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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

RUFFO PASTOR DIAZ, JAIME TORRES,
and EDGAR GOMEZ,

Plaintiffs,

v.

DOS COYOTES DEVELOPMENT
COMPANY, LLC; DOS COYOTES
SUNRISE, INC.; DOS COYOTES
CONCORD, INC.; EAST BAY COYOTES,
INC.; COLTAM, INC., COLMAX LLC;
TRUMAX, LLC; COYOTE SUNSHINE,
LLC; COYOTE R15, INC.; ROBERT H.
DAVIDSON; JASON WOLENIK;
MICHAEL TOPF; and DOES 1 through 25,
inclusive,

Defendants.

Case No. CIVMSC20-01670

CLASS ACTION - COMPLEX

[ASSIGNED FOR ALL PURPOSES TO
THE HON. CHARLES TREAT]

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Date: August 29, 2024

Hearing Time: 9:00 a.m.

Dept.: 12

Action Filed: August 26, 2020

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This motion will be made and based upon: (1) this notice of motion; (2) the memorandum of points and authorities in support thereof; (3) the declaration of Arlo Garcia Uriarte and the exhibits attached thereto, all of which are filed and served concurrently herewith; as well as (4) the records, pleadings, and papers on file in this action, and upon such other matters as may be presented at the time of hearing on this motion.

and

Arlo Garcia Uriarte
Liberation Law Group, P.C.
Attorneys for Plaintiffs

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I. INTRODUCTION

Plaintiffs Ruffo Pastor Diaz, Jaime Torres, and Edgar Gomez (hereinafter “Plaintiffs”) respectfully request final approval of the \$875,000 class and representative action settlement¹ reached between them and Defendants East Bay Coyotes, Inc., Jason Wolenik, Michael Topf, Dos Coyotes Development Company, LLC, Dos Coyotes Sunrise, Inc., Dos Coyotes Concord, Inc., Coltam, Inc., Colmax, LLC, Trumax, LLC, and Robert Davidson (hereinafter “Defendants”) (collectively “the Parties”). Defendants own and operate² ten, fast-casual Mexican restaurants that do business as Dos Coyotes Border Café (hereinafter “DCBC”); nine of these restaurants are in the Sacramento area while one is in San Ramon, CA (See, <https://doscoyotes.com/all-locations>). Plaintiffs were formerly employed by one or more of the named Defendants as kitchen workers.

The settlement received the Court’s preliminary approval on May 3, 2024. In the Court’s Preliminary Approval Order, the following “Settlement Class” was provisionally certified for settlement purposes only: “all current and former hourly or non-exempt employees of Defendants who worked in the State of California from August 26, 2016, through June 5, 2023, who did not sign arbitration agreements” (the aforementioned time period shall be referred to as the “Class Period”). [See, Preliminary Approval Order p. 8, ¶ 6].

The Settlement Administrator (Simpluris, Inc.) mailed the Court-approved notice form to putative Settlement Class members (sometimes abbreviated “SCM”) on June 21, 2024. [Beliveau Dec.³ ¶ 8]. In total, notice was sent to 882 people via USPS first-class mail. [Id]. 190

¹ The Joint Stipulation of Class and PAGA Settlement (hereinafter “Agreement” or “AGMT”) contains the terms of the proposed settlement (hereinafter “Settlement”) and is attached as Exhibit “1” to the Declaration of Arlo Uriarte (hereinafter “Uriarte Dec.”), filed concurrently herewith.

² Plaintiffs do not mean to imply joint ownership or control. Not all entities are responsible for all of the restaurants.

³ “Beliveau Dec.” means the declaration of Jennifer Beliveau. Ms. Beliveau is employed as a Project Manager by Simpluris, Inc., and has been assigned to this case. [Beliveau Dec. ¶ 1]. Her declaration is attached as Exhibit “2” to Uriarte Dec.

1 forms were returned as undeliverable, but the Settlement Administrator successfully re-mailed
2 152 of those forms, leaving just 38 as undeliverable. [Beliveau Dec. ¶ 9].

3 The total putative SCM number is significantly less than originally contemplated at
4 mediation and for preliminary approval. Prior to mediation, Defendants estimated that there
5 were approximately 1,193 putative class members, and Plaintiffs accepted the proposed
6 settlement assuming in or around that number in terms of affected employees. [See, Plaintiffs’
7 Preliminary Approval Motion (hereinafter “PA Mot.”) 15:11-19]. However, the class data
8 provided by Defendants and analyzed by the Settlement Administrator revealed only 882
9 unique, putative SCM. [Beliveau Dec. ¶¶ 3-5]. The difference is likely due to the fact that a
10 significant number of putative SCM worked at multiple DCBC locations and were employed by
11 multiple defendants who are not directly related, leading some individuals to be double
12 counted. [Uriarte Dec. ¶ 2]. Plaintiffs submit that the reduced number means a more favorable
13 settlement because the projected individual recovery increases from \$421.51 per person on
14 average, as projected for preliminary approval, to \$552.31 per person on average. [Beliveau
15 Dec. ¶ 16].

