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

RAEIGN VELASQUEZ, MIKAYLA ASEVO
and ERIC RIVAS on behalf of themselves and
on behalf of all persons similarly situated

Plaintiffs,

v.

TEAM BLAZE, a California Corporation;
GHOLAMREZA MEDALI, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 30-2021-01187932-CU-OE-CXC

[Assigned for all purposes to the Hon. Peter J.
Wilson, Dept. CX101]

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT**

Date: October 26, 2023

Time: 2:00 p.m.

Dept.: CX101

Complaint Filed: March 9, 2021

Trial Date: Not set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 26, 2023, at 2:00 p.m., or as soon thereafter as
the matter may be heard, before the Honorable Peter J. Wilson, judge presiding, in Department
CX101 of the above referenced Court located at 751 W. Santa Ana Blvd., Santa Ana, California

92701, Plaintiffs Raeign Velasquez, Mikayla Asevo, and Eric Rivas (collectively, “Plaintiffs”) will seek an Order: (1) approving the Class and Representative Action Settlement Agreement (“Settlement Agreement,” “Settlement,” or “Agreement”) in this matter; (2) conditionally certifying the following Class for settlement purposes only: “non-exempt hourly employees who were employed by Defendants during the Class Period” (September 26, 2018 through the date the Court grants Preliminary Approval); (3) appointing Plaintiffs as the Class Representatives, and Zack Broslavsky and Jonathan A. Weinman of Broslavsky & Weinman LLP, and Dennis S. Hyun of Hyun Legal, APC as Class Counsel; (4) preliminarily approving the Settlement Agreement and the total Maximum Settlement Amount in the amount of Six Hundred Thousand Dollars (\$600,000.00); (5) finding on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement, including the amount of the Class Representative enhancement award, attorneys’ fees and costs, settlement administration costs, and the allocation of payments to Class Members, that could ultimately be given final approval by this Court; (6) approving the Notice of Settlement to be sent to Class Members (attached as Exhibit 1 to the Agreement); (7) appointing Phoenix Settlement Administrators as the Settlement Administrator; and (8) setting the matter for a Final Fairness and Final Approval hearing.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify a class for settlement purposes.

The basis for this Motion, filed without any opposition from Defendants Team Blaze and Gholamreza Medali (collectively, “Defendants”), is that the proposed settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to participate in, opt-out of, or object to the settlement.

This Motion will be based on the attached Memorandum of Points and Authorities, the Stipulation and the proposed Class Notice, and the supporting Declarations of Zack Broslavsky, Dennis S. Hyun, Jonathan A. Weinman, and Plaintiffs, and upon the oral arguments of counsel (should there be any) and on the complete records and file herein.

1 Dated: September 13, 2023

HYUN LEGAL, APC

2
3 By: 
4 Dennis S. Hyun
Attorneys for Plaintiffs and the Class

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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act (the
3 “PAGA”) action filed on behalf of Plaintiffs Raeign Velasquez (“Velasquez”), Mikayla Asevo
4 (“Asevo”), and Eric Rivas (“Rivas”) (collectively, “Plaintiffs”). Defendant Team Blaze (“Blaze”) is
5 a Blaze Pizza franchisee that operates Blaze Pizza-branded restaurants in Los Angeles and Orange
6 Counties. Defendant Gholamreza Medali (“Medali”) (collectively, “Defendants”) (Plaintiffs and
7 Defendants collectively, the “Parties”) is the owner, founder, and principal of Team Blaze, and is
8 being sued under legal theories and doctrines including joint employer and alter ego.

9 Plaintiffs bring the following class claims: 1) meal break violations; 2) rest break violations;
10 and 3) overtime and minimum wage claim based on class members not being compensated for all
11 hours worked. Based thereon, Plaintiffs sought all applicable remedies, including waiting time and
12 wage statement penalties, PAGA penalties, and attorneys’ fees and costs.

13 The Parties have reached a proposed class and PAGA action settlement, the terms of which
14 are reflected in the Parties’ Class and Representative Action Settlement Agreement (“Settlement
15 Agreement,” “Settlement,” or “Agreement”).

16 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating to
17 the class and PAGA claims alleged in the lawsuit and engaged in a thorough study of legal principles
18 applicable to the claims asserted against Defendants. Through the exchange of formal and informal
19 discovery, Defendants provided necessary data pertaining to the number of putative class members
20 and number of workweeks at issue, a sampling of time and pay records for purposes of performing
21 an analysis of the alleged violations and penalties resulting therefrom, as well as information
22 pertaining to Defendants’ payroll policies and practices. Plaintiffs then retained EconOne to conduct
23 a damage analysis. Thereafter, the Parties attended mediation with well-respected retired Judge, the
24 Hon. Steven R. Denton (ret.)

25 In addition to disputing liability, Defendants raised financial issues and/or hardship and
26 provided select financial documents to the mediator and counsel for review on a confidential and
27 mediation privileged basis. The Parties subsequently agreed that Defendants would submit financial
28 information and documents to an independent neutral as part of their continuing mediation efforts, so

1 this matter can be further evaluated for resolution. After vetting several neutrals, the Parties retained
2 Karl Ehlert of Matson, Driscoll & Damico, LLP, a forensic accounting firm, to review certain
3 documents and make findings as to Defendants' financial ability to fund any potential class and
4 representative Private Attorneys General Act (the "PAGA") settlement. The Parties agreed that Mr.
5 Ehlert's findings within this confidential and privileged setting would be binding with regard to their
6 efforts to resolve the action. Mr. Ehlert provided the Parties his preliminary review and analysis on
7 October 7, 2022, and his updated report on January 18, 2023. In response to the updated report
8 provided on January 18, 2023, the Parties met and conferred, held a call with Mr. Ehlert and
9 understood that Mr. Ehlert's analysis is complete. After months of continued negotiations, the
10 Parties have reached this settlement. The following represents the key terms of the settlement:

