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Attorneys for Plaintiffs Griselda Razon,  
and all other current and former aggrieved  
employees of Defendants

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

GRISELDA RAZON, individually,  
and on behalf of all other similarly  
situated current and former employees  
of DEFENDANTS,

Plaintiff,

vs.

TOP N CATERING, LLC, a  
California limited liability company;  
and DOES 1 through 50, inclusive,

Defendants.

**CASE NO.: 37-2021-00023578-CU-OE-CTL**

*[Assigned for all purposes to the  
Honorable Blaine K. Bowman, Dept. C-74]*

**CLASS ACTION**

**NOTICE OF MOTION AND MOTION  
FOR PRELIMINARY APPROVAL  
OF JOINT STIPULATION OF  
SETTLEMENT AND RELEASE;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF  
FARZAD RASTEGAR IN SUPPORT  
THEREOF**

**Date: September 4, 2026**  
**Time: 8:30 a.m.**  
**Dept.: C-74**

**Reservation No. 100492**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE  
NOTICE that on September 4, 2026, at 8:30 a.m., in Department C-74 of the above-  
entitled Court, located at 330 W. Broadway, San Diego 92101, Plaintiff Griselda will  
move the Court for Preliminary Approval of the Joint Stipulation of Settlement and  
Release in the above-captioned case. The motion will be made pursuant to California

1 Rule of Court 3.769, and will be based upon this Notice, the attached Memorandum of  
2 Points and Authorities Declaration of Farzad Rastegar, and the Joint Stipulation of  
3 Settlement and Release filed concurrently herewith, including attachments thereto, and  
4 upon any other evidence which may be considered by the Court at time of hearing.

5 Dated: January 9, 2025

RASTEGAR LAW GROUP, APC

6  
7 By:

  
8 FARZAD RASTEGAR  
9 Attorneys for Plaintiffs Griselda Razon,  
10 and all other current and former  
11 aggrieved employees of Defendant  
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1           **I.       INTRODUCTION**

2           On May 27, 2021, Plaintiff Griselda Razon filed this wage and hour class action  
3 complaint against Defendants TOP N CATERING, LLC, a California limited liability  
4 company and DOES 1 through 50, inclusive. The case alleges non-compliant meal  
5 periods and rest breaks, non-compliant wage statements, failure to properly pay straight  
6 time, failure to pay overtime and derivative causes of action. Following investigation and  
7 a substantial exchange of documents and information, the parties engaged in mediation.  
8 The parties have now entered into a Joint Stipulation of Settlement and Release  
9 (hereinafter sometimes referred to as the “Settlement Agreement” or “Agreement”). The  
10 parties now seek Preliminary Approval of the Settlement Agreement.

11           **II.       BACKGROUND AND PROCEDURAL HISTORY**

12           This is a wage and hour class action alleging meal period and rest break violations,  
13 non-compliant wage statements, failure to pay straight time pay, failure to pay overtime  
14 wages, and failure to timely pay wages upon termination, as well as a derivative cause of  
15 action under California’s Unfair Competition Law (“UCL”) and Private Attorneys  
16 General Act (“PAGA”). Declaration of Farzad Rastegar ISO Motion for Preliminary  
17 Approval of Class Action Settlement (“Rastegar decl”) ¶ 2.

18           On March 19, 2021, Plaintiff (by counsel) sent a PAGA notice to Defendant  
19 indicating its violation of certain Labor Code violations. Rastegar decl, ¶ 3. The case  
20 was subsequently filed in San Diego Superior Court on May 27, 2021. *Id.*

21           The parties agreed to mediate with David Moeck. In advance of the mediation,  
22 Defendants supplied Plaintiff with payroll and timekeeping documents, as well as other  
23 information, documents, and data requested by Plaintiff. Plaintiff’s counsel analyzed the  
24 data for the mediation. Rastegar decl, ¶ 5, 6

25           TOP N CATERING, LLC is a San Diego based company that prepares and  
26 distributes lunches to California primary schools for school children. Defendant  
27 maintains a corporate headquarters and production/distribution facility in San Diego,  
28 California. Defendant

1 employed Plaintiff to work as an hourly non-exempt production employee from  
2 approximately July of 2018 to August 28, 2020. Rastegar decl, ¶ 4.

3 Plaintiff's core allegations are that she was not provided with compliant meal  
4 periods and rest breaks while employed by Defendant, that she was not paid all of the  
5 wages to which she was entitled, and that she received non-compliant wage statements.  
6 Plaintiff pursues derivative claims under the California Labor Code, PAGA, and the  
7 UCL.