16 Additionally, employee reaction to the settlement has been very positive – there are no
17 objections and only two people have requested exclusion. [Beliveau Dec. ¶¶ 13-14]. Trial
18 courts find settlement terms to be presumptively fair when there are no objections or very few
19 objections. *See, Carter v. City of L.A.* (2014) 224 Cal. App. 4th 808, 822 *citing Dunk v. Ford*
20 *Motor Co.* (1996) 48 Cal. App. 4th 1794, 1802; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
21 Cal.App.4th 116, 133.

22 Lastly, Defendants have agreed to fund the settlement in exchange for a limited release
23 from SCM and a general release from each plaintiff. Plaintiffs describe the Class Member
24 release as limited because it only reaches the claims “...that were alleged in the Action and that
25 reasonably could have been alleged in the Action based on the allegations asserted in the Action
26 and any amendments thereto,” [AGMT ¶ E(3)]. With all of the above in mind, Plaintiffs and
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28

1 Class Counsel⁴ respectfully submit that SCM are best served by the instantly proposed
2 settlement rather than by further litigation and the ensuing substantial risks.

3 **II. CASE BACKGROUND**

4 Plaintiffs initiated this lawsuit on August 26, 2020. Plaintiffs' Third Amended
5 Complaint, the operative complaint at hand, lists the following causes of action: (1) failure to
6 pay all hours worked; (2) failure to pay overtime compensation; (3) failure to pay compensation
7 for meal period violations; (4) failure to pay compensation for rest break violations; (5) wage
8 statement violations; (6) waiting time penalties; (7) civil penalties pursuant to the Private
9 Attorneys General Act (Labor Code §§2698, et seq.); and (8) Unfair Competition in Violation
10 of Cal. Business and Professions Code §§17200, et seq. Causes of action five through eight are
11 derivative of causes of action one through four. Causes of action one through four are based on
12 the following central allegations: (1) Defendants misclassified certain employees like Ruffo
13 Pastor Diaz (his position was "Kitchen Manager" or "Assistant Manager") as exempt, salaried
14 employees when they should have been classified as non-exempt, hourly employees and paid
15 overtime compensation for overtime hours worked; (2) Defendants frequently failed to provide
16 adequate meal periods and regularly failed to provide adequate rest periods to Plaintiffs and
17 putative class members; moreover, Plaintiffs and putative class members were often required to
18 work during unpaid meal period times, in turn they are allegedly owed hourly wages for this
19 unpaid work (at overtime rates where applicable).

20 The Parties agreed to mediate this matter in November of 2022. [Uriarte Dec. ¶ 6].
21 Formal discovery was placed on hold thereafter, and the Parties agreed to exchange additional,
22 key information prior to mediation to facilitate the process. *Id.* Defendants agreed to provide all
23 relevant written, wage and hour policies, data points (*e.g.*, total number of putative class
24 members, total workweeks, average pay rate, etc.), and a 10 percent sample of timekeeping and
25 payroll records for the putative class. *Id.*

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27
28 ⁴ "Class Counsel" refers to Arlo Garcia Uriarte of Liberation Law Group, P.C., as appointed by
the Court in its order granting Preliminary Approval.

1 The Parties agreed to this proposed Settlement with the assistance of an experienced and
2 well-regarded class/representative action mediator, Steve Serratore. [Uriarte Dec. ¶ 7]. The
3 Parties attended a full-day’s mediation session with Mr. Serratore on April 6, 2023, but a
4 resolution was not possible then. *Id.* However, Mr. Serratore issued a mediator’s proposal that
5 the Parties eventually accepted after some additional, mediator-aided negotiation. *Id.*

6 A memorandum of understanding was fully executed by the Parties in May 2023. *Id.*
7 After, the Parties drafted and finalized a long-form settlement agreement, which was fully
8 executed in October 2023. [See, Agreement pages 21-23]. Preliminary approval was granted on
9 May 3, 2024. Notice forms were mailed on June 21, 2024, and the notice period expired on
10 August 5, 2024. [Beliveau Dec. ¶¶ 8, 12]. Now, Plaintiffs seek final approval of the settlement
11 and approval of their requested settlement deductions through the accompanying motion,
12 submitted concurrently herewith.

