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on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

NIOMY TAYLOR, on behalf of herself and
others similarly situated,

PLAINTIFF,

vs.

GR MANAGEMENT INC; and DOES 1 to 100,
inclusive,

DEFENDANTS.

Case No.: CVRI2101671

CLASS ACTION

*[Assigned for all purposes to the Hon. Harold
Hopp, Dept. 10]*

**PLAINTIFF NIOMY TAYLOR'S NOTICE
OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

*[Filed concurrently with the Declaration of
Melissa A. Huether in Support; Declaration of
Niomy Taylor; and [Proposed] Order]*

Hearing Information:

Date: April 27, 2023

Time: 8:30 a.m.

Dept.: 10

Res ID: 550372344958

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

NOTICE IS HEREBY GIVEN that on April 27, 2023 at 8:30 a.m., or as soon thereafter as
the matter can be heard in Department 10 of the Riverside County Superior Court Courthouse
located at 4050 Main Street, Riverside, California 92501, Plaintiff NIOMY TAYLOR ("Plaintiff")

1 will move for an order granting preliminary approval of the proposed class action settlement on the
2 terms and conditions set forth in the Joint Stipulation of Class Action and PAGA Settlement
3 (“Settlement Agreement”) between Plaintiff and GR MANAGEMENT INC. (“Defendant”), a copy
4 of which is attached to the Declaration of Melissa A. Huether (“Huether Dec.”) as **Exhibit “1.”**
5 Plaintiff will further move that the Order specifically encompass the following:

- 6 1. Certify a class for settlement purposes only;
- 7 2. Appoint the Plaintiff as Class Representative for settlement purposes only;
- 8 3. Appoint Joseph Lavi, Esq., Vincent C. Granberry, Esq., and Melissa A. Huether,
9 Esq. of Lavi & Ebrahimian, LLP as Class Counsel;
- 10 4. Approve the proposed Notice of Class Action Settlement, Objection Form, and
11 Exclusion Form in the form attached as **Exhibit A** to the Settlement Agreement and to the
12 [Proposed] Order Granting Plaintiff’s Motion for Preliminary Approval of Class Action Settlement
13 as **Exhibit A**;
- 14 5. Set a Final Approval and Settlement Fairness Hearing on a date that is approximately
15 140 days after the Court grants preliminary approval of the Settlement.

16
17 Dated: April 5, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

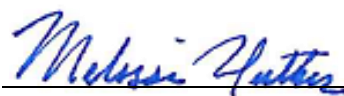
18
19 By: 
20 Joseph Lavi, Esq.
21 Vincent C. Granberry, Esq.
22 Melissa A. Huether, Esq.
23 Attorneys for PLAINTIFF NIOMY TAYLOR
24 on behalf of herself and others similarly
25 situated
26
27
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff NIOMY TAYLOR on behalf of herself and others similarly situated (“Plaintiff”)
4 respectfully submits this memorandum of points and authorities in support of her motion for
5 preliminary approval of the proposed class action settlement with GR MANAGEMENT INC.
6 (“Defendant”) (Plaintiff and Defendant are collectively hereinafter referred to as “the Parties”).
7 Plaintiff seeks entry of a proposed order granting preliminary approval of the class settlement
8 which: (1) preliminarily approves the proposed settlement of the class action; (2) approves the form
9 and method for providing notice and directs that notice be given to members of the settlement class;
10 (3) preliminarily certifies the settlement class for settlement purpose; and (4) schedules a final
11 approval hearing date.

12 As consideration for this Settlement, Defendant shall pay a sum equal to Four Hundred Fifty
13 Thousand Dollars (\$450,000) (the “Gross Settlement Amount”) to fund the non-reversionary, no
14 claims made settlement of this class action (Joint Stipulation of Class Action and PAGA Settlement,
15 (“Settlement”) ¶ 33(g). attached as **Exhibit “1”** to Declaration of Melissa A. Huether (“Huether
16 Dec.”). The Gross Settlement Amount is inclusive of settlement payments to participating Class
17 Members, all attorneys’ fees and costs, the enhancement payment to Plaintiff for her services as
18 class representative, PAGA penalties, and settlement administration as provided by this Settlement.
19 (*Id.*)

20 **II. SUMMARY OF LITIGATION**

21 **1. The Parties**

22 Plaintiff NIOMY TAYLOR worked as an hourly non-exempt employee of Defendant from
23 approximately April 15, 2018, to July 14, 2020. Defendant operates Subway restaurant locations in
24 California. Plaintiff seeks to represent current and former non-exempt employees who are or were
25 employed by Defendant as hourly non-exempt employees in California at any time during the
26 period from March 24, 2017 through May 1, 2022 (hereinafter “Class Members” or “Class”). As of
27 February 15, 2022, there were 169 Class Members who worked approximately 7,566 workweeks.
28 (Huether Decl., ¶ 3.)

1 **B. The Complaint and Allegations**

2 On March 29, 2021, *Niomy Taylor v. GR Management Inc.* was filed as Case Number
3 CVRI2101671 in Riverside County Superior Court as a putative wage and hour class action. The
4 original Complaint alleged claims for: (1) failure to pay wages for all hours worked at minimum
5 wage in violation of Labor Code sections 1194 and 1197; (2) failure to pay overtime wages for
6 overtime hours worked in violation of Labor Code sections 510 and 1194; (3) failure to authorize or
7 permit meal periods or pay meal period premium wages in violation of Labor Code sections 512
8 and 226.7; (4) failure to authorize or permit rest periods in violation of Labor Code section 226.7;
9 (5) failure to indemnify for employment-related losses/expenditures in violation of Labor Code
10 section 2802; (6) failure to timely pay earned wages during employment in violation of Labor Code
11 section 204; (7) failure to provide complete and accurate wage statements in violation of Labor
12 Code section 226; (8) failure to timely pay all earned wages and final paychecks due at time of
13 separation of employment in violation of Labor Code sections 201, 202, and 203, and (9) unfair
14 business practices in violation of Business and Professions Code sections 1700, *et seq.* (Huether
15 Dec. ¶ 4.) Also on March 29, 2021, Plaintiff submitted notice to the Labor and Workforce
16 Development Agency (“LWDA”) of her intention to bring a claim for civil penalties pursuant to the
17 Private Attorney General Act of 2004 against Defendant. (Huether Dec. ¶ 4.)

18 On June 4, 2021, Plaintiff filed a representative action pursuant to PAGA entitled *Niomy*
19 *Taylor v. GR Management Inc.*, Riverside County Superior Court, Case No. CVRI2102839
20 (“PAGA Action”). (Huether Dec. ¶ 5.)

21 On March 1, 2022, the Parties attended a private mediation session with Steve Rottman, Esq.,
22 a well-respected mediator experienced in mediation wage and hour class and representative actions.
23 As a result of the mediation, the Parties reached a settlement which if approved resolves this Action
24 as well as the PAGA Action. (Huether Dec. ¶ 6.)