8 The Settlement Agreement in the pending action involves a class of: "all  
9 individuals who are or were employed by Defendant as nonexempt employees in  
10 California during the Class Period." Settlement Agreement, ¶ 1.40. Class Period shall  
11 mean the period from May 27, 2017 through January 29, 2024. Settlement Agreement,  
12 ¶ 1.10. "PAGA Period" means the period from March 19, 2020 through January 29,  
13 2024. Settlement Agreement, ¶ 1.30.

### 14 **III. TERMS OF THE SETTLEMENT AGREEMENT**

15 • Defendant shall pay a total sum not to exceed \$165,000.00. Settlement  
16 Agreement, ¶ 1.22.

17 • Attorneys fees of not more than 33.33% of the gross settlement fund  
18 (\$55,000), to be paid from the Settlement; Settlement Agreement, ¶ 1.50.

19 • Class Counsel's litigation costs, of up to \$12,000.00, to be paid from the  
20 Settlement; *Id.*

21 • An Incentive Award Payment to the Class Representative in the amount of  
22 \$8,000.00 to the class representative, to be paid from the gross settlement amount;  
23 Settlement Agreement, ¶¶ 1.24, 5.2.

24 • Costs of Settlement Administration, of up to \$5,950.00, to be paid from the  
25 Settlement and that Phoenix Class Administrators be appointed as settlement  
26 administrator; Settlement Agreement, ¶ 6.1.

27 • PAGA payment in the total amount of \$15,000.00, 75% of which  
28 (\$11,250.00) will be paid to the California Labor & Workforce Development Agency,

1 and the remaining 25% (\$3,750.00) to be paid to the PAGA Settlement Class. Settlement  
2 Agreement, ¶ 5.5.

3       • Automatic payment to class members (i.e., no claim forms used, no  
4 reversion to Defendant). Settlement Agreement, ¶ 1.22.

5       • Defendant has estimated there are approximately seventy-six (76) persons  
6 in the Class. Rastegar decl, ¶ 22. Defendant will provide a declaration under penalty of  
7 perjury confirming the number of applicable Class Members during the Class Period.

8 The Gross Settlement Amount will increase proportionally if the Class size is above  
9 eighty (80) persons (e.g. if the class size increases by 10% beyond 76 employees, then the  
10 Gross Settlement shall increase by 10%). To the extent there are more than eighty (80)  
11 persons subject to the settlement of this dispute, Defendant may elect to “roll back” the  
12 class period end date to a date which results in the class containing 76 employees.  
13 Settlement Agreement, ¶ 5.4.

14       The Class Notice will inform Class Members of their estimated share of the  
15 settlement and the number of workweeks they worked during the Class Period.

16       Class Members may dispute their workweeks if they believe they worked  
17 more weeks in the Class Period than Defendant’s records show by submitting  
18 information to the Settlement Administrator no later than forty-five (45) days  
after being mailed the Class Notice and Settlement Allocation Form by the  
Settlement Administrator, which is the defined Response Deadline.

19 Settlement Agreement, ¶ 7.2.

20       Within twenty-eight (28) days following the Preliminary Approval Date, the  
21 Settlement Administrator shall determine the number of workweeks worked  
22 by each Class Member, populate the data for each Class Member  
23 accordingly, and send each Class Member the Class Notice via first-class,  
United States mail. The Class Notice shall also contain an easily-understood  
statement alerting the Class Members that, unless they elect to Opt Out of  
the Class Settlement, the Class Member is releasing and waiving all Released  
Claims against the Released Parties.

24 *Id.*

25  
26       “Any Class Participants who wish to object to the Class Settlement may  
27 submit a written objection to the Settlement Administrator no later than the

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1 Response Deadline. Only Class Participants may object to the Settlement.”

2 Settlement Agreement, ¶ 7.4.

3 Each Settlement Class Member shall be entitled to a portion of the net settlement  
4 fund based upon the number of workweeks the Settlement Class Member met the criteria  
5 for inclusion in the Settlement Class. Each Class Member shall receive payment of a pro  
6 rata portion of the total combined work weeks of all the Settlement Class Members. By  
7 way of example, if the net settlement fund is \$54,250.00, and there is a total of 3,500  
8 workweeks between all Settlement Class Members, if Class Member “A” has 100  
9 workweeks, Class Member A’s portion of the net settlement fund would be \$500.00  
10 [ $\$54,250 \div 3,500 \text{ workweeks} = \$15.50 \times 100 = \$1,550.00$ ]. Settlement Agreement, ¶ 5.3.

11 The Class Settlement Payment to each Class Member will be apportioned as  
12 thirty-three and one-third percent (33.33%) wages, and sixty-six and two-thirds percent  
13 (66.67%) penalties and interest. The PAGA Settlement Payment to each Class Member  
14 will be 100% characterized as penalties. Settlement Agreement, ¶ 5.6.