13 **III. OVERVIEW OF THE SETTLEMENT AGREEMENT**

14 The Parties have reached an agreement here for \$875,000 in gross settlement funds. From
15 that total, Plaintiffs request the following deductions: (1) attorney’s fees for Class Counsel
16 equaling \$291,637.50 (33.33% of the gross settlement amount); (2) \$15,590.28 in accrued
17 litigation costs for Class Counsel; (3) \$18,000 in settlement administration fees for Simpluris,
18 Inc.; (4) representative enhancement awards to Plaintiffs equaling \$5,000 each (\$15,000 total);
19 and (5) a \$40,000 PAGA allocation (\$30,000 of this allocation must go to the LWDA, per Cal.
20 Lab. Code § 2699(i), while the remainder is for Class Members who worked during the PAGA
21 Period). Plaintiffs provided notice of the settlement to the LWDA on December 22, 2023. [See,
22 Supplemental Declaration of Arlo Uriarte ISO Preliminary Approval, filed 03/01/24].
23 Defendants must pay any applicable employer-side payroll withholding taxes separate and apart
24 from the gross settlement amount. [AGMT ¶ C(1)].

25 All remaining funds are to be distributed *pro rata*⁵ to participating Class Members –
26 claims are not necessary. [AGMT ¶¶ A(18) and C(1)]. Class Member distributions will account
27

28 ⁵ The Agreement details the individual payment calculation method and formula. “Individual
Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of

1 for both an individual settlement payment and a PAGA payment where applicable. [AGMT ¶
2 G(5)(a)]. Those who opted out of the settlement will still receive a PAGA payment if they
3 worked during the PAGA Period. [AGMT ¶ G(5)(d)] For tax purposes, 10% of individual
4 settlement payments will be allocated to wages, and the required tax withholding will be made
5 by the Settlement Administrator for this portion. [AGMT ¶ C(3)(d)(i)]. The remainder will be
6 allocated to penalties and interest. *Id.* The Settlement Administrator shall issue any necessary
7 Form W-2 and 1099 statements to Class Members for their respective individual settlement
8 payments. *Id.*

9 Participating Class Members will automatically receive checks within seventy-five days
10 of the Agreement’s Effective Date⁶. [AGMT ¶ D(3)]. Defendants “shall fully fund the Gross
11 Settlement Amount, and also fund the amounts necessary to fully pay Defendants’ share of
12 payroll taxes... by transmitting the funds to the Administrator no later than 60 days after the
13 Effective Date.” [AGMT ¶ D(2)].

14 More than likely, some individual checks will not be negotiated by certain Class
15 Members for reasons outside of the Parties’ control. Accordingly, Plaintiffs’ counsel
16 recommended, and the Parties have selected, La Raza Centro Legal (hereinafter “LRCL”) as the
17 *cy pres* recipient to receive any unnegotiated funds after the check expiration period expires.
18 [Uriarte Dec. ¶ 13; AGMT ¶ D(3)(c)]. It is LRCL’s “...mission is to provide high quality, free
19 legal representation to the Latino community and other low-income immigrant families, as the
20 most trusted partner in legal services.” [https://www.lrcl.org/mission-vision-values]. Neither
21 Plaintiffs’ counsel nor his firm are directly affiliated with LRCL; they have no financial
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23
24 Workweeks worked by all Participating Class Members during the Class Period and (b)
25 multiplying the result by each Participating Class Member's Workweeks.” [AGMT ¶ C(3)(d)].

26 “The individual settlement awards for the class claims will be determined by dividing the Net
27 Settlement Amount by the total number of pay periods for the Class Members, resulting in the
28 Pay Period Value, and then multiplying the Pay Period Value by the number of pay period
worked by each Class Member.” [AGMT ¶ E(5)(b)].

⁶ The “Effective Date” definition is found in paragraph A(16) of the Agreement.

1 investment in the non-profit nor do they have any say-so as to its management. [Uriarte Dec. ¶
2 14].

3 The NSF will be \$504,772.72 if the Court approves all requested deductions; this would
4 allow individuals to recover approximately \$552.31 each on average. [Beliveau Dec. ¶¶ 15-16].
5 The highest estimated individual payment is \$3,629.31 while the lowest is \$10.14. [Beliveau
6 Dec. ¶ 16]. Plaintiffs maintain that this settlement represents a meaningful and important
7 recovery for hardworking, hourly employees. Plus, their participation in this settlement would
8 only require them to release the wage and hour claims brought by Plaintiffs or those directly
9 related thereto. [AGMT ¶ E(3)]. Plaintiffs and their counsel are confident that the settlement is
10 fair, reasonable, and adequate. [Uriarte Dec. ¶ 12].