25 On January 18, 2023, as a part of the Settlement, Plaintiff filed a First Amended Complaint
26 (“FAC”) adding a tenth cause of action for civil penalties pursuant to California’s Private Attorneys
27 General Act, Labor Code Section 2698, *et seq.* (Huether Dec. ¶ 7.)

28 ///

1 Defendant's defenses to Plaintiff's claims were as follows: with regard to Plaintiff's claim for
2 failure to pay for all hours worked at the minimum and/or overtime rate of pay, Defendant would
3 likely argue that they advised class members not to work off the clock and to the extent the class
4 members did work off the clock, it was not at the direction of Defendant and Defendant was
5 unaware of such work. Regarding Plaintiff's argument that Defendant failed to authorize or permit
6 compliant meal and rest periods, Defendant could argue it always provided employees with a timely
7 and compliant meal periods. Defendant would likely argue that to the extent non-compliant meal
8 periods were taken, it was not at their direction and it was unknown Defendant. Regarding
9 Plaintiff's rest period claim, Defendant would likely contend that there are no records of when or if
10 rest periods were taken and the Defendant was not required to monitor whether compliant rest
11 periods were taken. Finally, Defendant could further argue that it maintained and provided to the
12 class compliant meal and rest period policies. Regarding Plaintiff's claims that Defendant failed to
13 indemnify employees for business expenses, Defendant would likely argue that there was no reason
14 for the class to use their personal cell phones for work purposes and to the extent they did, it was
15 their decision and not required by Defendant. Based on the foregoing, Defendant concluded, wages
16 were properly paid to Plaintiff and Class Members and that at the time wages were paid out upon
17 separation of employment, Defendant believed, in good faith, that it was properly paying all wages
18 to separating employees. Further, Defendant would likely conclude that wage statements provided
19 to the class were complete and accurate as it was unaware that any additional wages were owed. In
20 other words, Defendant concluded, Plaintiff would not be able to establish the willful elements of
21 their Labor Code sections 226 or 203 claims. For these reasons, Defendant concluded, Plaintiff
22 would not likely prevail on her claims. Furthermore, Defendant argued that with respect to the
23 PAGA claim, the Court has the discretion to lower penalties give, that it appears unlikely a court
24 would find that any violations were knowing or intentional. (Huether Dec. ¶ 22.)

25 **C. The Exchange of Detailed Informal Discovery and Legal Analysis by the**
26 **Parties' Counsel**

27 On March 1, 2022, the Parties participated in a full-day mediation session with Steven J.
28 Rottman, Esq., a highly experienced and well-regarded class action mediator. As a critical part of

1 settlement negotiations, the Parties engaged in extensive informal discovery exchange which
2 included a sampling of timecards for approximately 50% of the class for the period from March
3 2019 to September 2021 and a sampling of wage statements; as well as information regarding
4 number of current and former hourly non-exempt employees; number of workweeks; number of pay
5 periods; average rate of pay; and Plaintiff's counsel's analysis of both the aforementioned sample
6 data and documentation. Defendant also provided a copy of their employee handbook which states
7 all of Defendant's relevant wage and hour policies. Plaintiff's counsel propounded special
8 interrogatories prior to agreeing to engage in informal discovery in advance of mediation (Huether
9 Dec. ¶ 8.)

10 Counsel for the Parties have investigated the law as applied to the facts discovered regarding
11 the alleged claims of Plaintiff and potential defenses thereto, and the potential damages claimed by
12 Plaintiff, and multiple conference calls and email exchanges between Plaintiff's counsel,
13 Defendant's counsel, and the mediator. (Huether Dec. ¶¶ 5-8.)

14 Plaintiff and Class Counsel recognize the expense and length of continued proceedings
15 necessary to litigate their disputes through trial and through any possible appeals. (*Id.*) Plaintiff has
16 also taken into account the uncertainty and risk of the outcome of further litigation, and the
17 difficulties and delays inherent in such litigation. (*Id.*) Plaintiff and Class Counsel are also aware of
18 the burdens of proof necessary to establish liability for the claims asserted in the Action, both
19 generally and in response to Defendant's compelling defenses thereto, and the difficulties in
20 establishing damages for the Class Members. (*Id.*) Based on the foregoing, Plaintiff and Class
21 Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate and
22 reasonable settlement, and is in the best interests of the Class Members. (*Id.*)

23 Defendant denies any liability or wrongdoing of any kind whatsoever associated with the
24 claims alleged in the Complaints, and Defendant further denies that, for any purpose other than
25 settling the Actions, that the Actions are appropriate for class or representative treatment.
26 (Settlement, ¶¶ 28, 55.) However, the Settlement constituted a compromise of disputed claims and
27 the monies being paid as part of the Settlement are genuinely disputed. (*Id.*)

28 ///

III. THE SETTLEMENT

The settlement contemplates (i) entry of an Order preliminarily approving the settlement and approving certification of a provisional settlement class, contingent upon final approval of the settlement; and (ii) entry of an Order granting final approval of the settlement and judgment.

Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the Lawsuit by agreement upon the terms and conditions and for the consideration set forth in the Stipulation, a copy of which is attached to the Declaration of Melissa A. Huether as **Exhibit "1."**

A summary of the key terms of the Settlement is as follows:

1. "Class" or Class Member(s)" means all non-exempt employees of Defendant who worked for Defendant in California during the Class Period. (Settlement, ¶ 8.)
2. "Class Period" means March 29, 2017 through May 1, 2022. (Settlement, ¶ 7.)
3. "PAGA Employee" means all non-exempt employees of Defendant who worked for Defendant in California that worked during the PAGA Period. (Settlement, ¶ 17.)
4. "PAGA Period" means the time period from March 29, 2020 through May 1, 2022. (Settlement, ¶ 16.)
5. "Gross Settlement Amount" means Defendant's maximum total payment under the Settlement, including all attorney's fees and costs, the Class Representative Service Payment to the named Plaintiff, the costs of settlement administration, the PAGA Allocation, and any other payments provided by this Settlement, is four hundred fifty thousand dollars and no cents (\$450,000.00), subject to the Escalator Clause and except that, to the extent that any portion(s) of the Settlement Class Payments constitute wages, Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions, if any. (Settlement, ¶ 33(c).)
6. "Net Settlement Amount" means the figure that shall be determined by deducting from the Gross Settlement Amount (\$450,000.00) the following sums, subject to approval by the Court: (1) attorney's fees (not to exceed thirty-three and one-third percent (33 1/3%) of the Gross Settlement Amount, or one-hundred-fifty thousand dollars and no cents (\$150,000.00); (2) reasonable litigation costs (not to exceed twenty-five thousand dollars and no cents (\$25,000.00); (3) the Class Representative Service Payment (not to exceed nine thousand nine hundred dollars and no cents (\$9,900.00)) to the named Plaintiff; (4) the PAGA Allocation; and (5) costs of settlement administration (estimated not to exceed six thousand dollars and no cents

1 (\$6,000.00)). Settlement Class Payments will be calculated by the Settlement
2 Administrator and paid out of the Net Settlement Amount as set forth below.
(Settlement, ¶ 33(g).)

