Armond M. Jackson, SBN 281547
ajackson@jacksonapc.com
Andrea M. Fernandez-Jackson, SBN 295924
afernandez@jacksonapc.com
JACKSON APC
2 Venture Parkway, Suite 400
Irvine, California 92618
Phone: (949) 281-6857
Fax: (949) 777-6218

Attorneys for Plaintiff Rocio Rosales,
individually, and on behalf of all other similarly situated employees

FARZAD RASTEGAR, State Bar No. 155555
farzad@rastegarlawgroup.com
DOUGLAS W. PERLMAN, State Bar No. 167203
douglas@rastegarlawgroup.com
RASTEGAR LAW GROUP, APC
22760 Hawthorne Blvd., Suite 200
Torrance, CA 90505
Tel.: (310) 961-9600
Fax: (310) 961-9094

Attorneys for Plaintiff Ericka Kraut
and all other similarly situated current
and former employees of Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ROCIO ROSALES and ERICKA KRAUT, as individuals and on behalf of others similarly situated, Plaintiffs, vs. DT EMPLOYER, LLC, a California limited liability company; DT MANAGEMENT, LLC, a California limited liability company; DOUBLETREE EMPLOYER, LLC, a California limited liability company; HILTON EMPLOYER, INC., a California corporation; HILTON HOTEL EMPLOYER, LLC, a	Case No.: CIVSB2132004 Assigned for all purposes to: Hon. Christian Towns Dept. S26 **PLAINTIFF RUIZ'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** **Hearing Date:** March 12, 2025 **Hearing Time:** 8:30 a.m. **Department:** S26

California limited liability company; EMBASSY SUITES EMPLOYER, LLC, a California limited liability company; CURIO EMPLOYER, LLC, a California limited liability company; HAMPTON INNS EMPLOYER, LLC, a California limited liability company; HLT CONRAD DOMESTIC EMPLOYER, LLC, a California limited liability company; HLT CONRAD DOMESTIC, LLC, a California limited liability company; CONRAD EMPLOYER, LLC, a California limited liability company; WALDORF-ASTORIA EMPLOYER, LLC, a California limited liability company; HOMEWOOD SUITES EMPLOYER, LLC, a California limited liability company; and DOES 1 through 100, inclusive,

Defendants.

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I. INTRODUCTION

Plaintiff Roccio Rosales ("Plaintiff") and Plaintiff Ericka Kraut ("Plaintiff") seeks preliminary approval of the Parties' Stipulation of Class Action and PAGA Settlement (hereinafter "Stipulation" or "Settlement"), which if approved by the Court, would provide valuable monetary relief for current and former employees of Defendants DT Employer LLC; DT Management LLC; Doubletree Employer LLC; Hilton Employer Inc.; Hilton Hotel Employer LLC; Embassy Suites Employer LLC; Curio Employer LLC; Hampton Inns Employer LLC; Hlt Conrad Domestic Employer LLC; Hlt Conrad Domestic LLC; Conrad Employer LLC; Waldorf=Astoria Employer LLC; Homewood Suites Employer LLC ("Defendants") (collectively with Plaintiff, the "Parties"). The Parties jointly prepared and executed the formal long-form Stipulation, attached as **Exhibit 1** to the Declaration of Armond M. Jackson ("Jackson Decl."), the basic terms of which provide for:

(1) Conditional certification of the Settlement on behalf of Class Members defined as: all current and former non-exempt employees who are or were employed by DT Management LLC, DT Employer LLC, and/or Doubletree Employer LLC in California from May 26, 2017 to the date of preliminary approval.

(2) A non-reversionary Gross Class Settlement Amount of $3,500,000.00 in addition to employer payroll taxes which will be paid separately by Defendants. The Gross Settlement Amount includes:

(a) A Net Settlement Amount of approximately $2,188,500 (the Global Settlement Amount minus the requested Attorneys' Fees and Costs, Settlement Administration Costs, the payment to the California Labor and Workforce Development Agency ["LWDA"], and the requested Class Representative Enhancement Payment), which will be allocated to Participating Class Members on a pro-rata basis according to the Qualified Pay Periods worked by each Class Member during the Class Period. The entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class ("Participating Class Members"), and without the need to submit claims for payment.

(b) Attorneys' fees in the amount of one-third of the Class Settlement Amount (or $1,166,550) and litigation costs and expenses not to exceed $45,000.00 to Jackson APC ("Class Counsel").

(c) Settlement Administration Costs, currently estimated at $29,950.00 to be paid to the jointly selected settlement administrator, Phoenix Class Action Administrators.

