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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

PATRICE EMERSON, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

LERETA, LLC, a limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: CIVSB2111028

[Assigned to Hon. David Cohn, Dept. S-26]

CLASS ACTION

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

Date: April 18, 2023
Time: 10:00 a.m.
Courtroom: Dept. S-26
Judge: Hon. David Cohn

Action Filed: April 16, 2021
Trial Date: Not Set

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on April 18, 2023, at 10 a.m., or as soon thereafter as the matter
3 may be heard, in Department S26 of the above-captioned Court, located at 247 West 3rd Street, San
4 Bernardino, California 92415-0210, Plaintiff PATRICE EMERSON (“Plaintiff”) will and hereby does
5 move this Court for an order:

6 1. Granting class certification of the Class, solely for settlement purposes pursuant to
7 Code of Civil Procedure § 382;

8 2. Preliminarily approving the JOINT STIPULATION OF SETTLEMENT AND
9 RELEASE TO SETTLE CLASS ACTION (“Settlement” or “Agreement”);

10 3. Appointing counsel for Plaintiff, Moon & Yang, APC, as Class Counsel;

11 4. Appointing Plaintiff as the Class Representative;

12 5. Approving the use of the proposed notice procedure and related notice form;

13 6. Approving Phoenix Settlement Administrators as the third-party administrator;

14 7. Directing that notice be mailed to the Class; and,

15 8. Scheduling a hearing date for motions for final approval of class action settlement
16 and awards of attorneys’ fees and costs.

17 Good cause exists to grant this Motion because:

18 1. The Class meets all of the requirements for class certification for settlement
19 purposes under Code of Civil Procedure § 382;

20 2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the
21 disputed wage and hour claims asserted by Plaintiff;

22 3. Plaintiff and Class Counsel are adequate to represent the Class;

23 4. The proposed notice procedures and related forms comply with California Rules of
24 Court 3.766(d) and (e), adequately apprise Class Members of their rights, and fully comport
25 with due process; and

26 5. Based on the foregoing, notice should be directed to the Class Members and a final
27 fairness hearing should be scheduled (Plaintiff suggests about 140 days after preliminary
28 approval is granted).

1 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court,
2 which require approval by the Court of a class action settlement and permit the Court to extend the page
3 limit for memoranda.

4 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points
5 and Authorities, the Declarations of H. Scott Leviant, Plaintiff, and the Settlement Administrator in
6 support thereof, all papers and pleadings on file with the Court in this action, all matters judicially
7 noticeable, and on such oral and documentary evidence as may be presented in connection with the
8 hearing on the Motion.

9 Respectfully submitted,

10 Dated: January 13, 2023

MOON & YANG, APC

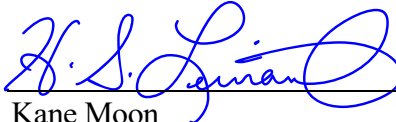
11 By: 
12 Kane Moon
13 H. Scott Leviant
14 Mariam Ghazaryan

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	iii
I. INTRODUCTION.....	1
II. THE MAJOR TERMS OF SETTLEMENT	1
III. FACTUAL AND PROCEDURAL BACKGROUND	4
A. Plaintiff’s Claims	4
B. Pre-Mediation Data Production and Analysis.....	5
C. Settlement.....	5
IV. CLASS DEFINITION.....	6
V. DISCUSSION.....	6
A. The Court Should Conditionally Certify the Class Because It Meets All the Requirements for Certification for Settlement Purposes Under CCP § 382.....	6
1. The Members of the Class Are Objectively Ascertainable and Numerous.	7
2. There Are Common Questions That Predominate Over Any Questions That May Be Unique to Individual Class Members.....	7
3. Plaintiff’s Claims Are Typical of Those of the Class.	8
4. Plaintiff and Plaintiff’s Counsel Will Adequately Represent the Class.....	8
5. Proceeding as a Class Action is Superior to Individual Actions.....	9
6. The Proposed Class Notice Is Constitutionally Sound and Complies with Rule 3.766(d) and (e).....	9
a) The Notice Procedure Satisfies Due Process	9
b) The Notice is Accurate and Informative	10
B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair, Adequate, and Reasonable	10
1. Class Action Settlements Are Subject to Review and Approval.	11

2.	The Parties Reached the Settlement Through Arms’ Length Negotiations Between Experienced Counsel with the Assistance of a Highly-Qualified Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.	11
3.	The Settlement Represents a Fair, Adequate, and Reasonable Compromise of Class Members’ Claims Based on Defendant’s Estimated Liability Exposure Given the Risks Continued Litigation Would Entail.	12
4.	The Proposed Method for Allocating Settlement Funds Is Fair.	15
5.	The Proposed Enhancement Payment to Plaintiff Is Fair, Adequate, and Reasonable and Warrants Preliminary Approval.....	16
6.	The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Preliminary Approval.	16
7.	The Proposed Payment to the Administrator Is Fair and Reasonable.....	17
8.	The PAGA Allocation is Reasonable.....	17
VI.	THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING	19
VII.	CONCLUSION.....	19

