (*Gen. Tel. Co. of the Nw., Inc. v. EEOC* (1980) 446 U.S. 318,
8 330.) However, “as a general rule, classes of 20 are too small, classes of 20-40 may or may not be
9 big enough depending on the circumstances of each case, and classes of 40 or more are numerous
10 enough.” (*Ikonen v. Hartz Mountain Corp.* (S.D. Cal. 1988) 122 F.R.D. 258, 262; but see
11 *Consolidated Rail Corp. v. Town of Hyde Park* (2d Cir. 1995) 47 F.3d 473, 482 [finding joinder
12 impracticable for group of forty (40) class members].)

13 Here, the proposed class of eight hundred eighty-six (886) individuals is both ascertainable
14 and sufficiently numerous to warrant certification. The parties’ Settlement Agreement provides
15 the putative class members shall consist of “all current and former nonexempt [employees]” of
16 Defendant. (Rastegar Decl., *supra*, at p. 2, ¶ 4(A).) The class period is March 1, 2018 through
17 October 1, 2021. (*Ibid.*) The proposed class is sufficiently numerous as it would be impracticable
18 to bring eight hundred eighty-six (886) individuals before the Court. Moreover, the parties’
19 description of the proposed class “identifies a group of unnamed plaintiffs by describing a set of
20 common characteristics” (i.e. time and place of the unnamed plaintiffs’ employment with
21 Defendant and their status as nonexempt employees). (*Estrada, supra*, 154 Cal.App.4th 1, 14.)
22 Unnamed plaintiffs easily can identify themselves as having a right to recover based on the
23 parties’ description. The fact that a marginal percentage of employees may not be entitled to
24 recovery does not make the proposed class any less ascertainable. (*Bell v. Farmers Ins. Exchange*
25 (2004) 115 Cal.App.4th 715, 742-743; *Aguiar, supra*, 144 Cal.App.4th 121, 136 [a class is not
26 inappropriate merely because each member at some point may be required to make an individual
27 showing as to eligibility for recovery].)

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1 timecards to make it appear as if employees had received legally-compliant meal periods when
2 they had not. (*Ibid.*) Plaintiff alleged such acts and omissions by Defendant applied “across the
3 board” as part of a policy and practice of avoiding the payment of all wages to employees. (*Ibid.*)
4 Plaintiff submitted substantial evidence that Defendant dictates to a large extent how and when
5 employees may take meal and rest breaks. Accordingly, although individual testimony potentially
6 would be relevant to determine whether Defendant’s policies unduly interfered with the ability of
7 nonexempt employees as a whole to take meal and rest breaks, the legal question to be resolved is
8 a common one, not an individual one. Namely, the overall impact of Defendant’s policies on its
9 employees.

10 **ii. PLAINTIFF’S CLAIMS ARE TYPICAL OF**
11 **THE PROPOSED CLASS**

12 The community of interest requirement demands that the class representatives have claims
13 or defenses that are typical of the class. (*Brinker, supra*, 53 Cal.4th 1004, 1021; *Fireside, supra*,
14 40 Cal.4th 1069, 1089.) “Typicality refers to the nature of the claim or defense of the class
15 representative, and not to the specific facts from which it arose or the relief sought.” (*Seastrom v.*
16 *Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) The test of typicality is whether other
17 members have the same or similar injury, whether the action is based on conduct which is not
18 unique to the named plaintiffs, and whether other class members have been injured by the same
19 course of conduct. (*Ibid.*)

20 Here, Plaintiff’s claims for violations of the California Labor Code are typical of the
21 proposed class. Like the putative class members, Plaintiff was injured by Defendant’s meal and
22 rest break policies because she was not paid all wages owed to her. Defendant’s policies and
23 practices applied across the board to avoid the payment of all wages to nonexempt employees.
24 Although employees’ factual circumstances may vary somewhat, Plaintiff and other nonexempt
25 employees were ultimately controlled by the same set of central policies and practices.