(d) A $50,000.00 payment of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. A $37,500.00 payment of the Gross Settlement Amount will be paid to the LWDA pursuant to the Private Attorneys General Act ("PAGA").

(e) Class Representative Enhancement Payment of $10,000.00 to Plaintiff Rocio Rosales for her service on behalf of the Settlement Class.

(f) Class Representative Enhancement Payment of $10,000.00 to Plaintiff Ericka Kraut for her service on behalf of the Settlement Class.

An objective evaluation of the Settlement confirms that the relief negotiated on the Class Members' behalf is fair, reasonable, and valuable. The Stipulation was negotiated by the parties at arm's-length with helpful guidance from mediator David Rottman, Esq., an experienced, well-respected class action mediator, and the Stipulation confers substantial benefits to Class Members. Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial.

As discussed below, the proposed Stipulation satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. Moreover, the proposed group of Class Members is appropriate for provisional certification. Accordingly, the Parties respectfully request that this Court grant preliminary approval of the Settlement.

II. FACTS AND PROCEDURE

A. Summary of the Litigation.

Defendants are a company that owns and operates a hotels, including but not limited to the location where Plaintiff worked. During the Class Period, Defendants employed non-exempt individuals to work at these hotels throughout California, including Plaintiffs whom resided in Orange County. Plaintiff Ms. Rosales and Ms. Kraut were employed as non-exempt Employees at the Defendants' facilities. [Jackson Decl. ¶ 3.] This Stipulation is limited to Defendants' employees in the State of California, during the Class Period. [*Id.*]

On May 26, 2021, Plaintiff filed a Class Action Complaint in the Orange County Superior Court alleging violations of the California Labor Code and applicable wage orders for the following claims: (1) failure to provide (1) minimum wages; (2) overtime wages; (3) failure to provide meal breaks (4) failure to provide rest periods; (5) failure to provide wages upon termination; (6) failure to maintain accurate itemized wage statements and maintain records; (7) failure to pay for necessary business expenses; (8) unlawful business practices under Business and Professions Code section 17200 et. seq.; and (9) violation of the California Private Attorneys General Act.

Thereafter, Plaintiff served a set of written discovery, including a Request for Production of Documents and Special Interrogatories. [Jackson Decl. ¶ 6.] Defendant produced its punch data for clock out and clock-in times, paystubs and pay records sample of the putative class members. [*Id.*] Prior to the mediation and for purposes of the Settlement, Plaintiffs retained an expert and analyzed the time and pay data. [*Id.*]

Plaintiff's primary theories of liability are as follows:

- **Unpaid Wage Claims**: Plaintiff alleges that Defendant failed to provide compensation for all hours worked due to off-the-clock work and failed to pay for all tips, gratuities and other benefits, reporting time pay and split shift premiums. [Jackson Decl. ¶¶ 15-18.]
- **Unlawful Meal Period Claim**: Plaintiff alleges that Defendant failed to provide compliant meal periods by understaffing employees in light of the work demands to allow them to take meal periods on time and for at least 30 minutes. [Jackson Decl. ¶¶ 11-14.]
- **Unlawful Rest Break Claim**: Plaintiff alleges that Defendant failed to permit and authorize rest breaks for the same reason they could not take their meal periods. [*Id.*]
- **Wage Statement Claim**: Plaintiff alleges that Defendant failed to provide complete and accurate itemized wage statements in compliance with Labor Code section 226(a) by issuing wage statements to Plaintiff and Class Members that failed to reflect the correct total number of hours worked and therefore, the correct wages earned, on every wage statement. [Jackson Decl. ¶¶ 19-23.]
- **Unlawful Failure to Pay Upon Termination Claim**: Plaintiff alleges that Defendant failed to pay that extra hour of pay was not provided when meal or rest breaks were not provided, and that workers were not paid all overtime and/or premium wages. [Jackson Decl. ¶ 24.]
- **2802 Claim**: Plaintiff alleges that Defendant failed to reimburse Plaintiff for business related expenses. [Jackson Decl. ¶ 25.]

After litigating this case for some time, the Parties agreed to mediate and scheduled mediation for February 1, 2023. Prior to the mediation, Defendant produced time and pay data, relevant wage and hour policies and other information for purposes of evaluation. Plaintiff's counsel reviewed the foregoing documents prior to mediation. [Jackson Decl. ¶ 6.]