- 11 • Maximum Settlement Amount of \$600,000.00, which will be paid by Defendants in six
12 installments, with the final installment being paid 900 days after final approval is granted,
13 and distributed to the Class on a **non-reversionary** basis (*See* Agreement ¶¶ 39(a), 40);
- 14 • Class Members do not need to submit claim forms to participate in the settlement (*Id.* ¶
15 55(c));
- 16 • Class Representative Service Award of up to \$7,500.00 each, for a total of \$22,500.00
17 (*Id.* ¶ 43);
- 18 • Class Counsel's attorneys' fees of up to \$200,000.00 (1/3 of Maximum Settlement
19 Amount) (*Id.* ¶ 42);
- 20 • Class Counsel's litigation costs of up to \$50,000.00 (*Id.* ¶ 42);
- 21 • Settlement Administration Costs of up to \$27,750.00 (*Id.* ¶ 45);
- 22 • PAGA Payment of \$60,000.00, of which 75% shall be paid to the Labor Workforce
23 Development Agency (the "LWDA"), or \$45,000.00, and 25% paid to PAGA Group
24 Members, or \$15,000.00 (*Id.* ¶ 44);
- 25 • Net Settlement Amount of approximately \$254,750.00 (*Id.* ¶ 46); and
- 26 • Raw average of \$118.49 ($\$254,750.00 \div 2,150$ Class Members) to each Settlement Class
27
28

Member.¹ The Class Members will receive two equal distributions. The first distribution will be within 10 days after the second installment payment by Defendants, which will be made 180 days after the final approval. The second distribution will be within 10 days after the final installment payment by Defendants, which will be made 900 days after the final approval. (*Id.* ¶ 64);

The Parties believe that the settlement for the consideration and on the terms set forth in the Agreement is fair, adequate, and reasonable, in light of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiffs and their counsel believe that they could prevail on class certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific risks that a class might not be certified, that Plaintiff could fail to establish liability, that Plaintiffs would be unable to prove damages in the amounts sought, and/or that Defendants would not be able to pay should Plaintiffs prevail.

Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class and Representative Action Settlement.

II. PROCEDURAL HISTORY

On March 9, 2021, Plaintiffs filed a class and representative action Complaint in the Superior Court for the County of Orange, California, alleging eight (8) separate causes of action for various wage and hour violations. In their Complaint, Plaintiffs' claims include: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide accurate itemized wage statements; (4) failure to provide rest breaks; (5) failure to provide meal breaks; (6) failure to pay all wages at the end of employment; (7) violation of California Business & Professions Code; and (8) civil penalties under the PAGA. Additionally on March 2, 2021, Plaintiffs submitted a written PAGA notice letter ("PAGA Notice") to the Labor and Workforce Development Agency ("LWDA").

After the filing of the Action, Plaintiffs and Defendants engaged in significant informal discovery including the production of policy records, time records, and payroll records for

¹ As of July 12, 2023, there are 1,945 class members, and Plaintiffs are assuming a 10% increase in that number by the time the Preliminary Approval is granted. Plaintiffs also expect the net amount to be slightly higher because Class Counsel's current litigation costs are less than the amount allowed under the Settlement Agreement.

1 Defendants' employees, as well as other data regarding Defendants' employees. Declaration of
2 Dennis S. Hyun ("Hyun Decl.") ¶ 8. The parties exchanged substantial informal discovery and
3 engaged in conferences regarding Plaintiffs' claims and the claims of the alleged aggrieved
4 employees, the value of those claims, and Defendants' defenses to those claims. *Id.*

5 The Parties have engaged in sufficient investigation and discovery to assess the relative
6 merits of Plaintiffs' claims and of Defendants' defenses to them. *Id.* On February 10, 2022, the
7 Parties attended a full-day mediation with experienced employment law mediator and retired judge
8 Hon. Steven R. Denton (Ret.), in an effort to resolve this class and representative action. *Id.* The
9 Parties did not reach a settlement at mediation, but they continued their settlement negotiations. *Id.*
10 The Parties retained Karl Ehlert of Matson, Driscoll & Damico, LLP, a forensic accounting firm, to
11 review Defendants' financial records and provide the Parties and their counsel with Mr. Ehlert's
12 opinion as to the amount that Defendants could afford in settlement. *Id.* Based on Mr. Ehlert's
13 assistance and findings, and months of continued negotiations, the Parties ultimately reached this
14 settlement. *Id.*

15 **III. DISCUSSION**

16 Any settlement of a class action lawsuit must be reviewed and approved by the Court. This is
17 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after
18 notice has been distributed to the class members for their comment or objections. The *Manual for*
19 *Complex Litigation, Third* § 30.41 states:

20
21 Approval of class action settlements involves a two-step process. First, counsel
22 submits the proposed terms of settlement and the court makes a preliminary fairness
23 evaluation. If the preliminary evaluation of the proposed settlement does not disclose
24 grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential
25 treatment of class representatives or of segments of the class, or excessive
26 compensation for attorneys, and appears to fall within the range of possible approval,
27 the court should direct that notice...be given to the class members of a formal fairness
28 hearing, at which arguments and evidence may be presented in support of and in
opposition to the settlement.
(Fed. Jud. Ctr., 3rd ed. 1995).

Thus, the preliminary approval by the trial court is simply a conditional finding that the
settlement appears to be within the range of acceptable settlements. As Professor Newberg
comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference

1 concerning a tentative settlement proposal may vary. The court may find that the settlement proposal
2 contains some merit, is within the range of reasonableness required for a settlement offer, or is
3 presumptively valid subject only to any objections that may be raised at a final hearing.” 4 Alba
4 Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.26 (4th ed. 2002).

5 The procedures for the parties’ submission of a proposed settlement for preliminary approval
6 by the court also are discussed in *Newberg on Class Actions*:

7 When the parties to an action reach a monetary settlement, they will usually prepare
8 and execute a joint stipulation of settlement, which is submitted to the court for
9 preliminary approval. The stipulation should set forth the central terms of the
10 agreement, including but not limited to, the amount of settlement, form of payment,
11 manner of determining the effective date of settlement and any recapture clause.

12 *Id.* § 11.24.

13 Here, the Parties have reached such an agreement and have submitted to this Court in
14 connection with this Motion a copy of the Agreement fully setting forth the agreement reached
15 among the Parties. The Agreement sets forth all terms of the agreement reached by the Parties,
16 which include, among other things, the method for calculating the Class Members’ Individual
17 Settlement Payments.