TABLE OF AUTHORITIES

CALIFORNIA DECISIONAL AUTHORITY

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	11
<i>Amaral v. Cintas Corp.</i> , 163 Cal. App. 4th 1157 (2008)	18
<i>Amaro v. Anaheim Arena Mgmt., LLC</i> , 69 Cal. App. 5th 521 (2021)	17
<i>Bell v. Farmers Ins. Exchange</i> , 115 Cal. App. 4th 715 (2004)	16
<i>Cartt v. Sup. Ct.</i> , 50 Cal. App. 3d 960 (1975)	9
<i>Clothesrigger, Inc. v. GTE Corp.</i> , 191 Cal. App. 3d 605 (1987)	7
<i>Dunk v. Ford Motor Co.</i> 48 Cal. App. 4th 1794 (1996)	7, 11, 16, 17
<i>Duran v. US Bank Nat’l Ass’n</i> , 59 Cal. 4th 1 (2014)	12
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008)	8
<i>Global Minerals & Metals Corp. v. Superior Court</i> , 113 Cal. App. 4th 836 (2003)	7
<i>Jaimez v. Daiohs USA, Inc.</i> 181 Cal. App. 4th 1286 (2010)	6, 7
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008)	11
<i>Laffitte v. Robert Half Intern. Inc.</i> , 1 Cal. 5th 480 (2016)	16, 17
<i>Linderv. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000)	6, 9
<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> , 103 Cal. App. 3d 573 (1980)	10
<i>Mallick v. Superior Court</i> , 89 Cal. App. 3d 434 (1979)	11, 17
<i>McGhee v. Bank of America</i> , 60 Cal. App. 3d 442 (1976)	8
<i>Miller v. Woods</i> , 148 Cal. App. 3d 862 (1983)	7
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal. App. 5th 56 (2021)	17, 18
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , 186 Cal. App. 4th 399 (2010)	11
<i>Noel v. Thrifty Payless, Inc.</i> , 7 Cal. 5th 955, 980 (2019)	7
<i>Sav-on Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004)	6, 7
<i>Seastrom v. Neways, Inc.</i> , 149 Cal. App. 4th 1496 (2007)	8
<i>Stambaugh v. Superior Court</i> , 62 Cal. App. 3d 231 (1976)	10
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	12

FEDERAL DECISIONAL AUTHORITY

<i>Dilts v. Penske Logistics, LLC</i> 2014 WL 205039 (S.D. Cal. 2014).....	12
<i>Ferrell v. Buckingham Property Mgmt.</i> (E.D. Cal. Jan. 21, 2020)	
Case No. 1:19-cv-00332-LJO-SAB, 2020 WL 291042	15
<i>Miller v. CEVA Logistics U.S.A., Inc.</i> , 2015 WL 729638 (E.D. Cal. Feb. 19, 2015).....	15
<i>O'Connor v. Uber Technologies, Inc.</i> , 201 F.Supp.3d 1110 (N.D. Cal. 2016).....	17
<i>Officers for Justice v. Civil Serv. Comm'n of San Francisco</i> , 688 F.2d 615 (9th Cir. 1982)	11
<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2000)	15
<i>Thomas v. Cognizant Tech. Sols. U.S. Corp.</i> (C.D. Cal. June 24, 2013)	
No. SACV111123JSTANX, 2013 WL 12371622.....	15
<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F.Supp. 294 (N.D. Cal. 1995)	16
<i>Viceral v. Mistras Group</i> , 2016 WL 5907869 (N.D. Cal. 2016)	18
<i>Willis v. Xerox Bus. Servs., LLC</i> , 2013 WL 6053831 (E.D. Cal. 2013)	18

STATUTES

Code of Civil Procedure § 382.....	6, 7, 19
------------------------------------	----------

RULES

Rules of Court, rule 3.766	9
Rules of Court, Rule 3.769	7, 10, 11

OTHER AUTHORITIES

<i>Findings of the Study of California Class Action Litigation</i> , 2000-2006	14
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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiff respectfully requests that
3 this Court preliminarily approve the proposed class action settlement set forth in the JOINT
4 STIPULATION OF SETTLEMENT AND RELEASE TO SETTLE CLASS ACTION (“Settlement” or
5 “Agreement”) with Defendant LERETA, LLC (hereinafter referred to as “LERETA” or “Defendant”).

6 Plaintiff and Defendant (collectively referred to herein as the “Parties”) reached a proposed class
7 action settlement with a gross settlement amount (“MSS”) of **\$450,000.00** in compromise of disputed
8 claims asserted on behalf of the below-defined Class consisting of approximately **327** members. Plaintiff
9 respectfully requests that the Court: (1) grant preliminary approval of the Settlement; (2) provisionally
10 certify a Class for settlement; (3) appoint Moon & Yang APC as Class Counsel; and (4) approve the
11 proposed Class Notice and direct its distribution. Plaintiff now submits this Motion for Preliminary
12 Approval, along with the Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], at
13 Exhibit 1 thereto). For the Court’s convenience, below is a summary of the key Settlement provisions.

14 **II. THE MAJOR TERMS OF SETTLEMENT**

15 The provisions of the proposed Settlement include the following:

- 16 • Defendant agrees not to oppose certification for purposes of Settlement. (Settlement, ¶
17 1.01(d).)
- 18 • Class: all persons who have been employed by Defendant in California and classified as a
19 non-exempt employee during the “Class Period” applicable to the operative complaint and
20 who have not signed arbitration agreements or release agreements with Defendant. The
21 “Class Period” is April 16, 2017 through the date the court preliminarily approves the
22 settlement. “Participating Class Members” means all Class Members who do not submit a
23 Request for Exclusion. (Settlement, ¶¶ 1.01(d), (h), (z).)
- 24 • Settlement Amount: Defendant will pay a maximum of **\$450,000.00**, referred to as the
25 Maximum Settlement Sum (or MSS herein), resulting in an estimated average **gross**
26 payment per Class Member of approximately **\$1,376.00**. (Settlement, ¶ 1.01(t).)
- 27 • Class Size: approximately **327** individuals as of the date of mediation worked an estimated
28 **26,706** workweeks. (Settlement, ¶ 1.01(t).)