11 **IV. FINAL SETTLEMENT APPROVAL IS APPROPRIATE**

12 **A. Class Action Settlements Are Favored; Applying Analogous Federal Law in** 13 **State Court is Appropriate**

14 Numerous courts have agreed that especially for class action litigation, “voluntary
15 conciliation and settlement are the preferred means of dispute resolution.” *7-Eleven Owners for*
16 *Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1151, *quoting Officers for*
17 *Justice v. Service Comm’n of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615,
18 625. *See also, Pilkington v. Cardinal Health, Inc., (In re Syncor ERISA Litig.)* (9th Cir. 2008)
19 516 F.3d 1095, 1101; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950 (“there
20 is an overriding public interest in settling and quieting litigation,” and this is “particularly true
21 in class action suits.”).

22 California courts commonly look to Federal Rule of Civil Procedure (“FRCP”) 23
23 jurisprudence for guidance when adjudicating class action litigation under CCP § 382 and
24 California Rule of Court (“CRC”) 3.769. *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821;
25 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01. *See also, Bell v. Farmers Ins.*
26 *Exchange* (2004) 115 Cal.App.4th 715, 740, *citing City of San Jose v. Superior Court* (1974) 12
27 Cal.3d 447, 453 (“the California Supreme Court has urged trial courts to be procedurally
28 innovative in determining whether to allow class suits, encouraging them to incorporate

procedures from outside sources in particular Rule 23 of the Federal Rules of Civil Procedure”) (internal quotations omitted).

B. Class Action Settlements Should Be Fair, Reasonable, and Adequate

“A settlement or compromise of an entire class action...requires the approval of the court after hearing.” [California Rule of Court, rule 3.769]. Specifically, “a two-step process is required. First, the court preliminarily approves the settlement, and the class members are notified as directed by the court...Second, the court conducts a final approval hearing to inquire into the fairness of the proposed settlement...If the court approves the settlement, a judgment is entered with provision for continued jurisdiction for the enforcement of the judgment.” *Cellphone Termination Fee Cases* (2009) 180 Cal. App. 4th 1110, 1118, quoting California Rule of Court, rule 3.769.

While trial courts have “broad discretion” to determine whether class action settlements are fair, the inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal. App. 4th 734, 742-743, quoting *Officers for Justice*, 688 F.2d at 624. See also, *Dunk v. Ford Motor Company* (1996) 48 Cal. App. 4th 1794, 1801 (whether a proposed settlement is “fair, adequate, and reasonable” is the paramount concern). Indeed, due regard should be given to what is otherwise a private consensual agreement. *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. Because all together, “the [trial] court’s determination is nothing more than ‘an amalgam of delicate balancing, gross approximations and rough justice.’” *Dunk*, supra at 1801, quoting *Officers for Justice*, 688 F.2d at 624. See also, *Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 246 (“The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.”).

C. All Relevant Factors Weigh in Favor of Final Approval

The following “well-recognized factors” are typically considered when evaluating the reasonableness of a proposed settlement. This list “is not exhaustive and should be tailored to

each case”: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, citing *Dunk* 48 Cal.App.4th at 1801; Newberg on Class Actions, §§ 11:41, 11:43, 13:68 (4th ed. 2002).

Plaintiffs briefed the relevant *Kullar* factors when they moved for preliminary approval. Since then, nothing has occurred to cast doubt on the Court’s positive determination. In fact, the notice process has been completed successfully, showing a very positive employee reaction (no objections and only two requests for exclusion). A presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel are experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk, supra* at 1802.

1. The Parties Reached the Proposed Settlement Aided by an Experienced Mediator

The Parties reached the instant settlement with the careful assistance of a highly experienced class/representative action mediator, Steven Serratore. [Uriarte Dec. ¶ 7]. The Parties attended a full-day’s mediation session with Mr. Serratore on April 6, 2023, but it was initially unsuccessful despite a mediator’s proposal. [*Id.*]. It took further negotiations to arrive at a memorandum of understanding in May 2023 [*Id.*]. The Agreement was later fully executed in October 2023. The adversarial, arms-length manner in which the deal was reached tends to show that the settlement is fair, reasonable, and adequate.

2. The Strengths and Weaknesses of Plaintiffs’ Claims Have Been Carefully Considered

a. Misclassification Claim

As explained to attain preliminary approval, Plaintiffs’ misclassification claim has two important strengths: (1) the alleged facts seem to clearly show misclassification for employees

1 like Ruffo Pastor Diaz who worked as a Kitchen Manager or Assistant manager; and (2) the
2 DCDC Defendants' Employee Handbook states Kitchen Managers or Assistant Managers
3 should be non-exempt positions.