- 3 7. All Settlement Payments will be allocated as follows: twenty percent (20%) to wages
4 and eighty percent (80%) to penalties and interest subject to applicable withholdings,
5 to be reported on a W-2 form, and reported on a 1099 form to be issued by the
6 Settlement Administrator (Stipulation, ¶ 33(k).). Individual PAGA Payments will be
entirely allocated to penalties and reported on 1099 and W-2 forms. (*Id.*)
- 7 8. Within twenty-one (21) calendar days after the Effective Date of the Settlement,
8 Defendant will fund the settlement account with a deposit of all Court approved and
9 claimed amounts from the Gross Settlement Amount. Within fourteen (14) calendar
10 days of the funding of the Settlement, the Settlement Administrator will issue
11 payments to: (a) Settlement Class Members and PAGA Employees; (b) the Labor
and Workforce Development Agency; (c) Plaintiff; and (d) Class Counsel. The
12 Settlement Administrator will also issue a payment to itself for Court-approved
services performed in connection with the settlement. (Settlement, ¶¶ 33(q); 33(r);
and 38.)
- 13 9. “Effective Date” is the date upon which all of the following events have occurred:
14 (i) this Joint Stipulation of Settlement has been executed by all Parties and their
15 respective counsel; (ii) the Court has given preliminary approval to the Settlement;
16 (iii) the Notice has been given to the Class, providing them with an opportunity to
17 dispute information contained in the Notice, to opt out of the Settlement, and to
18 object to the Settlement; (iv) the Court has held a final approval hearing and entered
a final order and judgment certifying the Class and approving this Settlement; and
19 (v) the later of the following events: (a) five (5) days have passed since final
approval is granted by the Court if there are no objections to the Settlement; (b)
20 sixty-five (65) days following notice of entry of the Court’s final order approving the
Settlement if there are any objections by any Class Member; (c) or if any appeal,
21 writ, or other appellate proceeding opposing this Settlement has been filed within
sixty-five (65) days following notice of entry of the Court’s final order approving the
22 Settlement, then twenty (20) days after when any appeal, writ, or other appellate
proceeding opposing the Settlement has been resolved finally and conclusively with
23 no right to pursue further remedies or relief. In this regard, it is the intention of the
Parties that the Settlement shall not become effective until the Court’s order
24 approving the Settlement is completely final, and there is no further recourse by an
appellant or objector who seeks to contest the Settlement. (Settlement, ¶ 33(b).)
- 25 10. Upon the later of (1) the Settlement’s Effective Date, or (2) the satisfaction of
26 Defendant’s obligation to provide to the Settlement Administrator a sum in the
amount required to satisfy all required payments and distributions pursuant to the
27 Settlement and the Order and Judgement of final approval. (Stipulation, ¶ 44(b).)
Settlement Class Members will not release the Released Claims or Released PAGA
28 Claims until both the Effective Date of the Settlement has occurred, and Defendant
has paid all amounts owing under the settlement. (*Id.*)

11. Each and every Settlement Class Member, on behalf of such Settlement Class Member and such Settlement Class Member's heirs and assigns, unless such Class Member has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period: (i) failure to pay wages for all hours worked at minimum wage in violation of Labor Code sections 1194 and 1197; (ii) failure to pay overtime wages for overtime hours worked in violation of Labor Code sections 510 and 1194; (iii) failure to authorize or permit meal periods or pay meal period premium wages in violation of Labor Code sections 512 and 226.7; (iv) failure to authorize or permit rest periods in violation of Labor Code section 226.7; (v) failure to indemnify for employment-related losses/expenditures in violation of Labor Code section 2802; (vi) failure to timely pay earned wages during employment in violation of Labor Code section 204; (vii) failure to provide complete and accurate wage statements in violation of Labor Code section 226; (viii) failure to timely pay all earned wages and final paychecks due at time of separation of employment in violation of Labor Code sections 201, 202, and 203; and (ix) unfair business practices in violation of Business and Professions Code sections 1700, *et seq.*; or that could have been premised on the claims, causes of action or legal theories of relief described above in (i)-(ix); and (x) all damages, including, but not limited to, liquidated damages, civil and statutory penalties, interest and other amounts recoverable under said claims, causes of action or legal theories of relief identified above in (i)-(ix). (Settlement, ¶ 44 (c)1.)
12. "Released PAGA Claims" means all claims for penalties and any other available relief pursuant to PAGA, to the extent asserted in Plaintiff's administrative exhaustion letter submitted to the LWDA in the PAGA Action on March 29, 2021 (the "LWDA Letter") or the PAGA Action Complaint, arising during the PAGA Period, including any and all claims for civil penalties, attorneys' fees, and costs pursuant to PAGA based on the claims and allegations stated in the operative Complaints and the LWDA Letter sent on March 29, 2021, or that could have been stated based on the facts alleged therein, including but not limited to claims for unpaid wages, minimum wage, overtime, meal periods, rest periods, unreimbursed employment-related expenditures, failure to provide suitable seating, waiting time penalties, wage statement violations, and failure to timely pay wages during employment, and Sections 11, 12, and 14 of the applicable Industrial Welfare Commission Wage Order ("Released PAGA Claims"). Plaintiff does not release any PAGA Employees' claim for wages. (Settlement, ¶ 20, 44 (d)1.)
13. "Releasees" means the Defendant named in the First Amended Complaint, together with their officers, directors, employees, and agents. (Settlement, ¶ 44(a).)
14. "Settlement Administrator" means Simpluris, Inc., or such third-party Settlement Administrator as may be mutually agreeable to the Parties and approved by the Court, to effectuate the processing and payment of Settlement. (Settlement, ¶ 33(p).)
15. "Plaintiff's Attorneys' Fees" means amount awarded to the Plaintiff's Attorneys by the Court for prosecuting the Action. Plaintiff's Attorneys' application for a

reasonable award of Plaintiff's Attorneys' Fees in a total amount not to exceed 33.3% of \$450,000 (i.e., \$150,000.00). (Settlement, ¶ 33(m).)

16. "Plaintiff's Expenses" means all of those expenses and costs incurred in connection with the Action by or on behalf of Plaintiff or Plaintiff's Attorneys, excluding Settlement Administration Costs. Plaintiff's Expenses not to exceed \$25,000. (Settlement, ¶ 33(g).)

17. "Class Representative Service Payment" means the additional sum to be paid to Plaintiff as compensation for her role as class representative, and for the risks and work attendant to that role. Subject to the Court granting final approval of this Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiff will request Court approval of Class Representative Enhancement of Nine Thousand Nine Hundred Dollars and Zero Cents (\$9,900.00). (Settlement, ¶33 (n).)