- 1 • PAGA Group Size: approximately **200** individuals as of the date of mediation, who
2 worked roughly **3,307** pay periods (Leviant Decl., ¶ 18);
- 3 • PAGA Period: April 16, 2017 through the date the court preliminarily approves the
4 settlement. (Settlement, ¶ 1.01(bb).)
- 5 • Escalator Clause: Defendant's best estimate for the number of workweeks at issue for the
6 Class Members prior to September 22, 2022, is 26,706 workweeks. If the amount of
7 workweeks within the Class Period is determined to be more than 10% higher than this
8 estimate (i.e., if it is 29,377 or more workweeks), the Maximum Settlement Sum shall be
9 increased by the average gross payout to the Class Members based on 29,377 workweeks
10 (the "Escalator Clause"). (Settlement, ¶ 1.01(t).)
- 11 • Kullar/Munoz Analysis: Plaintiff addresses the claims analysis herein, at Part V.B.3, and in
12 more detail the Declaration of Leviant, at Paragraph 18.
- 13 • No Reversion: The Settlement is a ***non-reversionary*** settlement.
- 14 • Certification: Plaintiff addresses certification requisites herein, at Part V.A., and in the
15 Declaration of Leviant, at Paragraphs 34-40;
- 16 • No Claim Form: No claim form is required. (Settlement., ¶ 3.04(g).)
- 17 • Class Release: The Settlement will release specified wage-and-hour claims for Class
18 Members (those Class Members who do not opt out of the Settlement) as defined by the
19 operative complaint. (Settlement, ¶ 5.01.)
- 20 • PAGA Release: The PAGA Employees will release the PAGA Claims set forth in this
21 Action, that were identified in the operative complaint and/or PAGA notice, regardless of
22 whether they opt out of the class portion of the Settlement. (Settlement, ¶ 5.04(g).)
- 23 • Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys'
24 fees and costs, service payment to Plaintiff, administration costs, and the PAGA Settlement
25 Payment, the remainder will be available for distribution to Class Members who do not opt
26 out, with each Class Member receiving a share based on the number of workweeks each
27 Class Member worked for a Defendant within the Class Period. The Net Settlement
28 Amount is estimated to be at least **\$199,000.00**, resulting in an average **net** payment per

Class Member of at least **\$608.00**, before any tax withholdings. (Settlement, ¶ 1.01(t).)

- Tax Allocation: The amounts distributed to Class Members will be characterized as 33.33% alleged unpaid wages, 66.67% to penalties and interest. (Settlement, ¶ 3.06(e).)
- Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the MSS. (Settlement, ¶ 1.01(t).)
- Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, Phoenix Settlement Administrators, and the Parties estimated that the costs of administration should not reasonably exceed \$15,000.00. Phoenix Settlement Administrators' low bid for services in the amount of **\$7,000.00** was selected as the lowest bid from a competitive bidding process. (Settlement, ¶ 3.06(d); Phoenix Decl., Exh. B.)
- Class Data for Administration: The Settlement Administrator will receive the Class List within 30 calendar days of Preliminary Approval, use the NCOA database to update the Class List, and then use skip tracing on returned Notices. (Settlement, ¶ 3.03.)
- Notice: The Notice will issue within 14 days of receipt of the Class List. (Settlement, ¶ 3.03). The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion.
- Notice Language: Notice will issue in English. All class members can read English.
- Objections: Objections can be submitted in person, through an attorney, or in writing to the Settlement Administrator, with no pre-requisite to being heard. (Settlement, ¶ 3.04(c).)
- Exclusion Requests: The procedure for exclusion requests is the same as the procedure for submitting a written objection. (Settlement, ¶¶ 3.04(b) and 3.03(c).)
- PAGA Allocation: From the MSS, **\$44,000** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.* ("PAGA"), and seventy-five percent (75%), or **\$33,000**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶ 1.01(cc).)
- Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Leviant Declaration;

- Enhancement/Service Awards to Plaintiff: Defendant will not oppose the application for a Service Payment of up to **\$5,000.00** for Plaintiff. (Settlement, ¶ 3.06(c).)
- Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to exceed 33 1/3% of the MSS (**\$150,000.00**), and actual costs, in an amount not to exceed **\$35,000**, to be paid out of the MSS. (Settlement, ¶ 3.06(b).)
- Check Void Period: Settlement checks will be valid for 180 days. (Settlement, ¶ 3.06(a).)
- Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the Community Legal Aid SoCal, located at 2101 N Tustin Ave, Santa Ana, CA 9270.5 (Settlement, ¶¶ 3.06(a).)
- Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after entry.
- Confidentiality Provisions: The Settlement does not impede Class Counsel’s ability to discuss the Settlement with Class Members. (Settlement ¶ 7.24).

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff’s Claims

On April 16, 2021, Plaintiff filed a putative Class Action complaint alleging the following labelled causes of action: (1) Failure to Pay Minimum and Regular Rate Wages [Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Lab. Code §§ 226.7]; (5) Failure to Timely Pay Final Wages at Termination [Lab. Code §§ 201-203]; (6) Failure to Provide Accurate Itemized Wage Statements [Lab. Code § 226]; and, (7) Unfair Business Practices [Bus. & Prof. Code §§ 17200, et seq.]. (The “Action.”) (Leviant Decl., ¶ 4.)

Plaintiff satisfied the administrative exhaustion prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”). Plaintiff filed a First Amended Complaint adding a cause of action under PAGA. (Leviant Decl., ¶ 5.)