15 Any funds associated with checks that have not been cashed within one hundred  
16 eighty (180) days, will become void and the Individual Settlement Amount associated  
17 with the uncashed check will be remitted pursuant to Code of Civil Procedure section 384  
18 to the California State Controller for deposit in the Unclaimed Property Fund in the name  
19 of the individual whose check was uncashed. Settlement Agreement, ¶ 8.8.

#### 20 **IV. ANALYSIS OF POTENTIAL DAMAGES**

##### 21 **Plaintiff’s Allegations:**

22 Plaintiff’s Complaint alleges the following eight causes of action: (1) failure to  
23 provide meal periods; (2) failure to provide rest periods; (3) failure to pay minimum wage  
24 and straight time wages; (4) failure to provide overtime compensation; (5) failure to  
25 provide accurate wage statements and maintain required records; (6) failure to timely pay  
26 wages due upon termination; (7) unfair business practices; and, (8) Representative cause  
27 of action for civil penalties under the California Private Attorneys General Act. Rastegar  
28 decl, ¶ 2.

**Relevant Data:**

Defendants produced time and payroll data, as well as relevant policy documents for the class. Rastegar decl, ¶ 11. The data was analyzed internally at Rastegar Law Group. *Id.* Plaintiff's summary of the relevant data is as follows:

**Class Member and Shift Data**

|                             |         |
|-----------------------------|---------|
| Class Members:              | 76      |
| Average hourly rate of pay: | \$13.00 |
| Average hours per week      | 37      |
| Average Employees per week  | 25      |
| Workweeks                   | 8,000   |

*Id.*

**Damages:**

Plaintiff's counsel received from Defendant the payroll data outlined above, and constructed a damage model based upon the data and Plaintiff's experience as Defendant's employee. Rastegar decl, ¶ 12.

**A. Compensation for Unpaid Wages and/or Premium Pay**

**1. Premium Wages Due for Meal Period Violations**

Under California Labor Code § 226.7 and Industrial Welfare Commission Wage Order No. 5, employees are entitled to one-hour of wages at the regular rate of compensation if they did not receive a full 30-minute, uninterrupted, duty-free meal period within the first five hours of work.

Plaintiffs allege that they were improperly denied 30-minute, uninterrupted, duty-free meal periods within the first five hours of work in violation of IWC Wage Order 5-2001(11). Based upon the data set forth above, Plaintiff's calculation of maximum potential damages on the meal period claims are as follows:

**Meal Periods** (226.7): 8,000 work weeks x 2 days missed per work week x \$13.00 = **\$208,000.00**. Rastegar decl, ¶¶ 13, 14.

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1                   **2.       *Rest Breaks, Failure to Pay all Wages Due***

2           Plaintiff contends that Defendant failed to provide duty-free rest breaks given the  
3 Class Members’ responsibilities and staffing levels which resulted in an underpayment of  
4 wages.

5           Employers in California are not required to record rest breaks. However, unlike  
6 meal periods, rest breaks are paid time, which provides much less of an incentive for the  
7 employer to enforce recording, and for the employee to consistently record them, making  
8 the data unreliable, and the evidence supporting the claim largely based upon anecdotal  
9 evidence. The lack of reliable recording makes rest break penalties extremely difficult to  
10 calculate with any precision and to prosecute on a class basis. *See, e.g., Ordonez v. Radio*  
11 *Shack*, 2013 WL 210223, at \*12 (C.D. Cal. Jan. 17, 2013) (noting that given lack of  
12 recorded rest breaks, there would be challenges regarding the “method for proving when  
13 class members were or were not authorized and permitted to take a rest break.”). Because  
14 off-the-clock time is also (by definition) not recorded, damages for this claim would also  
15 be very difficult to establish and to prosecute on a class basis. *See Brinker Restaurant*  
16 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1051 (noting plaintiff must produce  
17 “substantial evidence of a systematic company policy to pressure or require employees to  
18 work off-the-clock” to demonstrate that such claims are common to the putative group.)  
19 Given the foregoing, Plaintiff discounted the rest break and wage claims premised on-off-  
20 the clock work, and ascribed minimal value to them relative to the other claims. The  
21 maximum potential recovery on the rest break claim, if it could be certified and proved at  
22 trial, would be as follows: **Rest Breaks** (226.7): 8,000 work weeks x 2 days/work week  
23 x \$13.00 = **\$208,000.00**. Rastegar decl, ¶¶ 13,14.

24                   **3.       *Minimum Wage, Straight Time, and Overtime***

25           As set forth above, this claim involves work performed off-the-clock. Because  
26 such work is, by definition, unrecorded, a damages analysis is extremely speculative, at  
27 best. Liability and damages would both depend entirely upon anecdotal evidence, and  
28 ///

1 the possibility of expert analysis based upon a survey. However, courts in recent years  
2 have been viewing survey evidence with skepticism. Some employees can provide  
3 anecdotal evidence that they were forced to work off-the-clock. Others would testify that  
4 they never experienced that particular violation. It would appear to be an uphill battle to  
5 establish liability and damages for their claim on a class basis. Plaintiff believes it has  
6 minimal value in the class action context. Rastegar decl, ¶ 15.