4 Plaintiffs are confident that employees like Plaintiff Diaz did not regularly exercise
5 independent judgment and discretion, which is required for Defendants to establish the
6 exemption. *See, e.g., Mies v. Sephora U.S.A., Inc.* (2015) 234 Cal. App. 4th 967, 983. Instead,
7 Plaintiffs maintain he was primarily engaged in non-exempt duties (well over fifty percent of
8 his working time) chiefly consisting of line cooking and prep cooking. Moreover, his assigned
9 tasks were routine and pre-programmed by Defendants. Generally speaking, Mr. Diaz had no
10 say-so and did not provide any input regarding key aspects of Defendants' business, including,
11 but not limited to, restaurant operating hours, menu design, and the preparation method for
12 menu items. He did not have authority to hire or fire. He did not prepare employee performance
13 reports. He had nothing to do with determining employee rates of pay, the kitchen inventory
14 budget, staffing levels, or profit margins.

15 Conversely, while Plaintiffs' allegations are strong regarding Mr. Diaz, this is a putative
16 class action and establishing group liability will be a significant challenge. Section 382 of the
17 Code of Civil Procedure requires putative class members to share a question of common or
18 general interest...*Washington Mutual Bank v. Superior Court* 24 Cal.4th 906, 913 (2001). A
19 well-defined "community of interest" must be established, and to do so, the proponent of
20 certification must show "that questions of law or fact common to the class predominate over the
21 questions affecting the individual members." *Id.* Plaintiffs must also propose an adequate trial
22 plan to achieve and defend class certification. *See, Duran, supra*, 59 Cal. 4th 1, 27 ("...trial
23 courts deciding whether to certify a class must consider not just whether common questions
24 exist, but also whether it will be feasible to try the case as a class action).

25 As such, Plaintiffs must show that similar employees share common issues with Plaintiff
26 Diaz and that any individual differences can be effectively managed via an acceptable trial plan.
27 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 334. This tends to be a
28 significant hurdle for misclassification cases. Defendants have argued that the tasks and

responsibilities raised by Mr. Diaz vary across the employee group and that their duties and responsibilities must be individually analyzed to determine whether they require independent judgment and discretion. *See, e.g., Mies* at 983 (affirming a denial of class certification because “the trial court weighed the foreseeable common and individual issues, and reasonably concluded the Specialists' proper classification would likely hinge on individualized proof”). Defendants’ position could lead the Court to conclude that the misclassification claim is not appropriate for class action treatment despite the strength of Plaintiff Diaz’s individual claim.

b. Meal and Rest Period Claims plus Unpaid Wages Associated with Meal Period Violations

Plaintiffs highlighted the difficult nature of their remaining class claims when they made their preliminary approval motion. Unfortunately, the break claims, including unpaid wages tied to meal period violations, are very challenging due to the nature of an employer’s burden in this context. The California Supreme Court indicated that “[a]n employer's duty with respect to meal [and rest] breaks is an obligation to **provide** [break opportunities] to its employees,” not to ensure that meal and rest periods were taken. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1040 (emphasis added). In other words, employers do not have an obligation to “police” breaks. If an employer merely has to present an opportunity, then it is not as simple as determining whether employees went on break or not; the reasons why breaks were unavailable becomes a key consideration.

At hand, there are ten distinct restaurant locations owned and operated by ten different Defendants, not in a joint fashion, who employ separate sets of supervisors and managers. In turn, the odds of individual variability are quite high in Plaintiffs’ estimation. It may not be possible to manage these individual issues effectively. A single restaurant scenario, on the other hand, would greatly lessen the aforementioned risk.

Moreover, Plaintiffs theory regarding break violations is directly tied to the volume of business and alleged understaffing preventing break opportunities. There is no direct challenge to a written policy but rather to on-the-ground practices and procedures. It is more difficult to achieve certification of claims that challenge allegedly flawed employment **practices** as opposed