1 **B. Pre-Mediation Data Production and Analysis**

2 The Parties have conducted informal discovery and investigation of the facts and law. Such
3 discovery and investigation have included, inter alia, the exchange of informal data and discoverable
4 information in preparation for the mediation session. (Leviant Decl., ¶ 6.) The Parties have analyzed
5 payroll and other data pertaining to Plaintiff and the Class during the relevant Settlement Period,
6 including but not limited to the numbers of former and current members of each purported subclass
7 within the Class, average workweeks, and average rate of hourly pay. (*Id.*) In addition, Defendant also
8 provided documents reflecting their wage and hour policies and practices during the Settlement Period
9 and information regarding the total number of current and former employees in the Class. (*Id.*)

10 After reviewing documents regarding Defendant's wage and hour policies and practices and
11 other information obtained during the informal exchange of discovery, Class Counsel were able to
12 evaluate the probability of class certification, success on the merits, and the reasonably obtainable
13 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
14 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the
15 claims and defenses asserted in the litigation. (Leviant Decl., at ¶ 7.)

16 **C. Settlement**

17 On October 4, 2022, the Parties mediated before Steve Serratore, a highly experienced and
18 mediator. (Leviant Decl., ¶ 8.) At the mediation, the Parties discussed at length the burdens and risks of
19 continuing with the litigation as well as the merits of the claims and defenses. (*Id.*) The Parties agreed to
20 the terms of a proposed settlement and signed a long form settlement agreement (the Agreement). (*Id.*)

21 Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for
22 the claims asserted in the Action, both generally and in response to Defendant's defenses thereto.
23 (Leviant Decl., ¶ 9.) Plaintiff and Class Counsel have also taken into account Defendant's agreement to
24 enter into a Settlement that confers substantial relief upon the Class.

25 Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth
26 in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class.
27 (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the parties agree that the requirements
28 for establishing class action certification with respect to this class are satisfied. (*Id.*) If this Settlement is

not approved by the Court for any reason, Defendant reserves its rights to contest class certification. (*Id.*) This Settlement, if approved by the Court, will result in the termination with prejudice of the litigation through the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

IV. **CLASS DEFINITION**

The Class is defined as follows:

All persons who have been employed by Defendant in California and classified as a non-exempt employee during the “Class Period” applicable to the operative complaint and who have not signed arbitration agreements or release agreements with Defendant. The “Class Period” is April 16, 2017 through the date the court preliminarily approves the settlement. “Participating Class Members” means all Class Members who do not submit a Request for Exclusion. (Settlement, ¶¶ 1.01(d), (h), (z).)

(Leviant Decl., ¶ 34 and Exhibit 1.)

V. **DISCUSSION**

A. **The Court Should Conditionally Certify the Class Because It Meets All the Requirements for Certification for Settlement Purposes Under CCP § 382**

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest among its members and that a “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). Any doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to later modification. *Richmond v. Dart Indus. Inc.*, 29 Cal. 3d 462, 473-475 (1981). For purposes of this Settlement *only*, Defendant stipulated to conditional certification. (Settlement ¶ 25.)

“The certification question is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2000). Indeed, the certification question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). “[I]t is also well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior*

1 Court, 113 Cal. App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n.
2 19 (1996). As the court noted in *Dunk*, although certification requirements are intended “to protect the
3 interests of the non-representative class members,” that concern is “protected by the trial court’s fairness
4 review of the settlement.” *Dunk*, 48 Cal. App. 4th at 1807 n.19.

5 In view of these standards, and as shown below, the Class should be certified for purposes of
6 settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

7 **1. The Members of the Class Are Objectively Ascertainable and Numerous.**

8 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
9 the class, and (3) the means of identifying the class members. See *Miller v. Woods*, 148 Cal. App. 3d
10 862, 873 (1983). In this case, Plaintiff contends that all three considerations favor class certification.

11 A class is ascertainable when “it is defined ‘in terms of objective characteristics and common
12 transactional facts’ that make ‘the ultimate identification of class members possible when that
13 identification becomes necessary.’” *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019). The class
14 definition is sufficiently specific to enable the Parties, Class Members, and the Court to readily determine
15 the parameters of the class. See *Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 617 (1987). In
16 this case, there are approximately **327** Class Members, all of whom may be identified by reference to
17 Defendant’s records. In addition, to facilitate the administration of the Settlement, Defendant has agreed
18 to share the information from its records and has already demonstrated that it can do so. Accordingly,
19 the Class is not only ascertainable, but also sufficiently numerous. (Levant Decl., ¶ 35.)

20 **2. There Are Common Questions That Predominate Over Any Questions That**
21 **May Be Unique to Individual Class Members.**

22 The community of interest requirement embodies three factors: (1) predominant questions of law
23 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
24 representatives who can adequately represent the class. *Dunk*, 48 Cal. App. 4th at 1806. A question of
25 law or fact is common to the members of a class if it may be resolved through common proof. See,
26 *Jaimez*, 181 Cal.App.4th at 1305. As for predominance, it “is a comparative concept, and ‘the necessity
27 for class members to individually establish eligibility and damages does not mean individual fact
28 questions predominate.’” *Sav-on*, 34 Cal. 4th at 334.

1 In this case, Plaintiff contends that common questions exist. (Leviant Decl., ¶¶ 37-38.) Plaintiff
2 further contends that the claims present sufficient common issues of law and fact that predominate over
3 individual issues and warrant class certification. From their review of the documentation provided, Class
4 Counsel allege that for purposes of these claims, Defendant’s policies and practices are either identical,
5 or sufficiently similar, to raise the same questions of liability, and applied to all Class Members. Because
6 Class Members would have to prove the same issues of law and fact to prevail, and because their
7 potential legal remedies are identical, it would be preferable to resolve all Class Members’ claims by
8 means of the Settlement than to require each Class Member to litigate his or her individual claims.
9 Therefore, common questions predominate over any questions that may be unique to individual Class
10 Members, and class-wide settlement is superior to any other method of resolution.