#### 7 **4. Wage Statements**

8 Plaintiff's Labor Code § 226 claim is derivative of the other claims, such as the  
9 meal period claim. Section 226 provides for a civil penalty of \$50 per pay period in  
10 which a compliant wage statement is not provided, and a \$100 civil penalty thereafter,  
11 with a cap of \$4,000 per employee. Hence, the following potential penalties apply:

12 4,000 pay periods x \$50 = \$200,000 (Not applying \$4,000 limit). Plaintiff's  
13 expert analysis based upon Defendant's payroll data for the relevant time period conclude  
14 that the maximum potential Section 226 penalties which could be awarded, for all  
15 employees, equals **\$200,000.00**. Rastegar decl, ¶ 16.

#### 16 **5. Payment of All Wages Due to Terminated Employees**

17 California Labor Code §203 provides that, as a result of an employer's willful  
18 failure to timely pay all wages due to terminated or quitting employees, wages continue  
19 to accrue as a penalty until all wages due are paid, or for a period of 30 days, whichever  
20 occurs first. Plaintiff's counsel calculated Section 203 penalties to be a total maximum  
21 amount of **\$159,120. (8 hours \$13.00 x 30 days x 51 former employees)**. Rastegar  
22 decl, ¶ 17.

23 To prevail on a Section 203 claim, Plaintiff would have to demonstrate that the  
24 failure to pay all wages due was "willful." A Labor Code Section 203 claim may be  
25 successfully defeated by a showing of a reasonable, good-faith belief on the part of the  
26 employer that the disputed wages were not due. *Choate v. Celite Corp.* (2013) 215  
27 Cal.App.4th 1460. Uncertainty in the law may negate a Section 203 claim as well. *Diaz*  
28 *v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859. In the context of a Section

203 claim relying upon meal period and rest break penalties, in which an employee's decision to forgo meal periods or rest breaks negates the claim, a good-faith defense would be difficult to overcome.

#### **B. Penalties**

Pursuant to California Labor Code § 2699, if, at the time of the alleged violation, the person employs one or more employees, the default civil penalty is \$100.00 for each aggrieved employee per pay period for the initial violation and \$200.00 for each aggrieved employee per pay period for each "subsequent violation." Lab. Code § 2699(f). The term "subsequent violation" is a term of art, and some courts have suggested that a "subsequent violation" does not trigger under PAGA until an employer is on notice that it is violating the law. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal. App. 4th 1157, 1199; *Willis v. Xerox Business Solutions* (E.D. Cal. Nov. 15, 2013) 2013 WL 6053831, at \*6. Furthermore, the court retains discretion to reduce such civil penalties when, "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *Id.* § 2699(e)(2).

Penalties pursuant to the Labor Code Private Attorneys General statute are calculated as follows: assuming one violation per pay period, the maximum potential penalties under PAGA are:

226.7 Meal/Rest Periods: 4,000 pay periods \$100 = \$400,000.00

Wage Statements: 4000 pay periods x \$100 = \$400,000.00.

**Total = \$800,000.00**

Rastegar decl, ¶ 18.

The foregoing describes the maximum estimated potential damages and penalties. As set forth more fully below, Plaintiff discounted these amounts significantly, given Defendant's defenses to the claims, the significant risks of proceeding, and the discretionary nature of the penalties.

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1       **V.       CONDITIONAL CLASS CERTIFICATION**

2       The parties propose the Court conditionally certify the following class of  
3 plaintiffs, “All individuals who are or were employed by Defendant as non-exempt employees  
4 in California during the Class Period. Class Period shall mean the period from May 27, 2017 to  
5 January 29, 2024. Rastegar decl, ¶ 19.

6       The two primary requirements necessary to maintain a California class action  
7 are: (1) an ascertainable class, and (2) a well-defined community of interest in the  
8 questions of law and fact involved affecting the parties to be represented. *Daar v.*  
9 *Yellow Cab Company* (1967) 67 Cal.2d 695, 704. These requirements are generally  
10 more broadly expressed as the elements of (1) numerosity of class members, (2)  
11 typicality of claims, (3) adequacy of representation by the named plaintiffs, and (4)  
12 the superiority and predominance of common questions of law and fact. *Vasquez v.*  
13 *Sup. Ct.* (1971) 4 Cal.3d 800, 820.

14       Plaintiff has stated claims for Labor Code violations relating to wage payment and  
15 meal and rest period practices applicable to the class as a whole. Therefore, prosecution  
16 of this lawsuit as a class action is appropriate and desirable as an effective and efficient  
17 manner in which to remedy a pervasive wrong. *Richmond v. Dart Industries, Inc.* (1981)  
18 29 Cal.3d 462, 477-478. A judicial policy favoring the maintenance of appropriate class  
19 actions has increasingly been emphasized as serving an important function in our judicial  
20 system and society. Class actions can prevent a defendant from avoiding exposure for  
21 wrongful conduct simply because individual victims may lack the financial  
22 sophistication, financial motivation or resources to sue on their own. *Vasquez v. Sup. Ct.*,  
23 *supra*, 4 Cal.3d at 807-808. The requirements for class certification are present.

24       **A.       Numerosity of Class Members:**

25       Defendant employed approximately 76 class members over the duration of the  
26 class period. The California Supreme Court has upheld a class of only 10 individuals.  
27 *Bowles v. Superior Court* (1955) 44 Cal.2d 574. The Class, therefore, easily meets the  
28 numerosity requirement.

1           **B.     Typicality of Claims:**

2           The claims of class members are essentially identical. Plaintiff contends that  
3 Defendant had a practice of failing to pay wages owed for non-compliant meal and rest  
4 periods, including missed, short and late meal periods, in addition to other, less  
5 substantial violations, and as a result, Defendant committed related derivative violations  
6 of the Labor Code. Plaintiff, like other putative class members, was employed by  
7 Defendant in similar capacities, and contends he suffered similar violations of law. As  
8 such, Plaintiff contends her claims are typical of the class. Rastegar decl, ¶ 23-25.

9           **C.     Ascertainability of Class:**

10          The Class is readily ascertainable through its payroll records and employment  
11 records because it is a class of all non-exempt food service employees employed by  
12 Defendant. Rastegar decl, ¶¶ 21, 22.

13          **D.     Adequacy of Representation by Plaintiff and Her Counsel:**

14          The adequacy requirement is met where the plaintiff is represented by counsel  
15 qualified to conduct the litigation and the plaintiff's interest in the litigation is not  
16 antagonistic to the class members' interests. *McGhee v. Bank of America* (1976) 60  
17 Cal.App.3d 442, 451.

18          Plaintiff is a former employee of Defendant, who has alleged she was subjected to  
19 the unlawful policies and practices set forth in the complaint. Plaintiff has been  
20 instrumental in providing the information and evidence used to bring the action and the  
21 settlement. There is no conflict between the Plaintiff and the class.

22          Plaintiff's counsel are adequate to represent the Class, and they have significant  
23 experience in employment litigation generally, and wage and hour and employment-  
24 related class action litigation specifically. Thus, Plaintiff's counsel are adequate to serve  
25 as Class Counsel. Similarly, Plaintiff Griselda Razon has represented the class  
26 competently, and there is no reason for the Court to determine she is not an appropriate,  
27 able and "adequate" representative of the class. Rastegar decl, ¶¶ 39-48.

28       ///

1           **E.      Community of Interest, and Superiority and Predominance of**  
2           **Common Questions of Law and Fact:**

3           The community of interest requirement “does not mandate that class members  
4 have uniform or identical claims.” *Capitol People First v. Dept. of Developmental Servs.*  
5 (2007) 155 Cal. App. 4th 676, 692. Rather, courts focus on the defendant’s internal  
6 policies and “pattern and practice . . . in order to assess whether that common behavior  
7 toward similarly situated plaintiffs renders class certification appropriate.” *Id.* (citing *Sav-*  
8 *On*, 34 Cal. 4th at 333.)

9           Plaintiff maintains that common issues of fact and law predominate as to the  
10 claims. Plaintiff asserts that all class members had similar job duties as hourly  
11 employees, and were subject to similar practices regarding non-compliant meal and rest  
12 periods, unpaid wages, and resulting derivative claims for penalties. As a result, the  
13 claims arise from Defendant’s alleged uniform practices and policies. There would  
14 appear to be no questions of law which would vary from employee to employee.  
15 Additionally, the majority of factual differences would be in the area of damages.  
16 Rastegar decl, ¶ 25.

17           Finally, Defendant conditionally stipulates that for purposes of this motion, class  
18 certification is appropriate.