18 The parties also may, at the preliminary approval stage, request that the court provisionally
19 approve certification of the class—conditional upon final approval of the settlement. “[P]re-
20 certification settlements are routinely approved if found to be fair and reasonable.” *Wershba v. Apple*
21 *Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *accord Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
22 1794, 1803 (1996) (although the settlement was reached before any “adversary certification,” the
23 court was satisfied that it was “fair, adequate and reasonable”); *In re Baldwin-United Corp.*, 105
24 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts have employed this practice in the name of judicial
25 efficiency in order to facilitate apparently beneficial settlement proposals”). As further explained by
26 Professor Newberg:

27 The strength of the findings made by a judge at a preliminary hearing or conference
28 concerning a tentative settlement proposal...may be set out in conditional orders
granting tentative approval to the various items submitted to the court. Three basic
rulings are often conditionally entered at this preliminary hearing. These conditional
rulings may approve a temporary settlement class, the proposed settlement, and the
class counsel’s application for fees and expenses.

1 4 *Newberg on Class Actions* § 11.26.

2 In addition to such terms as class identification, settlement amount, and payment procedures,
3 the Settlement Agreement reached among the Parties contains a provision pursuant to which the
4 Parties stipulate to the Court's provisional certification of the Class, but do so for the purposes of
5 this settlement only. Defendants reserved their right to contest class certification in the event that the
6 settlement is not approved and litigation resumes.

7 **A. Proposed Class Definition**

8 The current settlement is being settled on behalf of "non-exempt hourly employees who were
9 employed by Defendants during the Class Period." *See* Agreement ¶ 8. The Class Period is defined
10 as "the time period from September 26, 2018 through the date the Court grants Preliminary
11 Approval." *Id.* ¶ 4. The class is comprised of approximately 2,150 unique individuals. Hyun Decl. ¶
12 10.

13 **B. Numerosity**

14 Courts generally find that numerosity is satisfied if the class includes forty or more members.
15 *See Villalpando v. Excel Direct Inc.*, 303 F.R.D. 588, 605-606 (N.D. Cal. 2014); *see also Jordan v.*
16 *L.A. County*, 669 F.2d 1311, 1320 (9th Cir. 1982) (noting, in dicta, that the court "would be inclined
17 to find the numerosity requirement...satisfied solely on the basis of [39] ascertained class
18 members"), *vacated on other grounds*, 459 U.S. 810 (1982); *Ark. Educ. Ass'n v. Bd. of Educ. of the*
19 *Portland*, 446 F.2d 763, 765-66 (8th Cir. 1971) (approving class of 20 members). In this case, there
20 are at approximately 2,150 individual class members, therefore, numerosity is satisfied. Hyun Decl.
21 ¶ 10.

22 **C. Ascertainability**

23 Class members are ascertainable where they may be "readily identified without unreasonable
24 expense or time by reference to official records." *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325,
25 1334 (2008); *see also Faulkinbury v. Boyd & Assocs., Inc.*, 216 Cal. App. 4th 220, 240 (2013). Here,
26 the identity of class members is clearly ascertainable from Defendants' payroll records and have
27 already been identified during the mediation process.

28 **D. Typicality and Adequacy of Representation**

1 **1. Class Representative’s Claims are Typical of the Class**

2 The commonality requirement is met when there are questions of law and fact common to the
3 class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal
4 issues with divergent legal factual predicates is sufficient, as is a common core of salient facts
5 couple with disparate legal remedies within the class”). Commonality requires only that some
6 common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation
7 are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendants’
8 conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d
9 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer’s
10 conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the
11 Defendants’ policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward &*
12 *Co.*, 193 Cal. App. 3d 411, 421 (1987).

13 Plaintiffs alleges that Defendants, as a matter of its corporate policy, practice, or procedure,
14 violated the Labor Code by failing to pay all regular, minimum, and overtime wages owed at the
15 time due and upon separation of employment, failing to provide off-duty meal and rest breaks,
16 failing to provide accurate itemized wage statements, and engaging in unfair business practices.
17 Declaration of Raeign Velasquez (“Velasquez Decl.”) ¶ 2; Declaration of Mikayla Asevo (“Asevo
18 Decl.”) ¶ 2); and Declaration of Eric Rivas (“Rivas Decl.”) ¶ 2. As a result, Plaintiffs allege that they
19 are owed unpaid wages and penalties for the above violations. Velasquez Decl. ¶ *Id.*; Asevo Decl.
20 *Id.*; Rivas Decl. *Id.* In other words, Plaintiffs contend that they were subjected to the same policy and
21 practice as other Class Members and that their claims are typical to those of the Class.

22 Moreover, Plaintiffs do not have any interests adverse to the Class, nor have any such issues
23 been raised or presented. Velasquez Decl. ¶ 5; Asevo Decl. ¶ 5; Rivas Decl. ¶ 5. Plaintiffs have taken
24 all necessary steps to represent the interests of the Class, and by providing information and
25 documents to Plaintiffs’ counsel. Velasquez Decl. ¶¶ 3-4; Asevo Decl. ¶¶ 3-4; Rivas Decl. ¶¶ 3-4.
26 For such reasons, Plaintiffs have adequately represented the Class Members and will continue to do
27 so.

28 **2. Class Counsel Have Adequately Represented the Class and Have
Experience with Wage and Hour Class Actions**

1 From the inception of the case, Class Counsel have zealously represented the interests of the
2 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
3 Representative. Again, Plaintiffs' counsel obtained a sampling of payroll data for approximately
4 8.5% of the class at the time of mediation and retained EconOne to conduct a damage analysis. Hyun
5 Decl. ¶ 8. On February 10, 2022, the Parties attended a full-day mediation with experienced
6 employment law mediator Hon. Steven R. Denton (Ret.), in an effort to resolve this class and
7 representative action. *Id.* The Parties did not reach a settlement at mediation, but they continued
8 their settlement negotiations. *Id.* The Parties retained Karl Ehlert of Matson, Driscoll & Damico,
9 LLP, a forensic accounting firm, to review Defendants' financial records and provide the Parties and
10 their counsel with Mr. Ehlert's opinion as to the amount that Defendants could afford in settlement.
11 *Id.* Based on Mr. Ehlert's assistance and findings, and months of continued negotiations, the Parties
12 ultimately reached this settlement. *Id.*

13 Class Counsel have been approved as class counsel on a number of prior cases, have litigated
14 numerous other class action cases, and are competent to represent the Class. Hyun Decl. ¶¶ 3-6;
15 Declaration of Zack Broslavsky ("Broslavsky Decl.") ¶¶ 3-6; Declaration of Jonathan A. Weinman
16 ¶¶ 5-7.