11 **3. Plaintiff’s Claims Are Typical of Those of the Class.**

12 Typicality “requires a showing that the class representative has claims or defenses typical of the
13 class.” *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1534 (2008). California
14 law does not require that plaintiffs have claims identical to the other class members. Rather, the test of
15 typicality is whether other members have the same or similar injury, whether the action is based on
16 conduct which is not unique to the named plaintiffs, and whether other class members have been injured
17 by the same course of conduct. *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007).

18 In light of these standards, Plaintiff is typical of class members. Like other Class Members,
19 Defendant employed Plaintiff in a non-exempt position during the Class Period, and Plaintiff claims that
20 he was subject to the same policies alleged to have impacted the entire class. (Leviant Decl., ¶ 36.)
21 Plaintiff alleges that he and other Class Members share the same claims stemming from Defendant’s
22 alleged violations of the Labor Code and relevant wage order. In addition, Defendant’s main defenses,
23 including that the wage and hour policies and practices fully comply with California law, apply equally
24 to the claims of all Class Members. Thus, Plaintiff is typical of the Class.

25 **4. Plaintiff and Plaintiff’s Counsel Will Adequately Represent the Class.**

26 The adequacy requirement is met where the plaintiff is represented by counsel qualified to
27 conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to class members’
28 interests, which is the case here. *McGhee v. Bank of America*, 60 Cal.App.3d 442, 451 (1976). In other

1 words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any
2 disabling conflicts of interest that might hinder the plaintiff's ability to represent the class. *Id.*

3 In the Action, Plaintiff has no conflicts of interest with other Class Members and have agreed to
4 place Class interests above Plaintiff's own. (Leviant Decl., ¶ 39; Emerson Decl., ¶¶ 5-14.) Moreover,
5 Plaintiff's counsel are experienced in wage and hour class action litigation and have no conflicts of
6 interest with absent Class Members. (Leviant Decl., ¶¶ 21-26, 39.) As such, this Court should appoint
7 Plaintiff as the Class Representative for the Class and appoint Plaintiff's Counsel as Class Counsel.

8 **5. Proceeding as a Class Action is Superior to Individual Actions**

9 Plaintiff contends that proceeding as a class action is a superior means of resolving this dispute,
10 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
11 the only means to deter and redress the alleged Labor Code violations. *See Linder v. Thrifty Oil Co.* 23
12 Cal. 4th at 434. Furthermore, individual actions arising out of the same operative facts would unduly
13 burden the courts and could result in inconsistent results, which may be avoided by class certification.

14 **6. The Proposed Class Notice Is Constitutionally Sound and Complies with** 15 **Rule 3.766(d) and (e)**

16 The proposed notice and settlement procedure are appropriate. Notice requirements are set forth
17 in Rules of Court, Rule 3.766. In determining the manner of the notice, the court must consider the
18 interests of the class, the type of relief requested, the stake of the individual class members, the cost of
19 notifying class members, the resources of the parties, the possible prejudice to class members who do not
20 receive notice, and the *res judicata* effect on class members. Rules of Court, Rule 3.766(e). Notice is
21 sufficient when it provides class members sufficient information to make informed decisions. *See*
22 *Mullane v. Cent. Hanover Bank & Trust, Co.*, 339 U.S. 306, 314 (1950).

23 *a) The Notice Procedure Satisfies Due Process*

24 The proposed procedure for distributing the Proposed Notice is robust and more than meets the
25 minimal requirement that it have "a reasonable chance of reaching a substantial percentage of the class
26 members." *Cartt v. Sup. Ct.*, 50 Cal.App.3d 960, 974 (1975). There is no statutory or due process
27 requirement that all class members receive actual notice, but in this matter, the Class Members will
28 receive direct mailed notice. Here, the proposed procedure includes safeguards, including mailing notice

1 to Class Members' last known addresses; skip tracing; searches for address changes; and the re-mailing
2 of returned notices to any forwarding addresses. This manner of notice complies with Rule 3.766(c)
3 because it provides a reasonable chance that Class Notice will reach most if not all Class Members.

4 *b) The Notice is Accurate and Informative*

5 The proposed Notice of Class Action Settlement should be approved for dissemination to the
6 Class Members because its content complies with Rule of Court 3.766(d) in that it contains a brief
7 explanation of the case, including the basic contentions or denials of the Parties, detailed information
8 about Class Members' rights to be excluded from the Settlement and object to the Settlement; a
9 statement that the Settlement will bind all members who do not timely opt-out. Thus, the Notice also
10 satisfies Rule of Court 3.769(f) regarding the contents of settlement notices.

11 The Notice also fulfills the requirement of neutrality in class notices. 3 NEWBERG § 8.39. It
12 summarizes the proceedings and the terms and conditions of the proposed Settlement, in an informative
13 and coherent manner, in compliance with the Manual for Complex Litigation ("MANUAL"), (2d Ed.
14 1993), which states that "the notice should be accurate, objective, and understandable to Class Members .
15 . ." MANUAL, § 30.211. It makes clear that the Settlement does not constitute an admission of liability
16 by Defendant and recognizes that this Court has not ruled on the merits. It also states that the final
17 settlement approval decision has yet to be made. Accordingly, the Notice complies with the standards of
18 fairness, completeness, and neutrality required of a combined settlement-certification class notice.

19 **B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair,**
20 **Adequate, and Reasonable**

21 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
22 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
23 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
24 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary
25 settlement approval, notice being given to class members, and a final fairness and approval hearing being
26 held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed
27 below, this Court should preliminarily approve the Settlement, allow the Parties to give notice to the
28 Class as proposed, and schedule a final fairness and final approval hearing.

1 **1. Class Action Settlements Are Subject to Review and Approval.**

2 Any settlement of class litigation must be reviewed and approved by the presiding court. Rules
3 of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial
4 court and (2) a subsequent (final) review after notice has been distributed to the class members. The
5 Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present
6 motion seeks *preliminary approval* and the setting of a Final Approval Hearing.