1 to unlawful written **policy**. See, e.g., *Payton v. CSI Electrical Contractors, Inc.* (2018) 27 Cal.
2 App. 5th 832, 840, citing *Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 29 (“In the
3 context of a wage and hour case ‘where a party seeks class certification based on allegations
4 that the employer consistently imposed a uniform policy or de facto practice on class members,
5 the party must still demonstrate that the illegal effects of this conduct can be proven efficiently
6 and manageably within a class setting.’”); *Mateo v. V.F. Corp.*, No. C 08-05313 CW, 2009 U.S.
7 Dist. LEXIS 105921, at *18-19 n.2 (N.D. Cal. Oct. 27, 2009) [collecting cases] (“Several
8 district courts have denied class certification in cases in which plaintiff employees claimed that
9 defendant employers had an unwritten practice requiring employees to work during meal and
10 rest breaks. In these cases, the courts found that individual issues predominated because liability
11 could not be established without having individual trials for each class member to determine
12 why each class member did not clock out for a full thirty-minute meal break on any particular
13 day.’ *Salazar v. Avis Budget Group, Inc.*, 251 F.R.D. 529, 534 (S.D. Cal. 2008); *Kenny v.*
14 *Supercuts, Inc.*, 252 F.R.D. 641, 646 (N.D. Cal. 2008); *Brown v. Fed. Express Corp.*, 249
15 F.R.D. 580, 586-87 (C.D. Cal. 2008); *Blackwell v. SkyWest Airlines, Inc.*, 245 F.R.D. 453, 467
16 (S.D. Cal. 2007); *Lanzarone v. Guardsmark Holdings, Inc.*, 2006 U.S. Dist. LEXIS 95785, 11-
17 13 (C.D. Cal.); *Wren v. RGIS Inventory Specialists*, 256 F.R.D. 180, 208-09 (N.D. Cal 2009).”)

18 Another weakness, from a damages perspective, is related to the staggering effects of the
19 COVID-19 pandemic. A large portion of the Class Period overlaps with the pandemic, a time
20 where many businesses struggled to stay afloat due to significant decreases in demand – this
21 issue dramatically affected California restaurants in particular. If the matter were to proceed
22 through litigation, Defendants would argue that their restaurants were run by a much smaller
23 crew during the pandemic, business was generally down, and Plaintiffs’ allegations, which are
24 largely based on the idea that Defendants’ operations were routinely quite busy and
25 understaffed, likely do not apply to a significant period of time. Plaintiffs’ damages model can
26 be seen as exaggerated when considering this reality.

27 **3. Significant Investigation and Evaluation Supports the**
28 **Recommendation of the Settlement**

1 The proposed settlement was agreed to after some pre-certification discovery, a pre-
2 mediation information exchange (to help bridge the gap from discovery to mediation),
3 mediation that included a mediator's proposal, and further negotiations through the mediator.
4 [Uriarte Dec. ¶ 8]. Prior to mediation, Plaintiffs received sufficient information to adequately
5 prepare their strategy and negotiating position. This included, but was not limited to: (1) all
6 relevant wage and hour policies; (2) data points regarding the putative class; and (3) a sample of
7 timekeeping and payroll records that Plaintiffs analyzed for wage and hour compliance. [Uriarte
8 Dec. ¶ 9]. The pay and time records produced, along with the key data points provided, allowed
9 Plaintiffs to build a detailed damages model which was previously shared with the Court and
10 weighed against their best-scenario recovery [See, Plaintiffs' Preliminary Approval Motion
11 16:3-18:9].

12 Plaintiffs are still confident in their evaluation of damages. The only change that has
13 occurred is that the Settlement Class, 880 Class Members, is considerably smaller than the
14 originally estimated 1,193 people. This difference increases the average employee recovery
15 significantly from approximately \$421.51 to \$552.31. [Beliveau Dec. ¶ 16]. Plaintiffs submit
16 that they thoroughly investigated the action, patiently weighed the pros and cons of a potential
17 deal numerous times, and held out for as much money as they believed was possible without
18 risking a denial of class certification. [Uriarte Dec. ¶ 11]. Had Plaintiffs attempted to certify the
19 class and been denied, their putative case would be worth zero dollars. In light of the foregoing,
20 Plaintiffs and Class Counsel are confident that the settlement is fair, reasonable, and adequate
21 and in the best interests of the Settlement Class. [Uriarte Dec. ¶ 12].

22 **4. Class Counsel is Experienced and Endorses the Settlement**

23 Class Counsel submits that given the constraints and realities of the case and his
24 significant class action experience, the Parties have been able to arrive at a settlement that is
25 fair, reasonable, adequate, and in the best interests of SCM. [Uriarte Dec. ¶¶ 12, 17]. Generally,
26 courts should rely upon the judgment of experienced counsel when assessing the adequacy of
27 proposed class action settlements. *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal. App. 4th
28 785, 786 ("A court should give considerable weight to the competency and integrity of counsel

1 and the involvement of a neutral mediator in assuring itself that a class action settlement
2 agreement represents an arm's-length transaction entered without self-dealing or other potential
3 misconduct.”); *Weinberber v. Kendrick* (2d Cir. 1982) 698 F.2d 61, 74 (“The court is entitled to
4 rely heavily on the assessment of able counsel negotiating at arms' length...When a settlement
5 is achieved through arms-length negotiations between experienced counsel, the court should be
6 hesitant to substitute its own judgment for that of counsel absent a showing of fraud, collusion
7 or other forms of bad faith.”). *See also, Rodriguez v. W. Publ'g Corp.* (9th Cir. 2009) 563 F.3d
8 948, 965 (courts have long deferred to the judgment of counsel when approving class
9 settlements so long as they are experienced and well-informed).