18. The Parties have agreed that Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) of the Gross Settlement Amount will be allocated to the resolution of any Class Members' claims arising under PAGA. Pursuant to PAGA, Seventy Five Percent (75%), or Eighteen Thousand Seven Hundred Fifty Dollars and Zero Cents (\$18,750.00), of the PAGA Payment will be paid to the California Labor and Workforce Development Agency ("LWDA Payment"), and Twenty Five Percent (25%), or Six Thousand Two Hundred Fifty Dollars and Zero Cents (\$6,250.00), of the PAGA Payment ("Aggrieved Employees Amount") will be distributed to Aggrieved Employees. (Stipulation ¶ 15.) Class Members who are PAGA Employees will not be permitted to exclude themselves from this portion of the Settlement. Each PAGA Employee's Individual PAGA Settlement Payment will be determined by comparing the individual PAGA Employee's PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows:
$$[[\text{PAGA Pay Periods worked by a PAGA Employee}] \div [\text{Sum of all PAGA Pay Periods worked by all PAGA Employees}]] \times [\text{PAGA Settlement Payment}] = \text{individual PAGA Employee's portion of the PAGA Settlement Payment.}$$
 (Settlement, ¶¶ 15, 33(j).)

19. Any Class Member wishing to opt-out from the Class Release must either (1) mail a Request for Exclusion including the name, address, telephone number, last four digits of the Class Member's Social Security Number, and the signature of the Class Member requesting exclusion; or (2) complete and submit the Request for Exclusion Form attached to the Notice which will advise Class Members of the requirements. Any Class Member who timely requests exclusion in compliance with these requirements shall not have any rights under the Settlement Agreement other than a right to receive a PAGA Settlement Payment if the Class Member is also a PAGA Employee. (Settlement, ¶ 33 (w).)

20. The Notice also shall provide Class Members with the procedure for objecting to the approval of the Settlement. Any Class Member wishing to object to the approval of the Settlement may (1) appear at the final approval hearing to be conducted by the

1 Court, remotely or in person, to explain any objection, (2) have an attorney object for
2 the Settlement Class Member, (3) submit a simple written brief or statement of
3 objection, or (4) complete and submit the Objection Form attached to the notice. A
4 statement of objection should contain sufficient information to confirm the identity
5 of the objector and the basis of the objection, including: (i) the full name of the
6 Settlement Class Member; (ii) the signature of the Settlement Class Member; (iii) the
7 grounds for the objection; and (iv) be postmarked within the Response Deadline to
8 permit adequate time for processing and review by the Parties of the written
9 statement or objection. (Settlement, ¶ 33 (x).)

- 10
11 21. “Response Deadline” means the later of sixty (60) calendar days after the initial
12 mailing or fourteen (14) calendar days from re-mailing. It is the date by which Class
13 Members may submit a timely request for exclusion or written objection to the
14 Settlement. (Settlement, ¶ 12.)

15 IV. ANALYSIS

16 1. **Class Action Settlements Are Subject To Review And Approval Under The 17 California Rules of Court**

18 Rule 3.769 of the California Rules of Court requires court approval for class action
19 settlements. “Before final approval, the court must conduct an inquiry into the fairness of the
20 proposed settlement.” (Cal. Rules of Court, rule 3.769(g).) Courts act within their discretion in
21 approving settlements which are fair, not collusive, and take into account “all the normal perils of
22 litigation as well as the additional uncertainties inherent in complex class actions.” (*In re Beef
23 Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef
24 Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.)

25 2. **This Settlement Is Fair, Reasonable, And Adequate**

26 The purpose of the preliminary evaluation of class action settlements is to determine only
27 whether the proposed settlement is within the *range of reasonableness* and, therefore, whether
28 notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple
Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4th Ed.) §11:25.)
Courts have broad powers to determine whether a proposed settlement is fair under the
circumstances of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-35; *Mallick v. Superior Court*
(1979) 89 Cal.App.3d 434, 438.) In evaluating preliminary approval, courts must consider several
relevant factors, including “the strength of the plaintiff’s case, the risk, expense, complexity and

likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel....” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” (*Wershba, supra*, 91 Cal.App.4th at 245.) Furthermore, courts must give “proper deference to the private consensual decision of the parties” because “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit 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.” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

A proposed class action settlement is presumed fair under the following circumstances: (1) the parties reached settlement after arm’s-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation, and (4) the percentage of objections is small. (*Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at 1802.) The Declaration of Class Counsel Melissa A. Huether demonstrates that the proposed settlement was the product of serious, informed, and non-collusive negotiations and demonstrates counsel’s extensive experience in both employment law as well as class action litigation.

1. The Settlement is the result of serious, informed, and non-collusive negotiations

The Settlement was reached as a result of arm’s-length negotiations facilitated by a highly regarded and experienced wage and hour mediator, Steve Rottman, Esq. and analysis by Plaintiff’s counsel. (Huether Dec. ¶¶5-21.) While Plaintiff believes in the merits of her case, she also recognizes the inherent risks of litigation and understand the benefit of the Class receiving settlement funds immediately as opposed to risking an unfavorable decision on class certification, summary judgment, at trial and/or the damages awarded, on an appeal that can take several more

1 years to litigate. (*Id.*)

2 **2. The extent of the information provided through informal discovery and the**
3 **stage of the proceedings support the Settlement**

4 As described herein, the Parties investigated and evaluated the factual strengths and
5 weaknesses of this case before reaching the proposed Settlement and engaged in sufficient
6 investigation and discovery, as referenced above, to support the Settlement. (*Id.*) Accordingly, the
7 proposed Settlement was reached following probative factual evaluation of Defendant’s relevant
8 policies and procedures including a sampling of timecards for approximately 50% of the class for the
9 period from March 2019 to September 2021 and a sampling of wage statements; as well as information
10 regarding number of current and former hourly nonexempt employees; number of workweeks; number
11 of pay periods; average rate of pay; and Plaintiff’s counsel’s analysis of both the aforementioned
12 sample data and documentation. (*Id.*)

13 Thus, the Settlement came only after the case was fully investigated by counsel, as set forth
14 above. This litigation, therefore, has reached the stage where “the Parties certainly have a clear view
15 of the strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
16 *Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

17 **3. Plaintiff’s counsel are experienced in similar litigation**

18 Experienced counsel, operating at arm’s-length, have weighed the strengths of the case and
19 examined all of the issues and risks of litigation and endorse the proposed settlement. The view of
20 the attorneys actively conducting the litigation “is entitled to significant weight” in deciding
21 whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985)
22 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.*
23 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, *supra*, 485 F.Supp. at 617.)