7 To evaluate a settlement, a court must receive “basic information about the nature and magnitude
8 of the claims in question and the basis for concluding that the consideration being paid for the release of
9 those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
10 116, 133 (2008). But the record need *not* contain an explicit statement of the maximum theoretical
11 recovery. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

12 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
13 **Between Experienced Counsel with the Assistance of a Highly-Qualified**
14 **Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

15 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
16 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
17 experienced in similar litigation, and the percentage of objectors is small.¹ *Dunk*, 48 Cal.App.4th at 1802;
18 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
19 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a
20 trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g.,*
21 *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding
22 concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801,
23 quoting *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

24 Relevant factors in making this determination, include, but are not limited to:

25 [T]he complexity and likely duration of further litigation, the risk of maintaining class
26 action status through trial, the amount offered in settlement, the extent of discovery
completed and the state of the proceedings, the experience and views of counsel, the

27 ¹ Because the fourth prerequisite for the presumption to arise cannot be addressed until the final
28 approval hearing, only the first three prerequisites are relevant at this preliminary approval stage.

1 presence of a governmental participant, and the reaction of the class members to the
2 proposed settlement.

3 *Id.* These factors require balancing, are non-exhaustive, and, trial courts should tailor the factors to each
4 case and give due regard to “what is otherwise a private consensual agreement between the parties.” *Id.*

5 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
6 counsel with the assistance of a highly-regarded mediator. (Levant Decl., ¶¶ 8-10.) With respect to the
7 claims at issue in this case, Plaintiff obtained data from Defendant (through informal discovery) and then
8 carefully reviewed that information. Counsel for Plaintiff also examined relevant policies and
9 interviewed witnesses in detail about their work experiences and Defendant’s practices. Based on the
10 totality of that review, Plaintiff estimated the potential exposure and then estimated risk factors to adjust
11 the reasonable expected outcome. The investigation that Plaintiff’s counsel conducted was sufficient to
12 provide enough information to intelligently evaluate the estimated exposure in this action for purposes of
13 negotiating the Settlement in view of the risks discussed below and are also sufficient to allow this Court
14 to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

15 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**
16 **of Class Members’ Claims Based on Defendant’s Estimated Liability**
17 **Exposure Given the Risks Continued Litigation Would Entail.**

18 The proposed Settlement of \$450,000.00 offers substantial, timely, and guaranteed payments to
19 Class Members. A settlement is not judged against what might be recovered at trial and does not have to
20 provide 100% of damages to be reasonable. “In the context of a settlement agreement, the test is not the
21 maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the
22 settlement is reasonable under all of the circumstances.” *Wershba*, 91 Cal.App.4th at 250.

23 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that
24 support the reduced compromise amount. These risks include, but are not limited to risks that: (i)
25 Plaintiff would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v.*
26 *US Bank Nat’l Ass’n*, 59 Cal. 4th 1, 39 & n. 33 (2014) (“*Duran*”), *citing Dilts v. Penske Logistics, LLC*
27 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial); (ii)
28 Defendant’s meal and rest period policies might not ultimately support class certification or a class-wide

1 liability finding; (iii) uncertainties pertaining to the ultimate legality of Defendant's policies and practices
2 could preclude class-wide awards of statutory penalties; (iv) individual differences between Class
3 Members could be construed as pertaining to liability and not just damages; (v) any civil penalties award
4 under the PAGA could be reduced by the Court in its discretion; (vi) class treatment could be deemed
5 improper as to one or more claims, except for settlement purposes; (vii) a Court could have limited the
6 Class in terms of scope or job title; (viii) lengthy appellate litigation could ensue; and, (ix) violation rate
7 estimates could prove lower than expected. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

8 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
9 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of
10 course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to
11 liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be
12 given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are
13 greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the
14 approximately 327 members of the Class, the average **gross** recovery is approximately **\$1,376.00** per
15 class member, and the estimated average **net** recovery for each Class Member is approximately
16 **\$1,491.00**. (*Id.*) Given that Defendant could challenge certification and liability, this is a significant sum
17 to have achieved in settlement. Moreover, a Class Member who worked a greater number of weeks for
18 Defendant will receive a larger share of the Settlement than a Class Member who worked for a shorter
19 amount of time during the class period. (*Id.*)

20 After analyzing the claims in this matter, Plaintiff has concluded that the value of this Settlement
21 is fair, adequate, and reasonable. (Leviant Decl., ¶ 18.) The Class Settlement Amount of **\$450,000** is
22 97% of the **\$463,793.82** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the
23 litigation. On that basis, it would be unwise to pass up this settlement opportunity. This assessment is
24 based on a carefully constructed model of the current fair value of the case, using estimated risks
25 (***including the fact of a recent settlement that effectively vitiates a portion of the claims***), average wage
26 rates, numbers of employees, the amount of time covered by the class period. (*Id.*)

27 Plaintiff's counsel estimates that the calculated plausible exposure is **\$2,658,838.50**, *including*
28 PAGA penalties and **no discount applied to any class claim**. (*Id.*)

- The reasonably estimated exposure for alleged unpaid off-the-clock work (arriving early to complete additional work) over the class period was estimated to be **\$736,493.50**, but with chances of certification and proof of liability (60% and 30% respectively) for a risk-adjusted exposure of **\$132,552.63**.
- The reasonably estimated exposure for alleged rest break violations over the class period was calculated at **\$310,702.60** (*generously* assuming 100% of the class experienced a rest break issue 20% of the time) but with low chances of certification and proof of liability (30% and 20% respectively) for a risk-adjusted exposure of **\$18,642.16**.
- The reasonably estimated exposure for alleged meal break violations over the class period was calculated at **\$275,615.60** (facial violations, excluding violations that could be eliminate with meal break waivers or employee choice issues), with chances of certification and liability risks (40% and 35% respectively) resulting in a risk-adjusted exposure of **\$38,586.18**.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **\$115,465.50** and **\$82,083.51**, respectively, on maximum exposures of **\$641,475.00** and **\$456,019.50**, respectively. The certification and liability risk factors are contingent upon the underlying unpaid wage claims and are assumed to be the same as those (60% and 30%) for that reason.
- Performing risk-adjusted valuations for all claims yields a total value in the range of **\$406,146.98**, excluding PAGA. (*Id.*)
- PAGA penalties were calculated as having a maximum realistic exposure of **\$6,336,300.00**, but a risk adjusted value of **\$1,267,260.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

(*See*, Leviant Decl., ¶ 18.)