17 **E. Superiority**

18 Class treatment is clearly superior to any other method of resolving Plaintiff's claims. *Sav-*
19 *On Drug Stores, Inc.*, 34 Cal. 4th 319, 326 (2004). In employment actions, class actions are in fact
20 encouraged. *Jaimez v. DAIOWS USA, Inc.*, 181 Cal. App. 4th 1286, 1308 (2010) ("In light of the
21 numerous common issues of fact and law that predominate in this lawsuit, we conclude that
22 proceeding by way of class action is the superior method of adjudication. Doing so would further
23 judicial economy by avoiding repetitious suits, would unify what would otherwise be a series of
24 small claims so as to enhance the class members' access to redress...").

25 Here, Plaintiffs' claims are based on the alleged system-wide policies, procedures, and
26 practices that apply to all class members and can be most efficiently litigated on a class-wide basis.
27 The alternative would be the unrealistic filing of numerous individual claims. Since the putative
28 class members are employees with relatively modest individual claims and limited resources, there is

1 a strong likelihood that individual claims would never be brought. *See Local Joint Exec. Bd. of*
2 *Culinary/Bartender Trust Fund*, 244 F.3d 1152, 1163 (9th Cir. 2001) (superiority requirement met
3 where class members would recover, at most, about \$1,330); *see also Gentry v. Sup. Ct.*, 42 Cal. 4th
4 443, 462 (2007).

5 **F. Summary of the Case, Investigation and Discovery, and Reasonable Estimate of**
6 **the Nature and Amount of Recovery**

7 The operative Complaint alleges the following causes of action: (1) failure to pay overtime
8 wages; (2) failure to pay minimum wages; (3) failure to provide accurate itemized wage statements;
9 (4) failure to provide rest breaks; (5) failure to provide meal breaks; (6) failure to pay all wages at
10 the end of employment; (7) violation of California Business & Professions Code; and (8) civil
11 penalties under the PAGA. Defendants deny the allegations in the action and are prepared to
12 continue to defend the action vigorously.

13 After the filing of the lawsuit, Plaintiffs propounded written discovery. Hyun Decl. ¶ 8. The
14 Parties then met and conferred and agreed to participate in an informal exchange of information and
15 early mediation effort. *Id.* Defendants produced policies and information, including a sampling of
16 putative class member time and pay records. *Id.* Thereafter, the Parties engaged in mediation with
17 Judge Denton on February 10, 2022, but were unable to settle. *Id.* The Parties retained Karl Ehlert of
18 Matson, Driscoll & Damico, LLP, a forensic accounting firm, to review Defendants' financial
19 records and provide the Parties and their counsel with Mr. Ehlert's opinion as to the amount that
20 Defendants could afford in settlement. *Id.* Based on Mr. Ehlert's assistance and findings, and
21 months of continued negotiations, the Parties ultimately reached this settlement. *Id.*

22 Based on their own independent investigations and evaluations, Plaintiffs and their counsel
23 are of the opinion that settlement for the consideration and on the terms set forth in the Settlement
24 Agreement is fair, reasonable, and adequate and is in the best interests of the Class in light of all
25 known facts and circumstances and the expenses and risks inherent in litigation. Hyun Decl. ¶¶ 7-8.

26 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
27 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has conducted
28 sufficient discovery and the settlement is reasonable in light of the strengths of the plaintiff's claims.

1 As discussed herein, Plaintiffs' counsel have conducted extensive discovery and investigation and, in
2 light of the strength and weaknesses of Plaintiffs' claims, Plaintiffs' attorneys submit that this
3 settlement is fair pursuant to *Kullar*.

4 Prior to the mediation, Plaintiffs were provided with a sampling of time and pay records
5 produced by Defendants for employees across Los Angeles and Orange Counties, which included
6 the records from 126 randomly selected class members. Hyun Decl. ¶ 8. Plaintiffs' counsel then
7 retained EconOne to conduct a damage analysis. *Id.* Plaintiffs' expert extrapolated from the
8 sampling to the entire putative class.

9 Plaintiffs analyzed Defendants' potential maximum exposure as follows:

10 Failure to pay all regular, minimum, and overtime wages owed: Plaintiffs allege that
11 Defendants failed to pay all wages, including having class members check and respond to text
12 messages and cell phone calls outside of working hours and not paying for that time, as well
13 requiring them to attend meetings and not paying for the entire time. *Id.* ¶ 9(a). Based on an analysis
14 of the data, Plaintiffs estimated that the amount of back wages owed was approximately
15 \$221,190.00, which was calculated by estimating 5 minutes off the clock work per shift and using
16 the average rate of pay of \$12.87. *Id.*

17 Meal & Rest Period Claims: Plaintiffs alleged they and similarly situated employees were
18 routinely not provided duty-free and/or timely meal/rest periods based on being unable to timely take
19 meal and rest breaks. Records reviewed by Plaintiffs' expert demonstrated an approximate 63%
20 violation rate for meal periods, which Plaintiffs calculated would result in approximately \$1.575
21 million in damages. Hyun Decl. ¶ 9(b). Given that there are no records of rest breaks (as there is no
22 legal obligation to record them), Plaintiffs assigned a 50% violation rate for rest breaks, for a total of
23 \$1.182 million. *Id.* Given the current state of the law that employers need not police their employees
24 to take rest breaks, Plaintiffs believe that this exposure analysis is reasonable.

25 Waiting time penalties: Plaintiffs also alleged that Defendants failed to pay all wages owed
26 upon separation of employment, as a result of the violations above. *Id.* ¶ 9(c). Plaintiffs estimated
27 that the potential exposure on this claim was approximately \$3.672 million, which was calculated
28 based on 608 former employees, whose average rate of pay was \$12.87. *Id.*

1 Section 226 Penalties: Plaintiffs also alleged that Defendants would be subject to penalties,
2 pursuant to Labor Code § 226, because the wage statements it distributed to employees did not state
3 the accurate number of hours worked, meal period premium payments earned, and gross and net
4 wages earned. Plaintiffs estimated the penalties associated with this claim as approximately \$1.527
5 million, which was based on 17,606 alleged pay periods. *Id.* ¶ 9(d). This assumes a 100% violation
6 rate.

7 With respect to Plaintiffs’ claims under the PAGA, Plaintiffs’ expert calculated the
8 maximum potential penalties at \$5.5 million. *Id.* ¶ 9(e). This is assuming if the Court were to award
9 separate PAGA penalties for each alleged Labor Code violation (aka “stack” penalties). *Id.* These
10 scenarios do not account for the imposition of the subsequent penalty amount given recent authority
11 indicating this increased penalty may only be available where there is a prior citation for a Labor
12 Code violation. *See Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no
13 heightened penalty because the Labor Commissioner nor any court warned the defendant that it was
14 subject to the Labor Code until the court handling the case at issue). Neither of these scenarios
15 account for the possibility that the Court would reduce the PAGA penalties, pursuant to its
16 discretion, which is discussed further below.

17 Despite Plaintiffs’ theories of liability and allegations, Defendants contended that they
18 complied with the Labor Code. For example, Defendants contended that they maintained legally
19 compliant meal and rest period policies, and that any violations were not the result of employer-
20 driven policies, but, rather, employee choice. Defendants have also argued that their wage policies
21 provide for payment of all hours worked, including for work meetings and for time spent responding
22 to messages during off hours. Defendants have also argued that text messages and calls outside of
23 working hours happened only on extremely rare occasions, and there were only a handful of
24 meetings outside of working hours during the class period.

25 These risks on class certification are compounded by the California Supreme Court’s holding
26 in *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained class
27 certification and subsequently prevailed at trial after eight years of litigation, but the judgment and
28 the certification ruling were reversed by the California Supreme Court after an additional five years

1 of litigation. The case was remanded to superior court where class certification was denied and
2 plaintiffs' subsequent appeal also was denied.

3 Defendants also alleged that the Court would not have awarded the full amount of PAGA
4 penalties. Pursuant to Labor Code § 2699(f)(2) the Court can decline to award PAGA penalties
5 where "if, based on the facts and circumstances of the particular case, to do otherwise, would result
6 in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court
7 of Appeal's decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the
8 plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA
9 penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id.* at
10 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.

11 Courts routinely award far less than the statutory maximum amount of civil penalties, even
12 where an underlying violation of the Labor Code is found. In *Magadia v. Wal-Mart Assocs., et al.*,
13 while the trial court imposed substantial PAGA penalties upon the defendant, such amount still
14 represented reductions of 67% and 80% of the potential PAGA penalties at issue. 2019 U.S. Dist.
15 Lexis 91792 at *87-*100 (N.D. Cal. May 31, 2019). Moreover, this was only after the plaintiff in
16 *Magadia* had prevailed after trial. Thereafter, the Ninth Circuit reversed the trial court's ruling,
17 which demonstrates the significant risk presented in moving forward with litigation. *Magadia v.*
18 *Wal-Mart Assocs., Inc.*, 999 F.3d 668, 677 (9th Cir. 2021).

19 Numerous courts have held that **gross** settlements approximating between only 8 and 25% of
20 the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs.*
21 *Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement recovering 16% of
22 potential exposure was fair and reasonable; "[i]t is well-settled law that a cash settlement amounting
23 to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.
24 Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of
25 pursuing the litigation to judgment"; noting that whether the settlement is fair and adequate depends
26 on the "the difficulties in proving the case"); *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-
27 02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement
28 recovering between 8.5% and 25% of the Defendants' potential exposure was fair); *Van Ba Ma v.*

1 *Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted
2 preliminary approval of wage and hour class settlement which obtained *only 9.1%* of projected
3 damages, given the risks of continued litigation) *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-
4 00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class
5 action settlement of approximately 15% of the potential recovery was fair and reasonable); *Greko v.*
6 *Diesel U.S.A., Inc.*, No. 10-cv-02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24
7 percent was reasonable).

8 In the present case, the total amount of Labor Code penalties amounts to approximately \$5.2
9 million without discounting for potentially losing some of the causes of action, or the trier of fact not
10 finding a knowing and intentional or willful violation. Hyun Decl. ¶ 9(f). Plaintiffs have moreover
11 learned that the majority of class members have entered into arbitration agreements, which would
12 further significantly reduce damages and Labor Code penalties. *Id.* The total exposure for PAGA
13 penalties \$5.5 million, if the Court were to “stack” penalties. If the Court reduced the PAGA
14 penalties as it did in *Carrington*, the potential value of the PAGA claim is only approximately
15 \$550,000. The Maximum Settlement Amount of \$600,000 is 7% of the realistic exposure analysis,
16 which is within the range of reasonableness, given all the facts and the risks of moving forward, and
17 the Court should grant approval of this settlement. *Id.*

18 Significantly, the Maximum Settlement Amount is furthermore within the range of
19 reasonableness in light of Defendants’ financial condition. *Torrissi v. Tucson Elec. Power Co.*, 8
20 F.3d 1370, 1376 (9th Cir. 1993) (holding that lower court properly approved class action settlement
21 because of the defendant’s financial condition; “Here one factor predominates to make clear that the
22 district court acted within its discretion. That factor is Tucson's financial condition.”).²

23 **G. The Settlement was Negotiated at Arm’s Length and is Not Collusive**

24 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
25 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*
26 *Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re*

27
28 ² It should be further noted that Defendant Medali was added as a co-defendant on information and belief, and there is a substantial risk that Plaintiffs would not obtain sufficient facts to prove joint employment and alter ego, which would leave Team Blaze as the only defendant.

1 *Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their
2 judgment for that of the proponents, particularly where, as here, settlement has been reached with the
3 participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms. Coop. v.*
4 *DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp. 1087
5 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust*
6 *Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan*
7 *Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

8 While the recommendations of counsel proposing the settlement are not conclusive, the
9 Court can properly take them into account, particularly where, as here, they have been involved in
10 discovery and negotiations for some period of time, appear to be competent, have experience with
11 this type of litigation, and have exchanged substantial evidence from the opposing party. *See 4*
12 *Newberg on Class Actions, supra*, § 11.47; *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 528 (“[s]o
13 long as the integrity of the arm’s length negotiation process is preserved, however, a strong initial
14 presumption of fairness attaches to the proposed settlement...[citations] and ‘great weight’ is
15 accorded to the recommendations of counsel, who are most closely acquainted with the facts of the
16 underlying litigation”).

17 Here, counsel for the Parties have a great deal of experience in wage and hour class action
18 litigation. Plaintiffs’ counsel has been approved as class counsel in a number of wage and hour class
19 actions and have extensive litigation experience. Hyun Decl. ¶¶ 3-6; Broslavsky Decl. ¶¶ 4-7. Each
20 side has apprised the other of their respective factual contentions, legal theories, and defenses,
21 resulting in negotiations taking place between the Parties. Hyun Decl. ¶¶ 7-8.

22 The settlement for each Class Member is fair, reasonable, and adequate, given the inherent
23 risks of litigation, including the substantial risks relative to class certification, and the costs of
24 pursuing such litigation. The settlement is the result of extensive arm’s length negotiations between
25 the Parties and their counsel. Again, the Parties completed mediation with Judge Denton, but were
26 unable to settle. The Parties thereafter retained a forensic expert to conduct a financial analysis and
27 based on that expert’s findings, the Parties reached this settlement.

28 Although Plaintiffs believe that a class can be certified, Plaintiffs also believe in the fairness

of the settlement that is based on factoring in the uncertainty and risks to Plaintiffs involved in not prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the possibility of non-certification, potential for appeals, and potential for inability to pay. Hyun Decl. ¶¶ 7-8. Despite the asserted fairness of the settlement terms, as set forth in the Notice of Settlement (“Class Notice”), should any Class Member wish to pursue his or her own case for the claims being released herein, each Class Member has the right to submit a Request for Exclusion (*i.e.*, opt-out) from the settlement. *See* Ex. 1 to the Agreement. The Class Members are also provided an Exclusion Form to submit their Request for Exclusion, which makes the process easier for Class Members. *See id.* As set forth in the Class Notice, Class Members are advised of their right to attend the final approval hearing and object to any of the terms contained in the Agreement.

H. Settlement Terms and Evaluation

1. Proposed Terms of the Settlement

This is a non-reversionary settlement wherein Class Members will be automatically paid out of the settlement if they do not opt-out of the settlement. The key terms of the settlement are as follows.

The Parties negotiated the amount to be paid to the Class for the Labor Code violations and PAGA penalties, including the attorneys’ fees and costs, Class Representative Enhancement Payment, and Settlement Administration Costs. Hyun Decl. ¶ 8. Again, the Settlement Agreement provides the following:

- Maximum Settlement Amount of \$600,000.00, which will be paid by Defendants in six installments, with the final installment being paid 900 days after final approval is granted, and distributed to the Class on a **non-reversionary** basis (*See* Agreement ¶ 39(a));
- Class Members do not need to submit claim forms to participate in the settlement (*Id.* ¶ 55(c));
- Class Representative Service Award of up to \$7,500.00 each, for a total of \$22,500.00 (*Id.* ¶ 43);
- Class Counsel’s attorneys’ fees of up to \$200,000.00 (1/3 of Maximum Settlement Amount) (*Id.* ¶ 42);

- Class Counsel’s litigation costs of up to \$50,000.00 (*Id.* ¶ 42);
- Settlement Administration Costs of up to \$27,750.00 (*Id.* ¶ 45);
- PAGA Payment of \$60,000.00, of which 75% shall be paid to the Labor Workforce Development Agency (the “LWDA”), or \$45,000.00, and 25% paid to PAGA Group Members, or \$15,000.00 (*Id.* ¶ 44);
- Net Settlement Amount of approximately \$254,750.00 (*Id.* ¶ 46); and
- Raw average of \$118.49 ($\$259,750.00 \div 2,150$ Class Members) to each Settlement Class Member.³ The Class Members will receive two equal distributions. The first distribution will be within 10 days after the second installment payment by Defendants, which will be made 180 days after the final approval. The second distribution will be within 10 days after the final installment payment by Defendants, which will be made 900 days after the final approval. (*Id.* ¶ 64);

The Individual Settlement Payments to Class and PAGA Group Members are based on the number of workweeks worked during the Class and PAGA Periods.⁴ Agreement at ¶ 61(a)-(b). Class Members have the opportunity to challenge the number of workweeks credited to them. Agreement ¶¶ 57. If counsel for the Parties are unable to resolve any such challenged the Court will decide the issue at the Final Approval Hearing. *Id.*

2. Nature of Any Injunctive Relief

The Settlement Agreement does not provide for any injunctive relief.

3. Uncashed Funds

Class Members will be given 180 days to cash their Individual Settlement Payments and uncashed funds will be sent to the California State Controller to be held in the name of the Class Member. Agreement ¶ 67.

4. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Class Members or Might Revert to the Defendants

None of the settlement funds will revert to Defendants. Agreement ¶ 38.

³ See also footnote 1.

⁴ “PAGA Period” is defined as March 9, 2020 through the date the Court grants Preliminary Approval. Agreement at ¶ 17.

1 **5. Scope of the Release of Class Members' Claims**

2 As a condition of participating in this class action settlement, Class Members and PAGA
3 Group Members will release the following claims:

4 69. Class Members' Release of Class Claims. Upon the funding of the Maximum
5 Settlement Amount and all applicable employer-side payroll taxes, and except as to
6 such rights or claims as may be created by this Settlement Agreement, each and every
7 Participating Class Member, on behalf of themselves and their heirs and assigns,
8 releases the Released Parties from the Released Claims that arose during the Class
9 Period. A Participating Class Member's cashing of the settlement check will be
10 considered a consent and opt-in to the settlement of all federal wage and hour claims
11 under the FLSA which are encompassed within these Released Claims, and each
12 Participating Class Member who cashes his or her settlement check will waive his or
13 her rights to bring such claims under the FLSA which arose during the Class Period.
14 A Participating Class Member who does not cash his or her settlement check will
15 retain all rights and claims under the FLSA. However, the settlement will still
16 discharge and extinguish the claims described herein under California law, including
17 those for Participating Class Members who do not cash their settlement checks or
18 who do not opt out of the settlement.

19 70. PAGA Group Members' Release of PAGA Claims. Upon the funding of the
20 Maximum Settlement Amount and all applicable employer-side payroll taxes, and
21 except as to such rights or claims as may be created by this Settlement Agreement,
22 each and every PAGA Group Member, on behalf of themselves and their heirs and
23 assigns, and Plaintiff, on behalf of the State of California, releases the Released
24 Parties from the Released PAGA Claims that arose during the PAGA Period.