19           **VI.    THE PRESUMPTION OF FAIRNESS**

20           Courts respect the integrity of counsel and presume the absence of fraud or  
21 collusion in the negotiation of a settlement unless evidence to the contrary is offered.  
22 *Hemphill v. San Diego Ass’n of Realtors* (S.D. Cal. 2004) 225 F.R.D. 616, 621. In short,  
23 courts operate under the presumption of fairness when the settlement is the result of  
24 arm’s length negotiation, investigation and discovery are sufficient to permit counsel and  
25 the court to act intelligently and counsel are experienced in similar litigation. *In Re*  
26 *Microsoft Cases* (2006) 135 Cal.App.4th 706, 723. Courts do not substitute their  
27 judgment for that of the proponents, particularly where, as here, settlement has been  
28 reached with the participation of experienced counsel familiar with the issues of fact and

1 law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v.*  
2 *Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145. Additionally, the court should not  
3 “reach any ultimate conclusions on the contested issues of fact and law which underlie  
4 the merits of the dispute, for it is the very uncertainty of outcome in litigation and  
5 avoidance of wasteful and expensive litigation that induce consensual settlements.” *Dunk*  
6 *v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802.

7 While the recommendations of counsel proposing the settlement are not  
8 conclusive, the Court can properly take them into account, particularly where, as here,  
9 they have been involved in litigation for some period of time, appear to be competent,  
10 have experience with this type of litigation, and have obtained substantial data from the  
11 opposing party. *7-Eleven Owners, supra*, 85 Cal.App.4th at 1151-1152.

## 12 **VII. REASONABLENESS OF SETTLEMENT AMOUNT**

13 The gross settlement figure is \$165,000.00. Divided by 76 class members, the  
14 gross settlement amount is approximately \$2,171.05 per class member (regardless of  
15 duration of employment). Plaintiff believes that, given the nature of the claims, the  
16 defenses to them, the risks regarding certification and possible obstacles to proceeding,  
17 this settlement represents a discount that is fair, reasonable, and in the best interests of the  
18 class. There are several factors motivating settlement from the Plaintiff’s perspective:

### 19 **A. Risks Regarding Class Certification.**

20 There exist the typical inherent risks of litigation and the risks related to the  
21 Plaintiff’s contemplated motion for class certification. Plaintiff believes that a motion for  
22 class certification could be meritorious. However, Plaintiff is also aware of the risk  
23 involved. Plaintiff considered these risks in evaluating the claims. Rastegar decl, ¶¶ 27,  
24 28,

#### 25 **1. Meal Periods**

26 Defendant has a facially compliant meal period and rest break *policy* which creates  
27 a substantial hurdle to class certification. Rastegar decl, ¶28. Defendant will argue that,  
28 to establish a violation for missed meal periods, a plaintiff must do more than show that a

1 meal break was not taken. *Id.*, see also *Brinker Restaurant Corp. v. Superior Court*  
2 (2012) 53 Cal.4th 1004. Instead, a plaintiff must show the employer impeded,  
3 discouraged, or prohibited the employee from taking a proper break, or otherwise failed  
4 to release the employee of all control. Rastegar decl, ¶ 28. “Thus, the crucial issue with  
5 regard to the meal break claim is the reason that a particular employee may have failed to  
6 take a meal break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629,  
7 641; see also *In re Walgreen Co. Overtime Cases* (2014) 231 Cal.App.4th 437, 443 (one  
8 must “ask why the worker missed the break before you can determine whether the  
9 employer is liable”). As a result, Defendant would make the case that determination as to  
10 the reasons for the violations (fault of the employer vs. employee choice) would be an  
11 individual inquiry with regard to each employee, thereby making individual questions  
12 outweigh common questions. Plaintiff accounted for these risks should this case proceed  
13 and discounted the claim accordingly.

## 14 **2. Rest Breaks**

15 Plaintiff contends that Class Members often could often not take duty-free rest  
16 breaks, as required by the California Supreme Court in *Augustus v. ABM Security Servs.,*  
17 *Inc.* (2016) 5 Cal.5th 257.

18 However, Plaintiff understands there are substantial risks to proceeding on this  
19 claim. Much like meal periods, an employer must “authorize and permit” rest breaks, but  
20 it need not ensure all rest breaks are taken. i.e., a rest break voluntarily skipped by an  
21 employee does not constitute a violation. Additionally, there is no requirement to record  
22 rest breaks. Rastegar decl, ¶ 30.

23 The lack of a legal requirement to do so, as well as the fact that, unlike meal  
24 periods, a missed punch for a rest break actually taken does not affect payroll, would tend  
25 to make the evidence much less persuasive. As a result, absent evidence of a company  
26 policy discouraging rest breaks, Defendant will argue that such claims are not amenable  
27 to certification. See, e.g., *Ordonez v. Radio Shack*, 2013 WL 210223, at \*12 (C.D. Cal.  
28 Jan. 17, 2013) (noting that given lack of recorded rest breaks, there would be challenges

1 regarding “method for proving when class members were or were not authorized and  
2 permitted to take a rest break.”). For these reasons, Plaintiff believes that there are  
3 significant risks to proceeding on this claim, and that the prospects of both certification  
4 and proving damages at trial are minimal at best. Rastegar decl, ¶ 30.