24 Both Plaintiff’s and Defendant’s counsel are experienced in employment, wage and hour
25 and class action matters. Lavi & Ebrahimian LLP is a well-regarded firm that handles almost
26 exclusively employment matters. (Huether Dec. ¶26.) Joseph Lavi, of Lavi & Ebrahimian, LLP, has
27 been approved as class counsel in numerous actions and has been named a Southern California
28

1 Super Lawyer in the area of Plaintiff’s employment litigation - class action from 2011-2021. (*Id.*)
2 Defendant’s counsel, Jason Morris of Newmeyer & Dillion LLP is also highly-regarded and
3 respected as employment defense counsel. Counsel on both sides share the view – endorsed by an
4 experienced wage and hour class action mediator – that this is a fair and reasonable settlement in
5 light of the complexities of the case, the state of the law and uncertainties of class certification and
6 litigation, and the benefit the settlement confers on the class. (Huether Dec. ¶¶5-22.) Given the risks
7 inherent in litigation, in class certification proceedings, and in the defenses asserted, this settlement
8 is fair, adequate, and reasonable and in the best interests of the class. (*Id.*)

9 **4. The Settlement is fair and reasonable based on the strengths of Plaintiff’s**
10 **case and the risks and costs of further litigation**

11 Plaintiff and her counsel have concluded it was reasonable to enter into the proposed
12 Settlement. Defendant has vigorously contested and continues to contest liability for the claims
13 asserted in the action. Although Defendant believes that class certification would be unlikely on
14 such claims, it nevertheless agreed to attempt resolution of the case through extensive informal
15 discovery and mediation to avoid the expense, distraction and uncertainty of protracted litigation.

16 There are significant legal uncertainties associated with cases such as this as they can be
17 factually complex and require protracted litigation to resolve. A settlement is not judged solely
18 against what might have been recovered had plaintiff prevailed at trial, nor does the settlement have
19 to provide 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska*
20 *Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney*
21 *v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, “[c]ompromise is inherent and
22 necessary in the settlement process...even if the relief afforded by the proposed settlement is
23 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to
24 a class settlement because the public interest may indeed be served by a voluntary settlement in
25 which each side gives ground in the interest of avoiding litigation” (*Wershba*, 91 Cal.App.4th at
26 250.)

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5. The Proposed Settlement is a Reasonable Compromise of Claims

To evaluate a settlement, the trial court must receive “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) However, the record need not contain an explicit statement of the maximum theoretical recovery:

“Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims—a number which appears nowhere in the record of this case. But *Kullar* does not, as Greenwell claims, require any such explicit statement of value; it requires a record which allows “an understanding of the amount that is in controversy and the realistic ranges of outcomes of the litigation.”

(*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

Based on the information informally produced by Defendant’s during the period from March 29, 2017 to February 2022, Defendant employed approximately 169 Class Members (151 former employees and 18 current employees) over the course of approximately 7,566 workweeks with an average rate of pay of \$12.94/hour. (Huether Dec. ¶12.) Additionally, the number of PAGA pay periods amounted to 1,458 for approximately 93 aggrieved employees. Based on our analysis, the maximum exposure for Plaintiff’s claims were as follows:

With regard to Plaintiff’s Unpaid Wages claims (i.e., the minimum and overtime wage claims), the maximum that Plaintiff could recover amounted to approximately **\$146,856.06**. [Calculated as follows: 7,566 workweeks X 1 hour off the clock work per week X \$19.41/OT Rate (based on \$12.94 average rate of pay) = \$146,856.06.] Plaintiff’s minimum and overtime wage claim was based on Plaintiff and other class members being required to arrive before their shift began and assist other employees prior to being permitted to clock in. However, given that there is no evidence of this claim because the work occurred off the clock and is reliant on Plaintiff’s and class members’ testimony, recovery of any damages for Plaintiff’s unpaid wages claims are unlikely and the risks are great. Because of the risks in bringing the claim to trial,

1 Plaintiff estimated that if she was successful on this claim at trial, it could result in a maximum of
2 \$73,428.03, which assumes 50% of the maximum violations could be proven. (Huether Dec. ¶13.)

3 With regard to Plaintiff's Meal Break Claim, Plaintiff alleged that she and other class
4 members regularly missed first and second meal periods because they often worked shifts alone
5 and therefore were unable to take a break and even when meal periods were taken, they
6 consistently interrupted. Based on Plaintiff's expert witness' analysis of the sampling of data,
7 provided that approximately 80% of shifts in the sampling evidenced a meal period violation.
8 Therefore, the maximum that Plaintiff could recover amounted to approximately \$391,616.16.
9 [Calculated as follows: 7,566 workweeks x 5 violations a week x \$12.94 average rate of pay x
10 80% violation rate = \$391,616.16.] Because of the risks in bringing the claim to trial, Plaintiff
11 estimated that there was a 75% chance of success in proving every violation given that there are
12 records of the vast majority of violations, thereby the maximum recovery at trial is likely
13 \$293,712.12. (Huether Dec. ¶14.)

14 With regard to Plaintiff's Rest Break Claim, Plaintiff alleged that Defendant regularly
15 failed to provide any rest periods that were due and Plaintiff and other class members rarely, if
16 ever, took a compliant rest period. Therefore, the maximum that Plaintiff could recover amounted
17 to approximately \$489,520.20. [Calculated as follows: 7,566 workweeks x 5 violations a week x
18 \$12.94 average rate of pay = \$489,520.20.] Given that there is no physical evidence whether rest
19 periods were or were not taken in compliance with the Labor Code, Plaintiff estimates she could
20 be successful in showing 15% of the violations at trial. Thus, the value of the claim at trial taking
21 into account the risks described above is \$73,428.03. (Huether Dec. ¶15.)

22 With regard to Plaintiff's Reimbursement claim, Plaintiff alleged that she and other class
23 members were required to use their personal cell phones in order obtain schedules and for other
24 work purposes. The maximum that Plaintiff could recover amounted to approximately \$250,000
25 [Calculated as follows: \$2/week X 7,566 workweeks = \$15,132.] Given that this claim could prove
26 to be highly individualized, Plaintiff estimates that she could be successful is proving 20% of
27 damages and therefore the value of the claim at trial is approximately \$6,052.80. (Huether Dec.
28 ¶16.)

1 With regard to Plaintiff's Wage Statement claim, which is wholly derivative of Plaintiff's
2 underlying claims for minimum, overtime, meal, and rest period claims, the maximum that
3 Plaintiff could recover amounted to approximately **\$676,000**. [169 employees X \$4,000 maximum
4 penalty = \$676,000.] Plaintiff alleged that derivative of the aforementioned violations, Defendant
5 failed to provide employees with wage statements which accurately stated the wages earned.
6 However, Defendant could argue that because this claim was derivative, the claim was subject to
7 the below described defenses. In addition, Defendant would likely argue that Plaintiff could not
8 show that any inaccuracy was based on a knowing and intentional failure—an element of a
9 violation of Labor Code section 226—or a violation of law in the manner required by Labor Code
10 section 226. However, Plaintiff believes she could be successful on this claim in at least pay
11 periods which a provable meal period violation occurred. As such, Plaintiff contends that there is
12 a 15% likelihood of success on this claim on a class basis resulting in approximately **\$101,400** in
13 wage statement penalties. (Huether Dec. ¶17.)