25 23. "Released Claims" means any and all claims, damages, or causes of action
26 alleged in, or arising out of, the allegations in the Complaint filed in the Action and
27 the PAGA Notice, which were alleged or that could have been alleged by Plaintiffs
28 and/or any Participating Class Member in such complaints and/or the PAGA Notice
based on any of the factual allegations contained in such complaints and/or the PAGA
Notice, including, but not limited to, claims under state, or local law, including, but
not limited to claims for unpaid wages, claims for the failure to pay minimum wages,
claims for the failure to pay overtime wages, claims related to missed meal and rest
breaks or periods and nonpayment of premium pay for such, failure to comply with
itemized employee wage statement provisions, failure to pay wages due at separation,
failure to timely pay wages during employment, failure to keep requisite payroll
records, unfair competition, the payment of any penalties (including PAGA). The
Released Claims specifically include, but are not limited to, all claims arising under
California Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.7, 510,
512, 1194, 1194.2, 1197, and 1197.1, the Wage Orders of the California Industrial
Welfare Commission, California Business and Profession Code sections 17200, et
seq., California Code of Civil Procedure section 1021.5, and California common law
of contract, interest and claims for attorney's fees relating in any way to those claims
alleged and mentioned in the complaint(s) and/or PAGA Notice.

29 24. "Released PAGA Claims" means any and all claims for civil penalties under
PAGA based on the labor code violations alleged in the PAGA Notice sent by
Plaintiff to the LWDA, including California Labor Code sections 201, 202, 203, 204,
226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 2698, et seq., the IWC Wage Orders
as well as all facts, theories, or claims for civil penalties that would be considered
administratively exhausted under applicable law by the PAGA Notice Plaintiffs sent

1 to the LWDA.
2 Agreement ¶¶ 23, 24, 69, 70.

3 As shown, the scope of the release is limited by the allegations, the facts, statutory citation or
4 legal theories contained in the Action. Further, the scope of the Release does not waive Civil Code §
5 1542 for Settlement Class Members. And, consistent with the law, PAGA Group Members cannot
6 opt-out of the PAGA Released Claims, nor their PAGA Payment. Agreement ¶ 55(i).

7 **6. Tax Treatment of Settlement Amounts**

8 Each Individual Settlement Payment will be allocated as follows for tax purposes: twenty
9 percent (20%) as wages, for which Defendants shall make appropriate withholdings, and separately
10 pay any applicable employer-side taxes, and for which IRS Forms W-2 will issue; and eighty percent
11 (80%) (excluding any portion of the share of the PAGA Payment) as interest and non-wage statutory
12 damages, for which IRS Forms 1099 will issue to the Settlement Class Members. Agreement ¶ 62.
13 The Parties believe this allocation is fair and reasonable in light of the fact that a majority of
14 potential recovery is based on waiting time and wage statement damages. Moreover, this will
15 provide a higher upfront payment to Class Members. Plaintiffs respectfully submit that this
16 allocation is fair and reasonable. See, e.g., *Barragan v. Populus Fin. Grp., Inc.*, 2022 WL 17219082,
17 at *4 (C.D. Cal. Sept. 16, 2022) (allocation of payments to class members as between penalties and
18 interest on the one hand, and wages on the other, found to be reasonable). The settlement amount
19 here is reasonable and fair under this same standard.

20 100% of PAGA Payments will be classified as civil penalties. Agreement at ¶ 62. The
21 employer's share of payroll taxes will be paid by Defendants separate from the Maximum Settlement
22 Amount. *Id.* ¶¶ 10.

23 **7. Affirmative Obligations to be Undertaken by Class Members or Class
24 Counsel and the Reasons for Any Such Obligations**

25 As stated above, Class Members do not need to do anything should they wish to receive their
26 share of the settlement funds. In other words, because this is not a claims-made settlement, Class
27 Members will not be required to make a submission to participate in the settlement. Thus, this
28 substantially decreases the amount of burden each Class Member must bear in order to receive their
Individual Settlement Payment. If a Class Member does not wish to take part in this settlement and

1 be bound by the release, the Class Member must submit an exclusion request. Agreement ¶ 55.

2 **I. Automatic Payment and Submission of Exclusions/Objections**

3 Class Members will not be required to submit a claim form to receive compensation. The Net
4 Settlement Amount will be fully distributed to Class Members who choose not to opt out of the
5 Settlement and the PAGA Settlement Fund will be distributed to PAGA Recipients. Agreement ¶¶
6 55(c), (i). Further, this is a non-reversionary settlement. *Id.* ¶ 38. Given that this is a non-
7 reversionary settlement, the Parties believe that 45 calendar days is sufficient time for Class
8 Members to object to or opt-out of the settlement. *Id.* ¶¶ 55, 56. Lastly, Class Members will be
9 notified of the final approval hearing and will have an opportunity to appear at the final approval
10 hearing. *Id.* ¶ 56, Exh. 1.

11 **J. Code of Civil Procedure § 384**

12 The Parties believe that sending uncashed monies to the California State Controller is better
13 for Class Members, as they will be able to seek their settlement funds in the event that they do not
14 cash their checks. Agreement ¶ 67. Plaintiffs' counsel has had situations where class members seek
15 their class payments after the check cashing deadline, so having the State maintain their settlement
16 monies permits class members to seek their monies after the litigation is over.

17 **K. Notice to Class Members**

18 Should the Court grant the instant Motion, Defendants will provide the Settlement
19 Administrator with a list containing each Class Member's full name, most recent mailing address,
20 most recent telephone number, Social Security Number, and dates of employment ("Class List").
21 Agreement ¶ 54(a). Defendants shall provide this information within 14 calendar days of
22 Defendants' receipt of the Preliminary Approval Order. *Id.* Upon receipt of the information and prior
23 to mailing the Class Notice, the Settlement Administrator shall perform address updates and
24 verifications as necessary prior to the first mailing. *Id.* Within seven (7) calendar days of receipt of
25 the Class List, the Settlement Administrator shall mail the Class Notice to all Class Members. *Id.* ¶
26 54(b). Any Class Notices returned to the Settlement Administrator as non-deliverable on or before
27 the Notice Deadline shall be sent promptly via regular first-class U.S. mail to the forwarding address
28 affixed thereto and the Settlement Administrator shall indicate the date of such re-mailing on the

1 Class Notice. *Id.* ¶ 54(c). If no forwarding address is provided, the Settlement Administrator shall
2 promptly attempt to determine the correct address using a skip trace and perform a re-mailing. *Id.*

3 The Class Notice will describe the terms of the settlement and advise Class Members of their
4 estimated Individual Settlement Payment, estimated PAGA Payment (if applicable), and their
5 opportunity to opt out of the Settlement, object to the Settlement, and/or dispute the number of
6 workweeks credited to them. *Id.* ¶ 54(b).