10 Class Counsel has considerable class action experience, specifically regarding actions
11 involving the application of California’s wage and hour laws. [Uriarte Dec. ¶ 17]. Class
12 Counsel’s experience renders him qualified to evaluate the class claims and defenses at hand.
13 Counsel is confident that the proposed settlement meets all applicable requirements of
14 California law, and given the unique circumstances present, it is in the best interests of the
15 Settlement Class. [Uriarte Dec. ¶ 12].

16 **5. Class Member Reaction Has Been Very Positive**

17 The reaction of the Settlement Class clearly supports final approval. No one has
18 objected, and just two people have requested exclusion. [Beliveau Dec. ¶¶ 13-14]. Numerous
19 courts have found settlement terms to be presumably fair when there is an absence or even a
20 low percentage of objectors. *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 820,
21 *citing Dunk, supra*, 48 Cal.App.4th at p. 1802. *See also, Custom LED, LLC v. eBay, Inc.* (N.D.
22 Cal. June 24, 2014) 2014 U.S. Dist. LEXIS 87180, *16; *Jones v. Agilysys, Inc.* (N.D. Cal. May
23 19, 2014) 2014 U.S. Dist. LEXIS 68562, *6-7; *Rosales v. El Rancho Farms* (E.D. Cal. July 21,
24 2015), *43 (absence of objections raises a strong presumption that the terms of a proposed
25 settlement are favorable to the class members).

26 Additionally, Class Counsel has been in communication with certain SCM who have
27 asked questions about the notice form or settlement [Uriarte Dec. ¶ 10]. Class Counsel has
28

endeavored to provide the right guidance to these SCM whenever possible. *Id.* Plaintiffs submit that these efforts have been important in ameliorating objections or requests for exclusion.

D. The Recommended PAGA Resolution is Appropriate

Plaintiffs previously provided support for their \$40,000 PAGA allocation request during preliminary approval. In summation, it is appropriate and sufficient because the settlement as a whole, not just the allocation, helps achieve PAGA's chief objective, which is to advance the state's policy of vigorously enforcing minimum labor standards. Cal. Lab. Code § 90.5. Plaintiffs' efforts here deter Defendants from committing future wage and hour violations by requiring them to pay a significant gross settlement amount. Additionally, employees who have suffered the alleged wage and hour violations will recover a meaningful sum of money on average as recompense. The foregoing represents a win for the enforcement of minimum labor standards in this locality.

Regarding the amount of the allocation specifically, our district's Appellate Court shed further light on the PAGA settlement approval standard: "[w]e therefore hold that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77, 287 Cal. Rptr. 3d 107, 127 (2021). Furthermore, the *Moniz* court found the "abuse of discretion" standard appropriate when reviewing trial court PAGA settlement approval decisions. *Id.* This means trial courts have wide discretion to determine what is "fair, reasonable, and adequate in view of PAGA's purposes" because "abuse of discretion" means "a decision that exceeds the bounds of reason...or one that is arbitrary, capricious, patently absurd, or even whimsical." *Artus v. Gramercy Towers Condo. Ass'n, No. A161265*, 2022 WL 949799, at *4 (Cal. Ct. App. Mar. 30, 2022) (internal quotations omitted).

Here, we have a class settlement with a PAGA allocation. PAGA does not impose specific requirements for monetary allocation. Instead, the general principle is provided that trial courts have the power to review and approve a proposed PAGA allocation that is part of a class action settlement. Cal. Lab. Code § 2699(l). Often, courts approve PAGA allocations that

1 are a small fraction of the total settlement amount. For example, *Viceral v. Mistras Grp., Inc.*
2 involved \$6,000,000 settlement and the court approved just a \$20,000 PAGA allocation. *Viceral*
3 *v. Mistras Grp., Inc.*, 2016 WL5907869, at *8-9 (N.D. Cal. 2016). Moreover, a California state
4 appellate court held that a “trial court did not abuse its discretion in approving a settlement
5 which does not allocate any damages to the PAGA claims.” *Nordstrom Corn. Cases*, 186 Cal.
6 App. 4th 576, 579 (2010).

7 Similar allocations or less (relative to the settlement total) have been commonly
8 approved in numerous previous cases. See e.g., *Roe v. Jose Torres L.D. Latin Club Bar, Inc.*,
9 No. 19-CV-06088-LB, 2020 WL 5074392, at *2–3 (N.D. Cal. Aug. 27, 2020) (\$2,000 PAGA
10 allocation was approved in connection with a \$135,000 class settlement by this Court); *Lowe v.*
11 *Popcornopolis LLC*, No. CV196984PSGRAOX, 2020 WL 5991509, at *9 (C.D. Cal. July 8,
12 2020) (the court found a \$20,000 PAGA allocation in connection with a \$500,000 class
13 settlement reasonable); *Foster v. Advantage Sales & Mktg., LLC.*, No. 18-CV-07205-LB, 2019
14 WL 6699793, at *6 (N.D. Cal. Dec. 9, 2019) (this Court preliminarily approved a \$10,000
15 PAGA allocation in connection with a \$1,200,000 settlement); *Moore v. Fitness Int'l, LLC*, No.
16 3:12-CV-1551-LAB-NLS, 2014 WL 12571448, at *5 (S.D. Cal. Jan. 22, 2014) (\$2,500 PAGA
17 allocation was approved in connection with a \$200,000 class settlement); *Franco v. Ruiz Food*
18 *Prods.*, 2012 U.S. Dist. LEXIS 169057, *41-42 (E.D. Cal. 2012) (approving a \$2.5 million
19 settlement with only a \$10,000 PAGA allocation); *Chu v. Wells Fargo Investments, LLC*, 2011
20 U.S. Dist. LEXIS 15821, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving an allocation of
21 \$10,000 to settle PAGA claims out of a \$6.9 million common-fund settlement). Accordingly,
22 the Court should have no hesitation approving the proposed PAGA allocation.

23 **E. The Court Approved Notice Plan Has Been Executed Satisfactorily**
24 **Satisfying Due Process Standards**

25 Courts have broad discretion when ordering a notice plan as long as it meets the dictates
26 of the California Rules of Court. CRC 3.769(f) (“If the court has certified the action as a class
27 action, notice of the final approval hearing must be given to the class members in the manner
28 specified by the court. The notice must contain an explanation of the proposed settlement and

1 procedures for class members to follow in filing written objections to it and in arranging to
2 appear at the settlement hearing and state any objections to the proposed settlement.”).

3 Class notice procedures “must fairly apprise the class members of the terms of
4 compromise and the options open to dissenting class members.” *Trotsky v. Los Angeles Fed.*
5 *Sav. & Loan Assoc.*, (1975) 48 Cal. App. 3d 134, 151-52. Class notice should strike a balance
6 between thoroughness and the need to avoid unduly complicating its content. *Wershba, supra*
7 91 Cal. App. 4th at 252. Generally, “notice is satisfactory if it...describes the terms of the
8 settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come
9 forward and be heard.” *Churchill Village, LLC v. General Electric* (9th Cir. 2004) 361 F.3d
10 566, 575 (internal quotations omitted).

11 Here, the Court approved notice procedures have met all the aforementioned
12 requirements. As previously determined by the Court during preliminary approval, the relevant
13 form contains all required information. Moreover, SCM had sufficient time to decide whether to
14 opt-out or object to the settlement, specifically forty-five days. The notice process commenced
15 on June 21, 2024, and concluded on August 5, 2024. [Beliveau Dec. ¶¶ 8, 12].

16 **F. The Court Should Confirm its Certification of the Class**

17 California Rule of Court, rule 3.769(d) provides: “[t]he court may make an order
18 approving...certification of a provisional settlement class after the preliminary settlement
19 hearing.” For the instant action, the Court provisionally certified the Settlement Class in its
20 Preliminary Approval order on May 3, 2024. No subsequent event has occurred to disrupt the
21 soundness of that initial determination. As such, Plaintiffs ask the Court to confirm its grant of
22 class certification for settlement purposes only.

23 **V. CONCLUSION**

24 For the reasons set forth above, and pursuant to Cal. Code Civ. P. § 382, Plaintiffs
25 respectfully request the Court grant final approval of the proposed settlement and enter a final
26 judgment intended to be a final disposition of this matter in its entirety. In addition, to satisfy
27 the dictates of California Rules of Court, Rule 3.771(b), the Settlement Class shall receive
28 notice of the final judgment issued in this action because the Settlement Administrator will

1 place a copy for their review on the Settlement website.

3 Dated: August 7, 2024



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