14 With regard to Plaintiff's Timely Wages Claim, based on the underlying unpaid wages,
15 meal period, and rest period claims, Plaintiff alleges that Defendant failed to timely pay wages
16 during employment. The maximum that Plaintiff could recover amounted to approximately
17 \$33,800.00. [169 employees x \$200 penalty = \$33,800.] (Huether Dec. ¶18.)

18 With regard to Plaintiff's Waiting Time penalties claim, the maximum that Plaintiff could
19 recover amounted to approximately **\$468,945.60**. [151 former employees X 8 hours per workday
20 X \$12.94/hour average rate of pay X 30 days = \$468,945.60.] Because this claim was derivative,
21 Defendant could argue it was subject to the aforementioned defenses that the employees received
22 wages for the time they recorded and were provided legally required meal and rest periods. In
23 addition, Defendant would likely argue that Plaintiff could not show that any failure to pay wages
24 was willful—an element of Labor Code section 203—or a violation of law in the manner required
25 by Labor Code sections 201 and 202. However, Plaintiff believes she could be successful on this
26 claim in at least pay periods which a provable meal period violation occurred. As such, Plaintiff
27 contends that there is a 15% likelihood of success on this claim on a class basis resulting in
28 approximately **\$70,341.84** in waiting time penalties. (Huether Dec. ¶19.)

1 Regarding Plaintiff's claims for the civil penalties associated with the foregoing alleged
2 violations of the Labor Code, Plaintiff's maximum recovery amounted to approximately
3 **\$291,600**. [1,458 pay periods X \$200 penalty (no stacking) = \$291,600]. It is more realistic to
4 assume that Defendant will only be found liable for an initial violation in the amount of \$100 for
5 each aggrieved employee, bringing the likely maximum recovery to approximately \$145,800.
6 Defendant would likely argue that PAGA penalties would be limited in any event. As discussed in
7 detail below, Defendant denies any liability. Moreover, Defendant would argue that even if
8 Plaintiff prevailed, the recoverable penalties under PAGA are minimal. Indeed, courts to consider
9 the issue have refused to "stack" PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal.
10 Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty
11 reduction to \$5 per pay period). Thus, the Parties contend the value of the PAGA claim if the case
12 proceeded to trial is approximately **\$7,290** (applying a lesser penalty of \$5 per pay period).
13 (Huether Dec. ¶20.)

14 As such, Plaintiff's maximum potential recovery in this matter, inclusive of PAGA
15 penalties, would amount to approximately \$2,748,338.02. The settlement reached in this matter
16 was \$450,000 or approximately 16.4% of maximum potential damages. (Huether Dec. ¶21.)

17 As explained above, however, defenses to Plaintiff's claims were as follows: with regard to
18 Plaintiff's claim for failure to pay for all hours worked at the minimum and/or overtime rate of pay,
19 Defendant would likely argue that they advised class members not to work off the clock and to the
20 extent the class members did work off the clock, it was not at the direction of Defendant and
21 Defendant was unaware of such work. Regarding Plaintiff's argument that Defendant failed to
22 authorize or permit compliant meal and rest periods, Defendant could argue it always provided
23 employees with a timely and compliant meal periods. Defendant would likely argue that to the
24 extent non-compliant meal periods were taken, it was not at their direction and it was unknown
25 Defendant. Regarding Plaintiff's rest period claim, Defendant would likely contend that there are no
26 records of when or if rest periods were taken and the Defendant was not required to monitor
27 whether compliant rest periods were taken. Finally, Defendant could further argue that it maintained
28 and provided to the class compliant meal and rest period policies. Regarding Plaintiff's claims that

1 Defendant failed to indemnify employees for business expenses, Defendant would likely argue that
2 there was no reason for the class to use their personal cell phones for work purposes and to the
3 extent they did, it was their decision and not required by Defendant. Based on the foregoing,
4 Defendant concluded, wages were properly paid to Plaintiff and Class Members and that at the time
5 wages were paid out upon separation of employment, Defendant believed, in good faith, that it was
6 properly paying all wages to separating employees. Further, Defendant would likely conclude that
7 wage statements provided to the class were complete and accurate as it was unaware that any
8 additional wages were owed. In other words, Defendant concluded, Plaintiff would not be able to
9 establish the willful elements of their Labor Code sections 226 or 203 claims. For these reasons,
10 Defendant concluded, Plaintiff would not likely prevail on her claims. Furthermore, Defendant
11 argued that with respect to the PAGA claim, the Court has the discretion to lower penalties give,
12 that it appears unlikely a court would find that any violations were knowing or intentional. For these
13 reasons, Defendant concluded, Plaintiff would not likely prevail on her claims. Furthermore,
14 Defendant argued that with respect to the PAGA claim, the Court has the discretion to lower
15 penalties give, that it appears unlikely a court would find that any violations were knowing or
16 intentional. (Huether Dec. ¶23.)

17 If the Plaintiff continued litigating this matter, the class members could potentially receive
18 **nothing** if the court agreed with Defendant's position or if Defendant was able to defeat
19 certification based on the individual inquiries that would be required regarding Plaintiff's minimum
20 wage, overtime wage, meal and rest claims, and reimbursement claim. Furthermore, even if the
21 Court agreed with Plaintiff, Plaintiff still had to prove Defendant acted intentionally and *willfully* in
22 order to receive the additional penalties under Labor Code Section 203. As such, Plaintiff's
23 decision to settle this matter was in the best interest of the Class Members.

24 This is a fair and reasonable result. Other substantial benefits also include that it is a non-
25 reversionary, non-claims made settlement, which distributes the Net Settlement Amount to each
26 Settlement Class Member. Settlement Payments to Settlement Class Members will be calculated
27 pro-rata by the Settlement Administrator. The pro-rata share will be determined by comparing the
28 individual Settlement Class Member's Covered Workweeks of all the Settlement Class Members