B. The Parties Settled After the Mediation.

On February 1, 2023, the Parties participated in a full day of mediation with mediator David Rottman, Esq., an experienced mediator of wage and hour class actions. Mediator Rottman helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. At the conclusion of the mediation, Mediator Rottman continued the negotiations for months that ultimately resulted in the resolution of this case byway of a mediator's proposal. [Jackson Decl. ¶ 6.] Thereafter, the Parties jointly drafted and executed the Stipulation. [Jackson Decl. ¶ 2, **Exhibit A**.] At all times, the Parties' negotiations were adversarial and non-collusive, and the Stipulation thus constitutes a fair, adequate, and reasonable compromise of the claims at issue. [Jackson Decl. ¶ 6.]

C. The Proposed Settlement Fully Resolves Plaintiff's Claims.

1. Compensation of the Settlement Class and Settlement Consideration

The proposed group of Class Members consists of all current and former non-exempt employees employed by the Released Parties in California during the Class Period, which is from May 26, 2017 through the date of preliminary approval. The Released Parties means Defendants and each of their successors, assigns, predecessors, subsidiaries, divisions, related companies and insurers, and their current and former employees, attorneys, officers, directors, and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries, and insurers of such plans and programs, both individually and in their business capacities.

Plaintiff and Defendants have agreed to settle the underlying class claims in exchange for the non-reversionary Gross Settlement Amount of $3,500,000.00. The Gross Settlement Amount includes: (1) settlement payments to Participating Class Members; (2) $1,166,550 in requested attorneys' fees and up to $45,000.00 in requested litigation costs to Plaintiff's Counsel; (3) Settlement Administration Costs capped at $29,950.00; (4) an allocation of $50,000.00 to PAGA; (5) a Class Representative Enhancement Payment of $10,000.00 to Plaintiff Rocio Rosales for her service on behalf of the Class Members; and a Class Representative Enhancement Payment of $10,000.00 to Plaintiff Ericka Kraut for her service on behalf of the Class Members. [Jackson Decl. ¶ 2, **Exhibit A.**]

Subject to the Court approving Attorneys' Fees and Costs, Settlement Administration Costs, the payment to the LWDA, and the Class Representative Enhancement Payment, the Net Settlement Amount will be distributed to Participating Class Members. The Net Settlement Amount will be paid to Participating Class Members, and without the need to submit claims for payment.

2. Formula for Calculating Settlement Payments

Each Class Member's share of the Net Settlement Amount will be proportional to the Workweeks that he or she worked during the Class Period. The Settlement Administrator will calculate Individual

Settlement Payments as follows:

- The Parties agree that the Net Settlement Amount shall be divided between all Participating Class Members in proportion to the number of individual Qualifying Workweeks for each Class Member.

- To calculate the minimum amount each Class Member will receive based on their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total number of Qualifying Workweeks by all Class Members during the Class Period and then allocated on a pro rata basis.

[Jackson Decl. ¶ 2, **Exhibit A** (Section 3.06, pgh. f.]

The average amount per workweek is $14.58 for each class member to be confirmed by the claim's administrator. This average net recovery is significantly higher than many wage and hour class action settlements approved by California state and federal courts. *Ressler v. Grossmanated Dept. Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. County Super. Ct.).

3. Release by the Participating Class Members

In exchange for the Gross Settlement Amount, Plaintiff and Class Members will agree to release the following Released Claims that accrue from May 26, 2017 through the date of preliminary approval:

> "Effective the date that the Gross Settlement Amount is deposited into the QSF, Named Plaintiffs and all Participating Class Members release the Released Parties from any and all federal, California state law, and local wage-and-hour claims, rights, demands, liabilities, and/or causes of action of every nature and description, whether known or unknown, including, without limitation, statutory, constitutional, contractual, and/or common law claims for wages, gratuities, reimbursements, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, which were or could have been asserted in the Actions based upon the alleged claims under any federal, state, or local statutes, Wage Orders, codes, or ordinances, to the extent permitted by applicable law, for the duration of the Class Period. The claims released shall include, without limitation, known and unknown claims relating to any alleged: underpayment of wages or gratuities; failure to pay minimum wages; failure to pay or correctly calculate regular, overtime, or meal or rest break premium pay; failure to provide meal or rest periods; failure to maintain accurate payroll records; failure to timely pay wages when due; failure to pay reporting time pay; failure to pay split shift wages; failure to reimburse business expenses; and any statutory and/or civil penalty claims including but not limited to claims for inaccurate wage statements, untimely or late pay, and underpayment of wages due at termination ("Released Claims")"

[Jackson Decl. ¶ 2, **Exhibit A** (Section 5.01)

III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Settlement.

1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable.

California Rule of Court ("Rule"), Rule 3.769 requires litigants to obtain court approval of class action settlements. Approval occurs in two steps: (1) an early "preliminary" review by the trial court; and (2) a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. [Rules 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").] The motion for preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, (3) the proposed order, and (4) must identify any agreement regarding attorneys' fees. [Rule 3.769(b) and (c).]

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

Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a "reasonable range." [*See North Cnty. Contractor's Ass'n, Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089–90 (1994); Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002) ("Newberg"). Reasonableness and fairness are presumed where: (1) the settlement is reached through "arms-length bargaining;" (2) investigation and discovery are "sufficient to allow counsel and the court to act intelligently;" (3) counsel is "experienced in similar litigation;" and (4) the percentage of objectors "is small." [*Dunk v. Ford Motor Co.,* 48 Cal. App. 4th 1794, 1802 (1996).] The presumption of fairness is consistent with California's public policy goal of favoring settlements. [*Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) ("the law wisely favors settlements"); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 ("public policy generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("voluntary conciliation and settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation").]

In reviewing the fairness of a class action settlement, due regard should be given to what is "otherwise a private consensual agreement between the parties." [*Cellphone Termination Fee Cases*, 186 Cal. App. 4th at 1389.] The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." [*Id.*]

2. Plaintiff's Counsel Conducted a Thorough Investigation of the Factual and Legal Issues and Objectively Assessed the Settlement's Reasonableness.

By engaging in an investigation and evaluation of Plaintiff's claims, Plaintiff's Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Stipulation, is fair, reasonable, and adequate, and is in the best interests of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant. [Jackson Decl. ¶¶ 3-29.]

Prior to the outset of the litigation, Plaintiffs provided Counsels with detailed accounts of their experience working for Defendants and the circumstances that gave rise to the alleged Labor Code violations. In addition to informing Plaintiffs' Counsels' initial evaluation of the lawsuit, the information that Plaintiffs provided also influenced Plaintiffs' Counsels discovery efforts. [Jackson Decl. ¶¶ 3-9.]

Plaintiffs' Counsels interviewed Plaintiffs who provided accounts of their own experiences, which enabled Plaintiffs' Counsels to understand the theories explaining the respective frequencies of the alleged violations borne out in the data and records produced and to learn more about the day-to-day circumstances giving rise to the alleged violations. [Jackson Decl. ¶ 3.] Overall, Plaintiffs' Counsel performed a searching investigation into the claims at issue, which included: (1) determining Plaintiffs' suitability a class representatives through interviews, background investigations, and analyses of their employment files and related records; (2) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (3) analyzing a sample of class member time and wage records; (4) analyzing Defendants' labor policies and practices; (5) researching settlements in similar cases; (6) researching Plaintiffs' novel theories of liability; (7) interviewing Plaintiffs regarding their alleged claims; (8) evaluating Plaintiffs' claims and estimating Defendants liability for purposes of settlement; (9) drafting the mediation brief; and (10) participating in the mediation. [Jackson Decl. ¶ 7.]

3. The Settlement Was Reached Through Arm's-Length Bargaining in Which All Parties Were Represented by Experienced Counsel.

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." [*State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986).] Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. [Newberg, § 11.51.]

On February 1, 2023, the Parties participated in a mediation with mediator David Rottman, Esq., who helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. [*In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (same).] At all times, the Parties' negotiations were adversarial and non-collusive. After a full day of mediation, the Parties reached a settlement in principal and executed a long form settlement agreement. [Jackson Decl. ¶ 6.]

Experienced class action counsel represented both Parties throughout the case and settlement negotiations. Plaintiffs are represented by Armond M. Jackson and Andrea Fernandez-Jackson of Jackson APC, who regularly litigate wage and hour claims through certification and on the merits, and has considerable experience settling wage and hour class actions including Farzad Rastegar and Douglas Perlman of Rastegar Law Group, APC. [Jackson Decl. ¶¶ 30-31; F Rastegar ¶¶ 1-12; Perlman Decl. ¶¶ 3-12] Defendants are represented by counsel of Jackson Lewis, P.C., which frequently serves as defense counsel in class and PAGA wage and hour actions.

4. The Proposed Settlement Is Reasonable Given the Strengths of Defendant's Defenses and the Risks and Expense of Continued Litigation.

In seeking approval, a settling party must provide sufficient information to "enable the court to make an independent assessment of the adequacy of the settlement terms." [*Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008).] However, "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." [*See Officers for Justice v. Civ. Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982).] "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." [*Id.* at 625.] "Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." [*In re Toys "R" Us - Delaware, Inc. - Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).] In other words, in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.[1]

Settling parties are not however required to partake in a hypothetical accounting exercise: *Kullar* does not . . . require any such explicit statement of [maximum] value; it requires a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." [*Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (*quoting Kullar*, 168 Cal. App. 4th at 120 (emphasis added)).] Overall, the most important factor in determining whether a settlement is fair and reasonable is the strength of the case for plaintiffs on the merits balanced against the amount offered in the settlement. [*Id.* at 409 n.6 (quoting *Kullar*, l 68 Cal. App. 4th at 130).]

Based on the information and evidence provided by Defendants in discovery, the analysis of the time data and pay data, and Plaintiffs' Counsel's own independent investigation, Plaintiffs' Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendants' maximum theoretical exposure by: (i) the strength of Defendants' affirmative defenses; (ii) the risk of losing a motion for class certification on some or all of the claims; (iii) the risk of the Court finding that a class and PAGA trial would be unmanageable;[2] (iv) the risk of losing on various dispositive or quasi-dispositive motions that Defendant will bring before trial (*e.g.*, motion to strike class and representative allegations, motion to decertify a class action, and/or motions for summary judgment) which may eliminate all or some of Plaintiffs' claims, or bar evidence necessary to prove such claims; (v) the risk of losing some or all of the claims at trial; (vi) the chances a Court may find Defendants did not willfully refuse to pay

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[1] Federal district courts also recognize that there is an inherent "range of reasonableness" in determining whether to approve a settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." [*Id.* at 188 (*quoting Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.)). *See Nat'l Rural Telecomm. Co-op. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery").

[2] Similar to class actions, California trial courts will strike PAGA claims where too many allegedly aggrieved employees would be required to show that they were, in fact, aggrieved, rendering the claim unmanageable because countless mini-trials would be necessary before the aggrieved employees were known and the claim could proceed. [*Wesson v. Staples the Office Superstore, LLC* (September 9, 2021) 2021 WL 4099059.]

discharged or terminated employees (*i.e.*, a good faith failure) under Cal. Lab. Code section 203; (vii) the chances a Court may find Defendants did not willfully and intentionally refuse to comply (i.e, a good faith failure) with the wage statement requirements under Cal. Labor Code section 226(e); (viii) the chances of the Court exercising its discretion to reduce PAGA penalties (*see* Cal. Lab. Code section 2699(e); (ix) the delay in payment to class members due to years of protracted litigation in certifying a class, obtaining a favorable verdict at trial, upholding that verdict on appeal, and administering class notice and payments to the class at that later stage instead of now; (x) the chances of a favorable verdict being reversed on appeal; and (xi) the difficulties attendant to collecting on a judgment (collectively, the "Discount Factors"). [Jackson Decl. ¶ 9.]

Based on the preceding and considering the aggregate value of the claims, Plaintiffs' Counsel valued the claims for settlement purposes at $6,382,808.90. [*Id.*] It must be underscored, however, that the reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery Plaintiff might have received had he succeeded at trial. Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'" [*Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (quoting *In re Michael Milken and Assoc. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993)).]

i. Data and Range of Damages

Review of the wage statements for the sampling revealed the following: (1) approximately 240,000 workweeks since May 26, 2017 to the date of preliminary approval. The following is a table of potential damages:

Claim	Reasonable Expectation of Damages and Penalties
Failure to Provide Meal Breaks	$900,238.48
Failure to Provide Rest Breaks	$450,119.24
Failure to Pay Wages	$2,635,075
Failure to Provide Accurate Wage Statements and Maintain Records	$503,250
Waiting Time Penalties	$1,279,213.70
Business Expense Reimbursement Violations	$549,537.50
Remaining PAGA Penalties Not Incorporated in Evaluation	$65,375
TOTAL	$6,382,808.92

[Jackson Decl. ¶¶ 10-26.]

ii. Unpaid Wage Claims

Based on Plaintiffs' experiences and discussion with other employees, Plaintiffs allege that Defendants required off-the-clock shift activities, split shift premium and tip/gratitude issues effectively forced Class Members to work off-the-clock in addition to failure to pay for all tips, gratuities and split-shift premiums. [Jackson Decl. ¶ 15-18.]

Employees are entitled to be paid for all "hours worked." [*See Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 582 ("hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.).] California Labor Code sections 1194, 1197, 1197.1, and 510 and the applicable Wage Orders mandate that employees must be compensated for all hours worked at minimum wage or greater, or at an overtime rate of 1.5 times the regular rate of pay for hours worked in excess of 8 in a workday or 40 in a workweek.

In this case, common proof of unpaid minimum and overtime wages for "off-the-clock" work could be difficult given the risks of certification as well as to demonstrate at trial for purposes of finding class-wide liability and damages. As with the preceding claims, Plaintiff had to discount the value of the minimum wage and overtime claim to account for the risks of continued litigation and Defendants' affirmative defenses. [*Id.*]

For example, Defendants will simply argue: (i) that Plaintiffs will not be able to present any evidence of a company-wide, uniform policy requiring employees to work off-the-clock, entitlement to tips, gratuities and split shift premium (ii) it cannot be held liable because it did not know employees were actually performing work off-the-clock or about the entitlements to tips, gratuities or split shift premiums. [*Brinker*, 53 Cal. 4th at 1017 ("[w]ith respect to the third contested subclass, covering allegations that employees were required to work "off-the-clock," no evidence of common policies or means of proof was supplied, and the trial court therefore erred in certifying a subclass"); *see also Garcia v. Sun Pacific Farming Co-op.*, No. CV F 06-0871 LJO TAG, 2008 U.S. Dist. LEXIS 111969 (E.D. Cal. May 14, 2008) (denying motion for class certification of state wage and hour law and other claims allegedly resulting from owed wages).] [*Id.*]

Furthermore, although employees are permitted to arrive early at the job site, Defendant will argue that its policies align with those in the *See's Candy Shops, Inc.* matter in that employees were expressly prohibited from working, when on premises before and after their scheduled shift, but allowed to pursue personal activities. [*See, e.g.*, *See's Candy Shops, Inc. v. Super. Ct.* (2012) 210 Cal. App. 4th 889, 907 (Court found employees were not subject to control of employer for time spent on employer's premises prior to the start of a shift, even when clocked in, because employer prohibited employees from performing any work before scheduled start time and employees were free to pursue any personal activities during that time before a shift.)]

Upon analysis, the unpaid wage claims were valued at $2,635,075 when applying risk factors. [*Id.*] Based on certain Discount Factors (*i.e.*, lack of common evidence such as express policies and customer deadlines), the lack of documentary evidence, and Defendants' ability to garner numerous declarations in support of its defense to this claim, Plaintiffs discount is reasonable. [*Id.*]

iii. Meal and Rest Period Claims

An employer's only obligation is to provide meal periods and authorize and permit rest periods, not to police its employees to ensure that they take their lunches and breaks. (*See Brinker*, *supra*, 53 Cal. 4th at 1028, 1034.)

Plaintiffs allege that Defendants understaffed shifts and scheduled meal periods such that employees did not take their meal periods within the first five hours of a shift, were less than thirty minutes, or did not take a meal period at all, on some occasions. Similarly, Plaintiffs allege employees were not authorized to take rest periods due to understaffing.

Although Defendants' time records may create a rebuttable presumption that it did not provide meal periods on those occasions, in compliance with California law, *see, e.g.*, *Donahue v. AMN Services, LLC* (2021) 11 Cal.5th 58, other evidence could potentially rebut the presumption or minimize the potential value of the claims.

The Defendants will argue that it did provide its employees with complete meal periods which could potentially undermine any claim of a systemic pattern or practice of failing to provide meal periods since employees choose to take them a few minutes late or short on their own volition at other times. Furthermore, since employees are not required in California to record their rest period times, this claim may present difficulties when proving the extent of any rest break violations.

In conclusion, it was analyzed that meal break and rest break exposure amounted to $1,350,357.72 after applying risk factors. [Jackson Decl. ¶¶ 11-14.]

iii. Reimbursement Claim

Plaintiffs alleged themselves, aggrieved employees and class members were subjected to

California Labor Code section 2802 violations for failure to reimburse class members and aggrieved employees. (*See* Cal. Lab. Code section 2802.) It was estimated that exposure amounts to $549,537.50. [Jackson Decl. ¶ 25.]

iv. Wage Statement and Records Claims

Plaintiffs allege that Defendants failed to provide Plaintiffs with timely and accurate wage statements as a derivative claim of the foregoing allegations for failure to provide breaks, pay for all hours worked, reporting time, split shift premiums, tips and gratuities, and improper overtime premium pay. [Jackson Decl. ¶¶ 19-23]

Labor Code section 226 requires that employers provide wage statements that accurately set forth a variety of items including, but not limited to, gross wages earned, total hours worked, deductions, net wages earned, the periods of employment, and hourly rates and corresponding number of hours at each rate. Labor Code section 226 further provides, in relevant part:

> (2)(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee ***cannot promptly and easily determine*** from the wage statement alone one or more of the following:
>
> (i) The ***amount of the gross wages or net wages*** paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to ***items (2)*** to (4), inclusive, (6), and (9) of subdivision (a) . . .
>
> (C) For purposes of this paragraph, ***"promptly and easily determine" means*** a reasonable person would be able to readily ascertain the information without reference to other documents or information.

Defendants provided wage statements with the itemized information, as required under Cal. Lab. Code section 226, to its Employees, including Plaintiffs, on a semi-monthly basis. This claim is therefore derivative of the claims set forth above – Plaintiffs' wage statements were not accurate because Plaintiffs were not paid an additional hour of pay when they were not provided meal and rest periods. [*Id.*]

It was analyzed that potential wage statement violations based upon wage violations, meal break or rest break violations that could potentially be entitled to wage statement violations amounting to $503,250. [*Id.*]

v. Waiting Time Penalties

This claim is based on Plaintiffs' allegations that an extra hour of pay was not provided when meal or rest breaks were not provided, and that Employees were not paid all minimum and overtime premium wages. It was analyzed that during the class period that could potentially be entitled to wages upon termination that were subjected to potential wage and premium wage violations amounted to $1,279,213.70 after applying risk factors [Jackson Decl. ¶ 24.]

5. The Settlement Amount Is Fair and Reasonable Compensation for the Class

As the above analysis shows, Plaintiffs' Counsel objectively and knowledgably balanced the strengths and weaknesses of the claims against the risk of continued litigation and was able to determine the realistic range of settlement recovery of $6,382,808.92. Therefore, in this case, the settlement value of $3,500,000 falls well within the range of reasonableness, and is thus fair, adequate, and reasonable.

B. The Proposed Notice Properly Informs Class Members About the Settlement.

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

No later than forty-five (45) days after the Preliminary Approval Date, Defendant will provide the Settlement Administrator with a "Class List" in electronic format based on its business records, identifying the names of the Class Members, their last known home addresses, Social Security numbers or, as applicable, other taxpayer identification number, their dates of employment and weeks worked during the Class Period. Within ten (10) business days of receiving a Class List from Defendant, the Settlement

[3] Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to reach class members. [Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986).]

Administrator will send Class Members, by first-class mail, at their last known address, the Court-approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the Settlement Class. The Notice Packet will include a calculation of the Class Member's approximate share of the Net Settlement Amount. Class Members will have forty-five (45) days from the date of mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the Settlement Administrator will check all Class Member addresses against the National Change of Address database and shall update any addresses before mailing. The Settlement Administrator will skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a Notice Packet was undeliverable. If a Class Member's notice is re-mailed, the Class Member shall have fifteen (15) calendar days from the re-mailing, or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which to postmark objections or requests for exclusion. [Jackson Decl., ¶ 2, Ex. A, Section 3.03] This method is designed to maximize the Class Member response rate while ensuring cost effective administration of the settlement. In past cases, similar notice methods to class members have resulted in strong response rates. Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process and the requirements of California law. [*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (The class notice must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.").]

Attached to the Joint Stipulation (Exhibit 1) is the notice packet for Class Members consisting of the Proposed Class Notice (Exhibit A), Workweeks Dispute Form (Exhibit B) and Exclusion Form (Exhibit C).

C. The Court Should Preliminarily Approve the Enhancement Payment.

Enhancement payments "are fairly typical in class action cases." [*Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of $5,000.00); *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) § 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiff: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006).] Enhancement payments "are intended to compensate class representative for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." [*Rodriguez*, 563 F.3d at 958–59; *see also Clark v. Am. Residential Servs., LLC*, 175 Cal. App. 4th 785 (2009).]

Subject to Court approval, therefore, the Settlement provides for a Class Representative

Enhancement Payment of $10,000.00 for Plaintiff Ms. Rosales and $10,000 for Plaintiff Ms. Kraut. The enhancement payment is fair and reasonable compensation for Plaintiffs' efforts in representing the putative Class and the interests of the State of California, for assisting counsel with the litigation, at mediation, and settlement, regularly conferring with counsel on the status of the case and the strategies for prosecuting the claims, reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. [Declaration of Rocio Rosales, ¶¶ 1-7; Declaration of Ericka Kraut ¶¶ 1-7.]

Plaintiffs will file a motion seeking award of the negotiated Class Representative Enhancement Payments if preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the Class Representative Enhancement Payments.

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

The purpose of an attorneys' fee award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. Plaintiffs will seek Court approval of attorneys' fees of $1,166,550 which is one-third of the Gross Settlement Amount, and reasonable and necessary litigation costs and expenses according to proof at the time of the Final Approval Hearing.

California courts routinely award attorneys' fees equaling one-third or more of the potential value of the common fund. *See Chavez v. Netflix, Inc*. 162 Cal. App. 4th 43, 66 n. 11 (2008) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: An Empirical Study*, 1 J. of Empirical Legal Studies, Issue 1, 27-78, at 35 (March 2004) (independent studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent with market rates). At final approval, Class Counsel will fully brief the merits of its request for attorneys' fees and costs.