The \$450,000 settlement here is fully supportable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶ 19.) Second, rest break and meal period claims have been challenging to certify, even after *Brinker*. (Leviant Decl., ¶ 19.) Third, the certification rates in California are lower than conventional wisdom holds. *See*, H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at <http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html>; *see also*, *Findings of the Study of California Class Action Litigation, 2000-2006*, available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement *or* as part of a contested certification motion).

Here, the estimated certification probabilities are *above* the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. (Leviant Decl., ¶ 19.) In sum, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. (*Id.*) The recovery is **17%** of the maximum plausible recovery (estimated to be approximately **\$2,658,838.50**, including over \$1,630,000.00 in PAGA penalties), which falls within the expected outcome under the likelihood of success metric and which compares favorably to other cases in which courts have granted approval of class wage and hour settlements representing a smaller fraction of the maximum theoretical damages.² (*Id.*) It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately \$653,728.50, with no risk reduction), excluding penalties and interest; the settlement is about 100% of the premium wages (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure values.³ Because the total Settlement amount and the proportion of the Settlement allocated to PAGA penalties fall within a reasonable range, the Settlement should be approved.

4. The Proposed Method for Allocating Settlement Funds Is Fair.

The proposed method of allocating the Settlement to Class Members also is fair. As noted, the Parties agreed to allocate the Settlement based on time worked by the Class Member during the Class Period, in relation to the total amount of time worked by all participating Class Members collectively. This proposed method is fair and reasonable because each Class Member's actual potential damages vary based on the number of workweeks he or she actually worked. A Class Member who worked a greater number of weeks for Defendant will receive a larger payment under the Settlement than a Class Member

² See, e.g., *Ferrell v. Buckingham Property Mgmt.* (E.D. Cal. Jan. 21, 2020) Case No. 1:19-cv-00332-LJO-SAB, 2020 WL 291042, *17-20 (granting preliminary approval of settlement that represented 5.2% of the original valuation of the claims); *Thomas v. Cognizant Tech. Sols. U.S. Corp.* (C.D. Cal. June 24, 2013) No. SACV111123JSTANX, 2013 WL 12371622, at *6 (granting final approval of settlement that encompassed between 4.4% and 5% of the maximum estimated liability).

³ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser amount than the maximum civil penalty amount specified by this part...”), and, second, courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics U.S.A., Inc.*, 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015).

1 who worked for a shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 11, 17.)

2 **5. The Proposed Enhancement Payment to Plaintiff Is Fair, Adequate, and**
3 **Reasonable and Warrants Preliminary Approval.**

4 The proposed enhancement payment of \$5,000 to Plaintiff is intended to recognize the value of a
5 general release of all claims and the substantial initiative and significant efforts by Plaintiff on behalf of
6 the Class.⁴ Courts routinely approve incentive awards to compensate named plaintiffs for the services
7 they provide and the risks they incur during class action litigation, often in much higher amounts than
8 that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding
9 “service payments” to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic*
10 *Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving a \$50,000 enhancement award). Plaintiff
11 contributed to the prosecution of this matter, including assistance prior to the mediations and substantial
12 time conferring with counsel over the course of this litigation and before filing. (Leviant Decl., ¶ 32;
13 Emerson Decl., ¶¶ 5-14.) The enhancement also recognizes the risks Plaintiff took on behalf of the Class
14 to be personally liable for all costs incurred regardless of the success of the litigation or class
15 certification, as well as the personal risk of facing intrusive discovery and potential disclosure to future
16 employers that Plaintiff sued a former employer. The accompanying Declaration of Plaintiff confirms
17 her involvement and supports appointment as Class Representative.

18 **6. The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate,**
19 **and Reasonable and Merits Preliminary Approval.**

20 The California Supreme Court removed any lingering doubt about the use of the percentage of
21 the fund method to award attorney’s fees in California Courts. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal.
22 5th 480, 503 (2016).⁵ Thus, this Court may and, pursuant to *Laffitte*, *should* award fees to Plaintiff’s
23

24
25 ⁴ Plaintiff is also releasing all of her individual claims in exchange for a general release payment of
26 \$10,000.00 to plaintiff. This payment is not for service to the class. Rather, it is consideration for a
release of all claims (predominantly FEHA claims) outside the scope of this settlement.

27 ⁵ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
28 doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method
inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport
to bar its usage generally in common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

1 counsel based upon the percentage of the fund methodology.

2 Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund method or the
3 lodestar method is used, the outcome is roughly the same: “[F]ee awards in class actions average around
4 one-third of the recovery’ regardless of ‘whether the percentage method or the lodestar method is used.’”
5 *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521 (2021). This is also consistent with
6 counsels’ experience in class cases. Here, Plaintiff’s attorneys intend to request attorneys’ fees of up to
7 \$150,000.00 (one-third of the MSS), and costs capped at \$35,000 (which includes payment for
8 mediation, filing fees, legal research fees, and other expenses). (Leviant Decl., ¶ 31.) Given the efforts
9 and risks involved, as well as the results achieved, these amounts are within the range of reasonableness.