### 5                   3.       **Derivative Claims and PAGA Claims**

6           Plaintiff’s claims for violation of Labor Code Sections 226 (earnings statements)  
7 and 203 (failure to pay all wages due at termination) are derivative of the meal period and  
8 rest break claims. If the underlying claims fail on class certification, summary  
9 judgement, or at trial, the derivative claims will fail as well. Rastegar decl, ¶ 32.

10          Should Plaintiff be successful on the underlying claims, the derivative claims have  
11 additional elements that must be established. The Section 226 claim requires that the  
12 failure to comply must have been “knowing and intentional.” Lab. Code § 226(e). The  
13 203 claim requires that the failure to pay all wages due was “willful.” Lab. Code §  
14 203(a). A good faith belief in a legal defense precludes any finding of willfulness.  
15 *Gonzalez v. Downtown LA Motors* (2013) 215 Cal. App. 4th 36, 54. If the company is  
16 able to establish that it believed that it was doing everything necessary to comply with  
17 meal period and rest break requirements, these penalties will not be available.

18          Plaintiff’s PAGA claims are also derivative of the underlying claims and present  
19 additional risks. Rastegar decl, ¶33. For example, PAGA states a court has discretion to  
20 award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v.*  
21 *Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing  
22 PAGA award substantially). *Id.* As set forth above, Defendant has raised potentially  
23 valid defenses to the Labor Code claims underlying Plaintiff’s PAGA allegations. Thus,  
24 the PAGA claims likewise face significant uncertainty. *Id.*

25          For these reasons, the amount to be paid to the LWDA comports with PAGA  
26 settlement amounts approved by other courts. *See, e.g., Chu v. Wells Fargo Investments,*  
27 *LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of  
28 \$7,500 to LWDA out of \$6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.*

(N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at \*1 (approving PAGA settlement of 0.3% or \$1,500).

#### **B. Other Factors**

Litigating and proving the amount of wages due to each individual class member would be an expensive, time-consuming, and extremely uncertain proposition. With regard to meal periods, as set forth above, the company's policies are compliant. Liability and damages would likely vary from employee to employee based upon the employees' and supervisors' testimony.

Additionally, establishing violations and proving the amount due would be very difficult or even impossible to accomplish. Rastegar decl, ¶ 34. Obtaining the cooperation of employees is always a difficult task, given the reluctance to openly aid the prosecution of a lawsuit against the company. *Id.* In contrast is the relative ease with which the company is able to obtain the cooperation of its employees. *Id.*

Finally, this class action is, from a practical point of view, the only avenue of recovery that is reasonably likely to result in any recovery for employees of Defendant. Rastegar decl, ¶ 35. Without this Class Action, Defendant will end up paying only a small fraction (if anything at all) of the money that Plaintiff contends is due and owing to Class Members. *Id.*

#### **VIII. THE CLASS REPRESENTATIVE ENHANCEMENT IS REASONABLE AND STANDARD IN CLASS ACTIONS**

The Settlement Agreement provides for an enhancement for the Class Representative in an amount up to \$8,000.00. The information provided by the Class Representative was helpful in litigating the wage and hour violations alleged in this action, and the recovery provided for in the Settlement Agreement would have been impossible to obtain without her willingness to act as a class representative. Rastegar decl, ¶ 36. The Class Action would not have been possible without the aid of the Class

1 Representative, who put her own time and effort into the litigation, and placed herself at  
2 personal and financial risk for the sake of the class members. *Id.*

3 Furthermore, the enhancement is also necessary to provide motivation for  
4 individuals such as Plaintiff to bring an action on behalf of the other employees, incurring  
5 the additional time and expense involved. *Id.* If the Plaintiff's own individual wage and  
6 hour claims will not be paid in full, which is usually the case, asking individuals such as  
7 Plaintiff to give up part of their own claims would make bringing a class action an  
8 extremely difficult proposition, from a practical perspective. Class actions entail not  
9 only the expenditure of time and money, but also risks, including risks to current or  
10 future employment, and the risk of a potentially devastating cost judgment if the action is  
11 ultimately unsuccessful.

12 Courts routinely grant approval of class action settlement agreements containing  
13 enhancements for the class representatives, which are necessary to provide incentive to  
14 represent the class, and are appropriate given the benefit the class representatives help to  
15 bring about for the class. Enhancements are especially appropriate where the plaintiffs  
16 are present or past employees whose present positions or employment credentials or  
17 recommendation may be at risk by reason of having prosecuted the suit, who therefore  
18 lend their names and efforts to the prosecution of litigation at some personal peril.  
19 *Roberts v. Texaco* (S.D.N.Y. 1997) 979 F.Supp. 185. In this case, obtaining recovery for  
20 the class would have been impossible without the participation and involvement of the  
21 Class Representative, and the risks he undertook on behalf of the absent class members.  
22 An incentive award of \$8,000.00 is reasonable to compensate her for her willingness to  
23 pursue and assist in this litigation, which would not have been possible without her  
24 contribution.

## 25 **IX. ATTORNEYS FEES AND COSTS**

26 The Settlement Agreement provides for attorneys' fees to Class Counsel of  
27 33.33% of the gross settlement (\$55,000.00 in fees) and litigation costs and expenses,  
28 estimated to be not more than \$12,000.00. The contingency fee percentage is less than

1 Class Counsel's contingency fee percentage charged in other employment cases. The fee  
2 is supported by the "common fund theory," where "one who expends attorneys fees in  
3 winning a suit which creates a fund from which others derive benefits, may require those  
4 passive beneficiaries to bear a fair share of the litigation costs." *Serrano v. Priest* (1977)  
5 20 Cal.3d 25, 35. See also *Quinn v. State of California* (1975) 15 Cal.3d 162, and  
6 *Samura v. Kaiser Foundation Health Plan, Inc.* (1993) 17 Cal.App.4th 1284. The  
7 percentage of the gross fund method of calculation is supported by a number of federal  
8 cases, including *Boeing v. Van Gemert* (1980) 444 U.S. 472, 478; *Mashburn v. National*  
9 *Healthcare, Inc.* (1988) 684 F.Supp. 679; *In re Hill* (9th Cir. 1985) 775 F.2d 1037. The  
10 percentage is also properly based upon the gross settlement. *Williams v. MGM-Pathe*  
11 *Communications Co.* (9th Cir. 1997) 129 F.3d 1026; *Boeing v. Van Gemert*.

12 Attorney fee applications in class actions based upon a percentage of a common  
13 fund have substantial support by the Ninth Circuit Court of Appeals, as well as various  
14 state courts. See, e.g., *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d  
15 268; and *Washington Public Power Supply Secur. Lit. v. City of Seattle* (9th Cir. 1994) 19  
16 F.3d 1291. Other Federal Courts of Appeals, such as the Eleventh Circuit and the D.C.  
17 Circuit, mandate use of the percentage method. *Camden I Condominium Ass'n v. Dunkle*  
18 (11th Cir. 1991) 946 F.2d 768, 774; *Swedish Hosp. Corp. v. Shalala* (D.C. Cir. 1993) 1  
19 F.3d 1261, 1271.

20 In the case at hand, the fee and costs provisions are clearly reasonable. Class  
21 counsel are qualified to handle this litigation because they are experienced in litigating  
22 Labor Code violations in both single and class actions. Class Counsel are attorneys who  
23 generally represent plaintiffs in employment cases and currently handle a number of  
24 wage and hour class actions. Rastegar decl, ¶¶ 38-48.

25 More specifically, Rastegar Law Group, APC (and its predecessor firm Rastegar  
26 & Matern), has litigated many cases against some of the largest firms in the country. The  
27 firm's attorneys have litigated numerous Plaintiffs' wage and hour class action cases, as  
28 well as individual employment cases.

1 The firm's attorneys are all actively and continuously practicing in employment  
2 litigation, representing almost entirely employee Plaintiffs, in both individual and class  
3 actions, in Superior Courts throughout the State, in the Court of Appeal, and in various  
4 Federal courts. Thus, Class counsel is "qualified, experienced, and generally able to  
5 conduct the proposed litigation" as required under existing law. *Miller v. Woods* (1983)  
6 148 Cal. App. 3d 862, 874.

7 The efforts of Class Counsel have resulted in substantial benefits to the settlement  
8 class, in the form of a substantial settlement fund established to compensate settlement  
9 class members for unpaid wages, and meal period and derivative violations. Without the  
10 efforts of Class Counsel, the Labor Code and Wage Order violations alleged in the  
11 Complaint would have gone completely unremedied. The percentage fee requested, one-  
12 third (33.33%) is inherently reasonable based upon the totality of the circumstances  
13 related to this case.

#### 14 **X. CONCLUSION**

15 The Settlement Agreement is fair and reasonable, and represents an excellent  
16 opportunity for the employees of Defendant to obtain recovery for unpaid wages, and for  
17 meal and rest period and derivative violations. For the reasons set forth above and in the  
18 Joint Stipulation of Class Action Settlement filed concurrently herewith, Plaintiff  
19 respectfully requests that the Court grant the Motion for Preliminary Approval of Class  
20 Action Settlement.

21 Dated: January 9, 2026

RASTEGAR LAW GROUP, APC

22  
23 By:

  
24 FARZAD RASTEGAR  
25 Attorneys for Plaintiffs Griselda Razon,  
26 and all other current and former  
27 aggrieved employees of Defendant  
28