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1 435.) Generally, a class action is appropriate “when numerous parties suffer injury of insufficient
2 size to warrant individual action and when denial of class relief would result in unjust advantage
3 to the wrongdoer.” (*Ibid.*)

4 Here, the class action device is the superior method of adjudication because employees’
5 individual injuries are of insufficient size to warrant individual relief, but the denial of class relief
6 would result in unjust advantage to Defendant. The issues slated for contest are primarily
7 common issues involving common evidence. It would not be efficient or fair to relegate these
8 complaints to multiple trials. Moreover, the proposed class suit is the only effective way to halt
9 and redress the alleged wrongdoing and prevent unjust advantage to Defendant due to its unlawful
10 employment policies and practices. Accordingly, the Court should find that there are substantial
11 benefits from certification, which render proceeding as a class superior to the alternatives.

12 **2. THE PROPOSED SETTLEMENT IS WITHIN THE RANGE**
13 **OF POSSIBLE APPROVAL BECAUSE IT IS**
14 **FUNDAMENTALLY FAIR, ADEQUATE, AND**
REASONABLE

15 Although the California statutes are silent with respect to the standard by which a proposed
16 settlement is to be evaluated, “the universally applied standard is whether the settlement is
17 fundamentally fair, adequate and reasonable.” (*Officers for Justice v. Civil Serv. Comm’n* (9th
18 Cir. 1982) 688 F.2d 615, 625; *Dunk v. Ford Motor Co.* (“Dunk”) (1996) 48 Cal.App.4th 1794,
19 1800-1801 [quoting *Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d
20 573, 578-579] [“To prevent fraud, collusion or unfairness to the class, the settlement or dismissal
21 of a class action requires court approval”].) The court’s ultimate determination will necessarily
22 involve “a balancing of several factors,” which factors may include, among others, some or all of
23 the following:

24 “[T]he strength of plaintiffs’ case; the risk, expense, complexity,
25 and likely duration of further litigation; the risk of maintaining class
26 action status throughout the trial; the amount offered in settlement;
27 the extent of discovery completed, and the stage of the proceedings;
28 the experience and views of counsel; the presence of a government

1 participant; and the reaction of the class members to the proposed
2 settlement.” (*Officers, supra*, 688 F.2d 615, 625.)

3 A presumption of fairness exists where: “(1) the settlement is reached through arm’s-length
4 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
5 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
6 small.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245; *Dunk, supra*, 48
7 Cal.App.4th 1794, 1802; *In re Microsoft IV Cases* (2006) 135 Cal.App.4th 706, 723.)

8 Here, the proposed Settlement Agreement is fundamentally fair, adequate, and reasonable
9 to all putative class members. It was reached after arms-length bargaining by the parties,
10 conducted with the assistance of a highly qualified and widely respected mediator, and after Class
11 Counsel thoroughly reviewed all available evidence. (Rastegar Decl., *supra*, at p. 3, ¶ 5.)
12 Plaintiff’s allegations of a policy and practice by Defendant intended to avoid the payment of
13 employee wages was supported by the evidence produced by Defendant in discovery. (*Id.* at pp.
14 3-4, ¶¶ 7-9.) Plaintiff analyzed the shifts of 182 employees constituting approximately one-fifth
15 (1/5th) of the putative class and found rampant meal period violations.¹ (*Id.* at p. 4, ¶¶ 7-8.)
16 Moreover, the sample revealed no evidence that Defendant paid premiums to its employees for
17 rest period violations.² (*Id.* at pp. 4-5, ¶ 9.)

18 On the other hand, Defendant maintained it had a policy and practice of authorizing lawful
19 meal and rest breaks and it produced a copy of its Employee Handbook, which contained several
20 pages that explained California law regarding meal and rest periods. (Rastegar Decl., *supra*, at pp.
21 5-6, ¶ 10.) Defendant also produced meal period waiver forms signed by Plaintiff. (*Id.* at p. 6, ¶

22
23 ¹ California Labor Code section 512, subdivision (a), and Industrial Welfare Commission wage order no. 5-
24 2001 require that employers relieve employees of all duties in order that they can take a thirty-minute, continuous and
25 uninterrupted meal period no later than their fifth consecutive hour of work, and a second, thirty-minute continuous
and uninterrupted meal period for workdays lasting longer than ten (10) hours. Section 226.7, subdivision (c) and the
wage order require that employers pay employees one hour of additional wages each workday that the employee is
not provided a lawful meal period.

26 ² California law further provides that employers are required to authorize and permit employees timely,
27 adequate, and duty-free rest periods of ten (10) minutes in length every four (4) hours, or major fraction thereof.
Further, employers must pay employees one hour of additional wages each workday that the employee is not provided
a lawful rest period.

11.) Given Defendant's denial of any wrongdoing, Plaintiff would have needed to incur great expense analyzing documents, deposing class members, and obtaining declarations to prove her claims. (*Id.* at p. 7, ¶ 12.) Class Counsel also considered the uncertain outcome and the risk of any litigation, especially in complex class actions such as this one, as well as the difficulties and delays inherent in such litigation, and the potential difficulty in maintaining the action as a class action. (*Ibid.*) Well under twenty percent (20%) of all class actions are certified by way of contested motion. (*Findings of the Study of California Class Action Litigation, 2000-2006.*)³ If the Court denied class certification, class members would not be entitled to any relief whatsoever.

a. Settlement Was Achieved Through Arm's-Length Bargaining

The settlement agreement was achieved as the result of a process that was neither fraudulent nor collusive. Defendant was represented in this proceeding by experienced counsel, Hazel U. Poei and Mojan Anari of Jackson Lewis, P.C. Each side advanced their respective positions during mediation. Had settlement negotiations ultimately failed, Plaintiff was committed and prepared to litigate the matter through trial and appeal if necessary.

b. Settlement Was Achieved After Sufficient Discovery And Investigation To Permit Class Counsel And The Court To Act Intelligently

Prior to the mediation on June 23, 2021, Plaintiff's counsel conducted significant discovery and investigation into the claimed meal and rest break violations. (Rastegar Decl., *supra*, at pp. 4-11, ¶¶ 7-11.) The firm carefully analyzed data produced by Defendant, which included Plaintiff's personnel file, Defendant's Employee Handbook, and a sampling of employees' timecard and payroll data. (*Id.* at p. 4, ¶ 7.) Accordingly, the Court should find that the Settlement Agreement was achieved after sufficient discovery and investigation to permit Plaintiff's counsel to act intelligently.

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³ <http://www.courts.ca.gov/documents/class-action-lit-study.pdf>

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1 (e) *Gutierrez v. California Commerce Club* (2010) 187 Cal.App.4th 969
2 (holding that it is premature for a trial court to determine the suitability of a class action on
3 demurrer). (*Id.* at p. 9, ¶ 19.)

4 Accordingly, the Court should find that Plaintiff's counsel is experienced in wage and hour
5 class actions.

6 **3. THE REQUEST FOR ATTORNEYS' FEES AND COSTS**
7 **BASED ON THE PERCENTAGE METHOD OF THE**
8 **COMMON FUND DOCTRINE IS FAIR, ADEQUATE, AND**
9 **REASONABLE**

10 The "common fund doctrine" provides that a private plaintiff, or his attorney, whose
11 efforts create, discover, increase, or preserve a fund to which others also have a claim is entitled to
12 recover from the fund the costs of his litigation, including attorneys' fees. (*Vincent v. Hughes Air*
13 *West, Inc.* ("Vincent") (9th Cir. 1977) 557 F.2d 759, 769.) The doctrine is designed to "spread
14 litigation costs proportionately among all the beneficiaries so that the active beneficiary does not
15 bear the entire burden alone and the 'stranger' beneficiaries do not receive their benefits at no
16 costs to themselves." (*Ibid.*)

17 The accepted practice of applying the "lodestar" method of determining the appropriate
18 amount of attorney's fees no longer achieves proportionality, predictability, and protection of the
19 class. (*Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1378.) Under the
20 lodestar method, the court determines the hours reasonably expended and a reasonable hourly rate.
21 (*Id.* at p. 1375.) The product of these two factors is the "lodestar," to which a multiplier may be
22 applied in appropriate circumstances. (*Ibid.*) The lodestar method encourages abuses such as
23 unjustified work and protracted litigation. (*Id.* at p. 1378.) The "better practice" in class action
24 common fund cases is to set a percentage fee award, as it aligns the interests of class counsel and
25 absent class members, encourages efficient resolution of the litigation by providing an incentive
26 for early, reasonable settlement, and reduces the demands on judicial resources. (*Id.* at pp. 1378-
27 1379.)