1 during the Class Period as follows: $[[\text{Workweeks worked by a Settlement Class Member}] \div [\text{Sum of}$
2 $\text{all Covered Workweeks worked by all Settlement Class Members}]] \times [\text{Net Settlement Amount}] =$
3 individual Settlement Payment for a Settlement Class Member. (Settlement, ¶ 33(i).). The PAGA
4 Settlement Payment to aggrieved employees will be calculated by comparing the individual PAGA
5 Employee's PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the
6 PAGA Employees during the PAGA Period as follows: $[[\text{PAGA Pay Periods worked by a PAGA}$
7 $\text{Employee}] \div [\text{Sum of all PAGA Pay Periods worked by all PAGA Employees}]] \times [\text{PAGA}$
8 $\text{Settlement Payment}] =$ individual PAGA Employee's portion of the PAGA Settlement Payment.
9 (Settlement, ¶ 33(j).). In addition, in the event any Settlement Payment and/or PAGA Settlement
10 Payment check has not been cashed within one hundred eighty (180) days, funds shall be
11 transmitted by the Settlement Administrator to the California State Controller's Office for
12 Unclaimed Property in the name of each Settlement Class Member and/or PAGA Employee who
13 failed to cash their Settlement Payment check prior to the void date. (Settlement, ¶ 42.).The Gross
14 Settlement Amount is reasonable in light of the risks involved in this case—including the prospect
15 of a potential adverse summary judgment ruling, class certification issues as well as the uncertainty
16 of class certification, defenses to the case, potential appeal, the elements of willfulness and/or
17 injury required for certain penalties. Based on information provided by Defendant, the class
18 worked an average of 45 workweeks with the lowest number of workweeks worked being 2 and the
19 highest number of workweeks worked being 256. Therefore, Plaintiff estimates the average
20 settlement payment to the class to be \$1,392.35; the lowest settlement payment to be \$61.88; and
21 the highest settlement payment to be \$7,920.91. Based on there being 93 PAGA Employees and
22 1,458 pay periods during the PAGA Period, the average PAGA share is approximately \$67.20 and
23 the value per pay period is \$4.28. (Huether Decl., ¶23.)

24 Plaintiff's Counsel is convinced that the proposed Settlement is in the best interest of the class
25 based on the negotiations and a detailed knowledge of the issues present in this action. The
26 affirmative defenses asserted by Defendant, the prospect of a potential adverse summary judgment
27 ruling, preemption issues, class certification issues as well as the uncertainty of class certification,
28 the difficulties of complex litigation, the lengthy process of establishing specific damages and

various possible delays and appeals, were also carefully considered by Class Counsel in agreeing to the proposed Settlement. In light of the above, the proposed Settlement is well within the “ballpark” of reasonableness and should be granted preliminary approval.

V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES

The court may make an order approving certification of a provisional settlement class after the preliminary settlement hearing. (California Rules of Court, Rule 3.769(d).) For settlement purposes, courts use a less stringent standard for certification of classes. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) “The reason for this is that no trial is anticipated in a settlement class case, so the case management issues inherent in the ascertainable class determination need not be confronted.” (*Id.*; see also *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming certification of class action for settlement purposes only].) Accordingly, this Court has discretion to certify Plaintiffs’ class for settlement purposes only.

The requirements under California Code of Civil Procedure Section 382 are all met for the purposes of certifying this case for settlement purposes:

- Numerosity: The settlement class consists of approximately 169 Class Members. Thus, the requirement of numerosity is easily met because joinder of 169 individual plaintiffs into a single case is otherwise impracticable in light of the circumstances of this case.

- Typicality: The claims of the class representatives are typical of the claims of the class members as a whole. Plaintiff suffered the same alleged violations (e.g. failure to pay for all hours worked; failure to pay proper overtime wages overtime hours worked; failure to pay meal period premium wages for missed meal periods; failure to pay rest period premium wages for missed rest periods; failure to indemnify for necessary expenditures; failure to timely pay earned wages during employment; failure to provide complete and accurate wage statements; and failure to pay all wages due upon separation of employment) as the class as a whole did and, thus, the claims of the named Plaintiff fairly represents the claims of the class as a whole.

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1 • Ascertainability: The proposed “Class” is easily ascertainable based on Defendant’s
2 own payroll records.

3 • Adequacy: Plaintiff has proven to be adequate class representatives. She has
4 conducted herself diligently and responsibly in representing the class in this litigation, she
5 understands her fiduciary obligations, and she has actively participated in the prosecution of this
6 case. (Huether Dec. ¶28.) Plaintiff has spent hours in meetings and conferences with counsel to get
7 a better understanding of their work environment and requirements. Plaintiff was readily available
8 during the full-day mediation of the matter and has continued to be actively engaged in the ongoing
9 settlement negotiations following mediation that were ultimately required to finalize settlement.
10 (*Id.*) Further, Plaintiff does not have any interest that is adverse to the interests of the other class
11 members. (*Id.*) Moreover, proposed class counsel is adequate to represent the class for settlement
12 purposes and has been appointed as class counsel before by this Court as well as both State and
13 Federal Courts. (Huether Dec. ¶24.)

14 • Commonality: Many common issues of law and fact unite the class. The common
15 questions of law and fact include, but are not limited to:

- 16 1) Whether Defendant failed to pay the Class Members for all hours worked at
17 minimum wage
- 18 2) Whether Defendant failed to pay the Class Members for overtime hours
19 worked at the proper overtime rate of pay;
- 20 3) Whether Defendant failed to provide the Class Members timely meal periods
21 and premium wages for missed meal periods;
- 22 4) Whether Defendant failed to provide the Class Members timely rest periods
23 and premium wages for missed rest periods;
- 24 5) Whether Defendant failed to indemnify Class Members for necessary
25 business expenditures;
- 26 6) Whether Defendant failed to provide the Class Members complete and
27 accurate wage statements;
- 28 7) Whether class member are entitled to waiting time penalties for Defendant’s
 failure to pay all wages upon separation of employment;
- 8) Whether Defendants failed to indemnify Class Members for the costs of
 necessary business expenditures; and
- 9) Whether Defendants violated Business and Professions Code section 17200.

1 • Superiority: A class action is superior to other available means for the fair and
2 efficient adjudication of this controversy. Joinder of all members of the proposed class is
3 impractical. Class treatment will permit a large number of similarly situated persons to prosecute
4 their common claims in a single forum simultaneously for settlement purposes without the
5 unnecessary duplication of effort and expense that numerous individual actions would engender.

6 **VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE APPROVED**

7 The proposed Notice of Class Action Settlement, Objection Form, and Exclusion Form in
8 the form attached to the Settlement Agreement as Exhibit A and to the [Proposed] Order Granting
9 Preliminary Approval of Class Action as Exhibit A, should be approved for dissemination to the
10 Class Members. These documents inform the Class of the terms of the Settlement, of their right to
11 receive their proportional share of the Settlement and the manner in which to do so, an estimate of
12 their estimates shares and the average amount of the Class' shares, of their right to request exclusion
13 or to comment upon or object to the Settlement by using the respective forms or written
14 submissions, and of their right to appear in person or by counsel at the final approval hearing and to
15 be heard regarding approval of the Settlement. Adequate periods of time are provided by each of
16 these procedures. Furthermore, the date and time of the Final Approval hearing will be inserted in
17 the Notice of Class Action Settlement and the Settlement Administrator will calculate the Class
18 Member's estimated settlement payments and PAGA payments as well as the insert Settlement
19 Administrator's contact information in the necessary locations amongst the notice documents.