10 **7. The Proposed Payment to the Administrator Is Fair and Reasonable**

11 In deciding whether to approve a proposed settlement, a trial court must determine if the
12 proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In
13 exercising this power, the overriding concern is to ensure that a proposed settlement is “fair, adequate,
14 and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Phoenix, which was
15 selected due to its competitive bid, estimates that administration can be performed for **\$7,000.00**.
16 (Phoenix Decl., Exh. B.) In Class Counsel’s experience, an estimated cost of **\$7,000.00** is a fair and
17 reasonable amount for administration fees and should be preliminarily approved. (Leviant Decl., ¶ 33.)

18 **8. The PAGA Allocation is Reasonable**

19 The ultimate decision as to the amount of penalties is always up to the discretion of the Court.
20 Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee seeking recovery of a civil
21 penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil
22 penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do
23 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

24 Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources
25 of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in
26 federal court decisions addressing that question. In their view, a PAGA allocation, even if a small
27 portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour
28 claims is robust and serves the deterrent purpose of the PAGA statute. *O’Connor v. Uber Technologies*,

1 *Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members
2 as employees and substantial monetary relief, a settlement not only vindicates the rights of class
3 members as employees, but may have a deterrent effect upon the defendant employer and other
4 employers, an objective of PAGA.”); *see also Visceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D.
5 Cal. 2016) (“Applying O’Connor’s sliding scale approach, settlement of the PAGA claim may be
6 substantially reduced below its standalone settlement value without sacrificing its statutory purposes
7 because the non PAGA settlement is relatively substantial.”) *Moniz* then provided explicit confirmation
8 that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement.
9 *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with the federal courts that have considered how to
10 evaluate a PAGA settlement, concluded that the class action factors are appropriately considered, along
11 with a consideration of whether the settlement furthers “PAGA’s purposes to remediate present labor law
12 violations, deter future ones, and to maximize enforcement of state labor laws.”

13 As to the first set of elements (the class-type analysis), it is embodied in Plaintiff’s discussion of
14 the adequacy of the settlement generally. Here, the expense, complexity and duration of future litigation
15 was to some extent unknown. However, what is certain is that to establish the foundational violations
16 that would support a substantial penalty award, tremendous time and expense would be invested.

17 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
18 PAGA’s purposes include (1) remediation of present labor law violations, (2) deterrence of future
19 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
20 portion of settlement funds to class members still advances the goal of labor law violation remediation.
21 The allocation of a major portion of settlement funds to class members also deters future violations. This
22 is a \$450,000 settlement, not a trivial sum. Deterrence is fulfilled. Finally, allocation of a major portion
23 of settlement funds to class members still advances the goal of enforcement of state labor law. This
24 settlement is, by definition, a response to alleged violations of state labor laws, balanced against risks.

25 In addition, there is no evidence that a court or a commissioner had informed Defendant that its
26 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
27 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013). And in *Cotter*, the court found a
28 significant reduction of the PAGA claim would be appropriate because “[t]his does not appear to be a

case where a company has deliberately sought to evade the law.” *Cotter*, 176 F. Supp. 3d at 941.

Finally, the PAGA allocation is fair. The LWDA is receiving \$33,000.00. The Class is receiving, net, an estimated \$199,000 for the releases of seven other theories of recovery (inclusive of the \$25,000.00 as the aggrieved employees’ share of the PAGA Allocation). While the proportion is tipped in favor of the Class Members, an allocation to the LWDA equal to about 17% of the Net Settlement Amount is not unfair and satisfies the policies underlying California’s wage and hour laws.

VI. THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING

The last step in the settlement approval process is the fairness hearing, where the Court makes a final determination about the propriety of settlement. Plaintiff requests that the fairness hearing in this case be scheduled for about 140 days after issuance of the Order granting preliminary approval. Under the Settlement, Defendant will have 30 days to provide the mailing data to the Settlement Administrator, which will then have 14 days to mail out class notice. Class Members have 60 days after mailing of the notice to submit exclusions or objections. Plaintiff proposes that the final approval hearing be scheduled for the first available date that is 140 days or later after preliminary approval is granted.

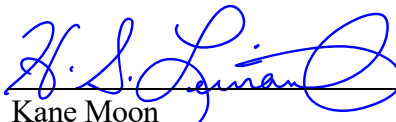
VII. CONCLUSION

For all the foregoing reasons, because the Class meets the requirements for certification, because the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant this Motion for Preliminary Approval, adopt the [Proposed] Order Granting Preliminary Approval of Class Action Settlement submitted herewith, and schedule a Final Fairness Hearing.

Respectfully submitted,

Dated: January 13, 2023

MOON & YANG, APC

By: 
Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending ☐ the original ☐ [or] ☒ a true copy thereof ☒ to interested parties as follows ☐ [or] ☐ as stated on the attached service list:

Jacqueline Beaumont
Anurita Varma
CALL & JENSEN
610 Newport Center Dr. Ste 700
Newport Beach, CA92660
jbeaumont@calljensen.com
avarma@calljensen.com

Counsel for Defendant Lereta, LLC

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

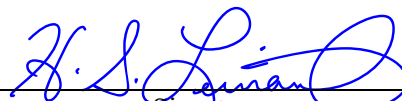
☐ **BY ELECTRONIC SERVICE:** Pursuant to the Court's Order directing Electronic Service, the above-named document(s) has (have) been electronically served on counsel of record by an approved electronic service provider. The transmission of these documents was reported complete and a copy of the service confirmation will be maintained, along with the original document(s) and proof of service in our office.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **January 13, 2023** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature