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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

RICARDO ALEXANDER OCAMPO,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

NOR-CAL BEVERAGE CO, INC., a
California corporation with its principal
place of business in California, and
DOES 1 to 100, inclusive,

Defendant.

CASE NO. 30-2021-01226173-CU-OE-CXC
Complaint Filed: 10/13/2021

CLASS ACTION

**NOTICE OF MOTION AND MOTION
FOR ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Judge: Honorable Randall J. Sherman

Hearing Date: May 5, 2023

Time: 10:00 a.m.

Department: CX105

Reservation Number: 73940205

1 **NOTICE IS HEREBY GIVEN** that, on May 5, 2023, at 10:00 a.m., or as soon thereafter as the
2 matter may be heard, in Department CX105 of the Superior Court of California, County of Orange
3 before the Honorable Randall J. Sherman, pursuant to Cal. Code of Civ. Pro. § 382, Plaintiff Ricardo
4 Alexander Ocampo (“Plaintiff”) individually and on behalf of all others similarly situated, will and do
5 hereby move this Court for entry of an Order:

- 6 1. Preliminarily certifying the Settlement Class for purposes of Settlement;
- 7 2. Preliminarily appointing Plaintiff Ricardo Alexander Ocampo as Class Representative
8 for purposes of settlement;
- 9 3. Preliminarily appointing James M. Treglio of Potter Handy LLP as Class Counsel for
10 purposes of settlement;
- 11 4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the
12 terms set forth in the Settlement Agreement, including payment by Nor-Cal Beverage Co., Inc,
13 (“Defendant”) of the Gross Settlement Amount (“GSA”) of \$390,000.00, for a class of approximately
14 140¹ remaining current and former employees of Defendant in California. This settlement, of \$390,000,
15 is made in addition to payments made to the class members in individual settlements totaling over
16 \$1,360,000, for a combined total value of \$1,750,000;
- 17 5. Preliminarily approving a Class Representative Enhancement Payment of \$10,000.00 for
18 the named Plaintiff from the GSA in recognition of his service to the Settlement Class;
- 19 6. Preliminarily approving Plaintiffs’ Counsel’s request as attorneys’ fees (i.e., up to
20 \$130,000.00), plus reimbursement of actual litigation costs up to \$20,000.00;
- 21 7. Preliminary approving a payment of PAGA penalties of \$60,000.00, including payment
22 to the Labor and Workforce Development Agency for its share of penalties pursuant to PAGA in an
23 amount of \$45,000.00;
- 24 8. Appointing Rust Consulting as the third-party Claims Administrator for mailing notices
25 and for settlement administration, and approving that \$13,000.00 be deducted from the GSA for the
26 costs of claims administration; and

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¹ 140 aggrieved employees is the remainder of the 89% of the 1,270 current and former employees who settled their claims individually.

1 9. Approving the proposed Notice of Class Action Settlement (“Class Notice”) and Claim
2 Form and ordering they be disseminated to the Settlement Class as provided in the Settlement
3 Agreement.

4 This Motion is based upon the supporting Memorandum of Points and Authorities, the
5 Declarations of James M. Treglio and the attached Exhibits, the Settlement Agreement, the Class
6 Notice, and the other papers and exhibits filed herewith.

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8 Dated: January 30, 2023

Respectfully submitted,
POTTER HANDY LLP

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10
11 /s/ James M. Treglio
12 By: _____
13 James M. Treglio, Esq.
14 Attorney for Plaintiffs and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Motion seeks preliminary approval of a wage-and-hour class action settlement between
4 Plaintiff Ricardo Alexander Ocampo (“Plaintiff”) and Defendant Nor-Cal Beverage Co., Inc.
5 (“Defendant”) for approximately 1,270 current and former hourly-paid, nonexempt employees employed
6 by Defendant in California from July 21, 2020, to the date of Preliminary Approval which Plaintiff seeks
7 to represent a Class. Among other things, Plaintiff alleged that he and the Class were not provided duty-
8 free meal and rest breaks and were not paid on time during the course of their employment. This
9 settlement, of \$390,000, is made in addition to payments made to the class members in individual
10 settlements totaling over \$1,360,000, for a combined total value of \$1,750,000.