20 **VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

21 Plaintiff's Counsel seeks attorneys' fees and costs award of 33.3% of the Gross Settlement
22 Amount or One Hundred Fifty Thousand Dollars (\$150,000) and Class Counsel's costs not to
23 exceed Twenty-Five Thousand Dollars (\$25,000), for the time spent litigating this matter as well as
24 expenses incurred in the prosecution of this Lawsuit thus far. Defendant will not object to an
25 award of attorneys' fees and costs in these amounts. The requested fees fall well within the
26 historical range of attorneys' fee awards under the common fund theory, which is generally from
27 20% to 50%. The requested fee is a fair compensation for undertaking complex, risky, expensive,
28 and time-consuming litigation on a contingent fee basis, especially in light of the substantial

benefits achieved by Plaintiff's counsel for the Class Members. Plaintiff's counsel diligently litigated and investigated this case.

California courts have recognized that an appropriate method for awarding attorney's fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. (*City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15 Cal. 3d 162, 168; *see also Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253, 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26.) The basis of the common fund is fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful. (*City & County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 111.) In *Quinn*, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Quinn v. State, supra*, 15 Cal. 3d at 167.) Similarly, in *Sweet*, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*City & County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 110.)

Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. (*Lealao, supra*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D. Cal 1989)] 723 F. Supp. 1373, 1375].) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to

determine the award of attorney's fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 [approving attorney's fee of 33%].)

Plaintiff's counsel's request for fees equal to 33.3% of the Gross Settlement Amount is within the range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig., supra*, 723 F. Supp. at 1378.) According to Professor Newberg: "No general rule can be articulated on what is a reasonable percentage of a common fund...Usually 50 percent of the fund is the upper limit on a reasonable fee award from a common fund, in order to assure that fees do not consume a disproportionate part of the recovery obtained for the class, though somewhat larger percentages are not unprecedented." (Newberg, *supra*, §14.6.)

Class Counsel has borne, and continues to bear, the entire risk and cost of litigation associated with this class action on a pure contingency basis. The factual and legal issues posed in this case were highly disputed, and there were also risks as to whether or not a class would be certified, leaving a large number of putative class members unlikely to receive any recovery.

Based on Class Counsel's past experience in class action wage and hour litigation, it is safe to state that Class Counsel is very likely to be called upon, after the Notice has been sent, to expend substantial amounts of additional time to help Class Members understand the terms of the proposed Settlement and to assist Class Members in the preparation and documentation of their Notice. It is also likely that, even after final approval of the Settlement has been granted, Class Counsel will be called upon to expend additional amounts of time in the presentation and resolution of contests and disputes relating to Class Members' allocation under the terms of the proposed Settlement, as to the amounts of individual claims and perhaps other individual issues.

The Court should preliminarily approve the requested attorney's fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case, and the great risk undertaken by Class Counsel. The requested attorneys' fees and costs will not be opposed by Defendant, and are well within established guidelines. The Class Members will also be notified of the requested amount and have an opportunity to object to the requested fees.

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1 **VIII. THE REQUESTED SERVICE PAYMENT IS REASONABLE**

2 The named Plaintiff is entitled to an enhancement award for her service as a class
3 representative and the risks associated with her role as the Class Representative and named
4 Plaintiff in this Lawsuit. Plaintiff understood and continues to understand her role as the Class
5 Representative, she has protected the interests of Class Members during the pending of this matter
6 and will continue to do so. (Huether Dec. ¶30; See also Declaration of Niomy Taylor.) Plaintiff
7 has spent hours in meetings and conferences with counsel to get a better understanding of their
8 work environment and requirement and Plaintiff was readily available during full day mediation in
9 this matter. (*Id.*) Even after mediation, Plaintiff continued to be engaged with counsel for the
10 months of the continued negotiations that it took to ultimately finalize a settlement as well as
11 understanding and discussing the settlement agreement with her attorneys. (*Id.*) Further, Plaintiff
12 does not have any interest that is adverse to the interests of the other class members. (*Id.*)
13 Defendant will not oppose the application for a service payment of \$9,900 to be paid from the
14 Gross Settlement Amount to Plaintiff for her services to the Class in this Lawsuit as well as
15 providing the Defendant with a general release of any and all of her rights and claims against the
16 Defendant. Class Counsel can attest that Plaintiff devoted a proportionate amount of time and
17 work assisting counsel in the case, communicating with counsel frequently, providing documents
18 and information regarding their employer and employment, which led to increase in the value and
19 ultimate success of the Settlement. (*Id.*)

20 **IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS**

21 The Parties propose the following schedule for the fairness hearing and final proceedings:

- 22 1. Within twenty-one (21) days from the date of preliminary approval of this
23 Settlement by the Court, Defendant shall provide the Settlement Administrator a
24 class database based on Defendant's payroll and other business records
25 containing the following information for each Class Member: (1) name; (2) last
26 known address; (3) social security number; and (4) dates of employment at
27 Defendant's locations in California. (Settlement, ¶ 39 (a).)
- 28 2. Within fourteen (14) days after the Class database is provided to the Settlement
Administrator, the Settlement Administrator will mail the Notices to the Class
Members by First Class United States mail. The Notice will be mailed in
English and Spanish to each Class Member. (Settlement, ¶ 39 (b).)

- 1 3. Class Counsel shall provide to the Court, at least five (5) days prior to the
2 deadline to file the motion for final approval, or such other date as set by the
3 Court, a declaration by the Settlement Administrator of due diligence and
4 confirming mailing of the Notices. (Settlement, ¶ 39 (d).)
- 5 4. Plaintiff shall file a Motion for Final Approval of the Class Action Settlement,
6 and Motion for Final Approval of Plaintiffs' Attorneys' Fees and Costs and
7 Service Payments to the Class Representative sixteen (16) court days prior to the
8 Final Approval Hearing date.
- 9 5. The Final Fairness and Approval Hearing date will be determined by Court. The
10 parties request that the Final Fairness and Approval Hearing be set approximately
11 one hundred forty (140) days following the Court's granting of preliminary
12 approval of the proposed Class Action Settlement. The Parties' respective
13 counsel will bring their calendars to the preliminary approval hearing for
14 purposes of scheduling the Final Fairness and Approval Hearing.

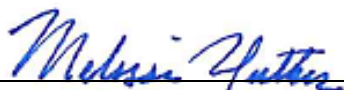
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X. CONCLUSION

The proposed class action settlement is fair, adequate, and reasonable. It will result in fair and immediate payment to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arms' length negotiations conducted by counsel for respective parties who are experienced in wage and hour class action litigation. For the foregoing reasons, the parties respectfully request that the Court grant preliminary approval of the proposed Settlement, sign the proposed Order, approve and authorize mailing of the proposed notice packet and set a date for a final approval hearing.

Dated: April 5, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: 
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on behalf of herself and others similarly
situated