7 Based on the foregoing, the Class Notice procedures fully comply with California Rules of
8 Court Rule 3.766(d) and (e).

9 **L. Costs and Fees**

10 **1. Attorneys' Fees and Costs**

11 California state and federal courts have recognized that an appropriate method for
12 determining award of attorneys' fees is based on a percentage of the total value of benefits to class
13 members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001);
14 *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980);
15 *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable
16 doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally
17 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone."
18 *Vincent*, 557 F.2d at 769.

19 Under California law, the award of attorneys' fees in common fund wage and hour class
20 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal.
21 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that
22 when class action litigation establishes a monetary fund for the benefit of the class members, and the
23 trial court in its equitable powers awards class counsel a fee out of that fund, the court may
24 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
25 created").

26 Here, the Parties have agreed to a payment of a maximum one-third of the Maximum
27 Settlement Amount (\$200,000.00) for payment to Class Counsel as of attorneys' fees. Agreement ¶
28 42. The fee award representing one-third of the Maximum Settlement Amount clearly falls within

1 that range and is consistent with other comprehensive surveys of class action settlements and fee
2 awards. *See* Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J.
3 Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
4 “[m]ost fee awards were between 25 percent and 35 percent, with almost no awards more than 35
5 percent.”); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study:*
6 *1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class action
7 litigation nationwide conclude that fees representing one-third of the total recovery is consistent with
8 market rates). Class Counsel are to be paid 40% of the attorneys’ fees within 10 days after the
9 second installment payment by Defendants (180 days after the final approval) and the remainder
10 within 10 days after the final installment payment by Defendants (900 days after the final approval.)
11 Agreement ¶ 42. Further, the Parties have agreed to reimbursement of Class Counsel’s litigation
12 costs not to exceed \$50,000.00. Agreement ¶ 42. Class Counsel have, at their own risk, expended
13 costs, for example, to file this instant action, perform service of process, pay mediation fees, pay
14 expert fees and other litigation-related costs, and will be submitting detailed a cost sheet for the costs
15 incurred at the time of filing Plaintiff’s Motion for Final Approval. Based on the foregoing, the
16 Court should preliminarily approve the attorneys’ fees and costs being requested by the Parties.

17 **2. Proposed Payment to the Class Representatives**

18 Plaintiffs respectfully request \$7,500.00 each, for a total of \$22,500.00. Agreement ¶ 43.
19 Class Representatives are to be paid in conjunction with Class Members, receiving half the amount
20 within 10 days after the second installment payment by Defendants (180 days after the final
21 approval) and half the amount after the final installment payment by Defendants (900 days after the
22 final approval.) *Id.*

23 Plaintiffs met and conferred with Class Counsel on a number of occasions to discuss the
24 case, provided documents and information to Class Counsel, and reviewed the Settlement
25 Agreement. As part of their duties as the Class Representative, Plaintiffs provided invaluable
26 information, evidence, and documents that resulted in this settlement. Velasquez Decl. ¶¶ 3-4; Asevo
27 Decl. ¶¶ 3-4; Rivas Decl. ¶¶ 3-4. In addition to the invaluable services Plaintiffs provided, Plaintiffs
28 also assumed significant risks for serving as Class Representatives and seeking benefits on behalf of

1 the Class. Because the claims alleged by the Class Representative involved the payment of costs to
2 the prevailing party, Plaintiffs could have possibly faced paying the costs of Defendants, had they
3 not prevailed in this action.

4 Plaintiffs also agreed to provide general releases as part of the settlement, including a waiver
5 of the protections of Civil Code § 1542—something Class Members will not have to do to
6 participate in the settlement. Agreement ¶ 71(b).

7 Furthermore, given that future employers are much less likely to hire individuals who have
8 filed suit against their prior employer, particularly cases of this nature, Plaintiffs may face prejudice
9 in the future from other potential employers. Plaintiffs assumed these risks and the whole Class
10 benefited from these risks. Class Members did not have to file individual lawsuits and bear the risks
11 of payment of costs if they did not prevail, nor did they have to face the potential for retaliation and
12 not getting future employment had they filed a public lawsuit.

13 Notably, courts have routinely granted approval of representative enhancements for far
14 greater amounts than the Service Awards sought by Plaintiffs in this case. *See, e.g., Van Vranken v.*
15 *Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In*
16 *re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two
17 incentive awards of \$ 55,000, and three incentive awards of \$ 35,000); *Brotherton v. Cleveland*, 141
18 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy*
19 *Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000
20 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist.
21 LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA
22 overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming
23 \$25,000 Incentive award to class representative in ERISA case). Here, Plaintiffs requests a modest
24 enhancement of \$7,500.00, which is “presumptively reasonable” and consistent with case law. As
25 part of the final approval motion, Plaintiff will submit a detailed declaration to further support her
26 request for the enhancement.

27 3. Settlement Administration Fees

28 The Parties have agreed to an estimated payment of \$27,750.00 to the Settlement

Administrator, Phoenix Settlement Administrators, to send notices and to administer this settlement. Agreement ¶ 45. Phoenix Settlement Administrators is a well-recognized class action settlement administrator. The Parties believe that the administration fee is reasonable and should be approved.

IV. THE LWDA HAS BEEN PROVIDED WITH NOTICE OF THIS MOTION

On September 13, 2023, Plaintiff provided notice of this motion to the LWDA. Hyun Decl. ¶ 13.

V. PROPOSED SCHEDULE FOR CLASS NOTICE, OBJECTIONS, OPT OUT, AND MOTION FOR APPROVAL, ATTORNEYS' FEES, AND FINAL ACCOUNTING

Description	Date	Details
Preliminary Approval Date		
Class List to Settlement Administrator		14 calendar days
Distribution of Class Notice		7 days after receiving Class List
Request for Exclusion / Objection Deadline		45 days after mailing of Class Notice
Final Approval Hearing		Approximately 100-120 days after preliminary approval
Compliance Hearing / Final Distribution and Judgment	~36 months after final approval	

VI. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL

Here, the proposed settlement is fair, adequate, and reasonable. It will result in both substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arm's length negotiations conducted by counsel for the respective parties who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed settlement, sign the

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1 proposed Order, approve and authorize mailing of the proposed Class Notice, and set a date for a
2 final approval hearing.

3
4 Dated: September 13, 2023

HYUN LEGAL, APC

5
6 By:  _____

Dennis S. Hyun

7 Attorneys for Plaintiffs and the Class
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