E. California Law Authorizes Provisional Certification for Settlement Purposes.

1. The California Standard for Class Certification

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

2. The Proposed Settlement Class is Ascertainable, and There is a Well-Defined Community of Interest Among Class Members.

Whether a class is "ascertainable" within the meaning of Section 382 is "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." [*Lee*, 166 Cal. App. 4th at 1334.] Class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records. [*Id.*] The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a class representative and counsel who can adequately represent the class. [Cal. Civ. Proc. Code § 382.] Expounding on the element of predominance, the California Supreme Court noted that the "ultimate question" is whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." [*Brinker*, 53 Cal. 4th at 1021-22.]

The proposed Settlement Class consists of all current and former non-exempt employees employed by the Released Parties in California at any time during the Class Period, which is May 26, 2017 through the date of preliminary approval. Defendants' payroll records will determine the Class Members because all Class Members are either current or former employees of Defendants and, therefore, the Class is readily ascertainable from Defendant's regular business records.

Conditional certification of the proposed group of Class Members is warranted here given the relatively relaxed standard for certification at the preliminary approval stage. [*See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a "lesser standard of scrutiny" for class certification in settlement cases).][4] In *Dunk*, the California Court of Appeal specifically rejected the argument that the

[4] *See also* Newberg on Class Actions § 13:18 (5th ed.) (Courts "declin[e] to treat formal class certification as a prerequisite for preliminary approval and undertak[e] a more cursory class certification analysis at the preliminary approval stage.") (*citing, e.g., Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC, 2016 WL 3549473, at *6 (E.D. Cal. June 30, 2016) ("[D]espite the Supreme Court's cautions in *Amchem* . . . , a cursory approach appears the norm.").)

standard for certifying a class for purposes of settlement is identical to the standard for certifying the same class for purposes of litigation; instead, the *Dunk* Court provided that the California Rules of Civil Procedure, Rule 23 allows for "a lesser standard of scrutiny for settlement cases." [*Id.* at n.19.]

Here, the California statutes relating to Plaintiffs' claims apply to all Class Members. Plaintiffs contend that Defendants' policies and practices apply Class-wide, and liability can be determined by facts common to all Class Members, *i.e*., common policies or de facto common practices that deny Class Members' meal and rest periods, and pay for all wages. The wage and hour issues are numerous and substantial, and a class action is the most advantageous method of adjudicating the claims of the Class. For example, Plaintiffs contends that their meal and rest period claims are readily certifiable because whether Defendants' policies and practices violate the law "is by its nature a common question eminently suited for class treatment." [*Brinker*, 53 Cal. 4th at 1033; *see Faulkinbury v. Boyd & Assocs., Inc.*, 216 Cal. App. 220, 237 (2013) ("[Defendant's] liability, if any, would arise upon a finding that its uniform rest break policy, or lack of policy, was unlawful."); *Benton v. Telecom Network Specialists, Inc.*, 200 Cal. App. 4th 701 (2013) (reversing denial of class certification and remanding where employer failed to adopt any policy authorizing and permitting meal and rest breaks).]

Plaintiffs also contend their wage and hour claims are typical of the proposed group of Class Members because they arise from the same factual basis and are based on the same legal theories applicable to the Class. Likewise, Plaintiffs' interests are coextensive with the interests of the Class and they allege that they were injured by the same company-wide practices to which the proposed Settlement Class was subject and seeks the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class by initiating this litigation and evaluating the fairness of the proposed settlement.

Additionally, Plaintiffs are represented by competent counsel who has extensive experience in litigating wage and hour class action cases. [Jackson Decl. ¶¶ 30-31; Rastegar ¶¶ 1-12; Perlman Decl. ¶¶ 3-12] Plaintiffs' Counsels have successfully briefed, argued, certified, and gained state court settlement approval of the same or similar class-wide causes of action that are at issue in this case. Plaintiffs' Counsels' wage and hour class action expertise establishes that they are well qualified to represent the interests of this Class. [*Id.*] A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual Class Member's claim, Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

IV. CONCLUSION

The Parties have negotiated a fair, reasonable settlement and presented the required for preliminarily approval, and as such, request that the Court preliminarily approve the settlement.

Dated: November 29, 2024

JACKSON APC

By: */s/ Armond M. Jackson*

Armond M. Jackson, Esq.
Andrea M. Fernandez-Jackson, Esq.
JACKSON APC
Attorneys for Plaintiff Rocio Rosales and all other similarly situated employees

Dated: November 29, 2024

By: */s/ Douglas Perlman*

Farzad Rastegar, Esq.
Douglas Perlman, Esq.
RASTEGARD LAW GROUP, APC
Attorneys for Plaintiff Ericka Kraut and all other similarly situated employees