1 Here, the Court should grant the proposed attorneys' fee award in the amount of thirty-
2 three and one-third percent (33 1/3%) of the Total Settlement Payout. This percentage fee award
3 is consistent with the average percentage fee award in class actions. (*Activision Securities*
4 *Litigation, supra*, 723 F.Supp. 1373, 1375 ["no matter what billing records are submitted to the
5 *Lindy* or *Kerr-Johnson* regimen, the result is an award that almost always hovers around 30% of
6 the fund created by the settlement"]; *Shaw v. Toshiba America Information Systems, Inc.* (E.D.
7 Tex. 2000) 91 F.Supp.2d 942, 972 ["Empirical studies show that, regardless whether the
8 percentage method or the lodestar method is used, fee awards in class actions average around one-
9 third of the recovery"].)

10 Plaintiff's counsel has invested significant time and resources into this case thus far,
11 without compensation. (Rastegar Decl., *supra*, pp. 9-10, ¶ 20.) Tasks performed to date include,
12 without limitation, all of the following: (a) Interviewed Plaintiffs and reviewed documents
13 produced by them; (b) Performed legal research and investigation regarding Plaintiffs' claims,
14 Defendant's defenses, and Defendant's employment practices; (c) Prepared the operative class
15 action complaint; (d) Appeared at the initial status conference; (e) Engaged in "meet and confer"
16 efforts with Defendant's counsel regarding production of its timekeeping and payroll records; (f)
17 Analyzed documents produced by Defendant; (g) Drafted Plaintiffs' mediation brief; (h) Attended
18 a full-day of mediation; (i) Drafted the settlement agreement; and (j) Prepared the instant motion
19 for preliminary approval of the Settlement Agreement. (*Ibid.*) In addition, the firm incurred and
20 will incur an estimated sixteen thousand two hundred sixteen dollars and sixty cents (\$16,216.60)
21 in litigation costs in connection with this matter. (*Id.* at p. 10, ¶ 24.) Pursuant to the parties'
22 settlement agreement, Plaintiffs' counsel is entitled to up to twenty-one thousand dollars
23 (\$21,000) for such costs. (*Id.* at p. 2, ¶ 4(B).)

24 As is the case here, virtually all of the firm's employment law clients are represented on a
25 contingency fee basis. (Rastegar Decl., *supra*, p. 11, ¶ 25.) Most individuals cannot afford to pay
26 for representation in litigation on an hourly basis. (*Ibid.*) Because the firm assumes the risk that it
27 will not be reimbursed for its time, it cannot afford to represent individual employees on a

1 contingency fee basis if, at the end of the representation, the firm receives less than the amount of
2 attorneys' fees negotiated with the other side. (*Ibid.*) In the high-risk, high-cost practice of class
3 action litigation, Rastegar Law Group has endured financial losses in several of its cases. (*Ibid.*)
4 It is therefore essential that the firm recover requested fees pursuant to settlement agreements if it
5 is to remain in practice and continue representing individuals in employment disputes.

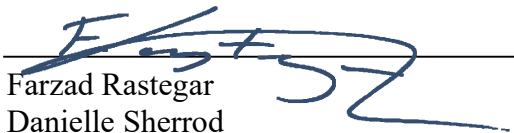
6 **IV. CONCLUSION**

7 Accordingly, based on all of the foregoing, the Court should grant preliminary approval of
8 the parties' proposed class action Settlement Agreement.

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10 Respectfully submitted,

11 Dated: January 20, 2022

RASTEGAR LAW GROUP, APC

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16 Danielle Sherrod
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