11 Because the settlement is fair and reasonable, was negotiated at arm’s length between counsel
12 following extensive informal and formal discovery, and was reached after attendance at a full-day
13 mediation and continued negotiations over several months, it should be preliminarily approved. Subject
14 to court approval, the Net Settlement Amount to Class Members will be distributed to Class Members
15 who submit timely Claim Forms, as follows:

16

Gross Settlement Amount	\$390,000.00
Attorneys’ Fees	(\$130,000.00)
Litigation Costs	(\$20,000.00)
Claims Administration Costs	(\$13,000.00)
Class Representative Enhancement Payment	(\$10,000.00)
PAGA payment to the LWDA	(\$45,000.00)
PAGA payment to PAGA Members	(\$15,000.00)

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21 Through this motion, Plaintiffs request that the Court enter an order: (1) conditionally certifying
22 the Settlement Class under Cal. Code of Civil Procedure § 382 and California Rule of Court 3.769(c) for
23 settlement purposes only and preliminarily approving the settlement; (2) approving the proposed Class
24 Notice to be distributed to Class Members pursuant to the Settlement Agreement²; (3) appointing Rust
25 Consulting as the Administrator; and (4) scheduling a hearing for final approval.

26 The settlement fairly takes into account the significant risks associated with pursuing this
27

28 ² The Notice of Pendency of Class Action and Proposed Settlement and Notice of Settlement Payment are attached to the Settlement Agreement as Exhibits B and C, respectively. (See, Declaration of James M. Treglio in Support of Plaintiffs’ Motion for Order Granting Preliminary Approval of Class Action Settlement (“Treglio Decl.”), Exhibits B and C.).

1 litigation further. Those risks include, by way of example only, denial or limitation of class certification,
2 decertification of the class, key factual and legal disputes as to the viability of Plaintiffs' claims under
3 the Labor Code, the potential for the action to be compelled into individual arbitration, and the risk of
4 loss on the merits at trial. Accordingly, Plaintiffs respectfully request that the Court preliminarily
5 approve the settlement as fair, reasonable, and adequate, allow notice to issue, and schedule proceedings
6 for final approval of the settlement.

7 **II. BACKGROUND**

8 **A. General Background Information About Defendant and Plaintiff**

9 Defendant Nor-Cal Beverage Co., Inc., is a California corporation headquartered in West
10 Sacramento, California. Defendant Nor-Cal is a company that boasts of being the largest independent
11 beverage co-packer west of the Mississippi and a highly-respected equipment solutions provider. To
12 provide its services, Defendant employs machine operators, such as the Plaintiff and the Class Members.

13 Plaintiff was hired as a Filler Machine Operator II assigned to Defendant's production facility in
14 West Sacramento on January 13, 2021 until he resigned on April 15, 2021. Defendant paid Plaintiff
15 \$18.58 per hour. Plaintiff's claims at issue here stem from Defendant's failure to provide a second meal
16 period even if Plaintiff worked for shifts over 10 hours. Moreover, Plaintiff and the Class Members were
17 only given two 15-minute breaks although they worked for at least 12 hours daily. In most instances, the
18 breaks were taken late or not given at all. When Plaintiff joined the company, Defendant informed him
19 that he will be paid overtime for work rendered beyond 40 hours per week. Although Plaintiff worked
20 for at least 60 hours every week, he was not paid for his overtime work. Plaintiff would be paid for
21 around four hours of overtime on some weeks and none at all on most weeks. Based on the Plaintiff's
22 Punch Detail Report attached hereto as Exhibit 3, from January 1, 2021 until April 15, 2021, Plaintiff
23 worked more than 5 hours on January 13, 2021, January 14, 2021, January 15, 2021, January 18, 2021,
24 January 20, 2021, January 21, 2021, January 22, 2021, January 28, 2021, January 29, 2021, February 5,
25 2021, February 6, 2021, February 7, 2021, February 13, 2021, February 15, 2021, February 16, 2021,
26 February 21, 2021, February 22, 2021, February 23, 2021, February 24, 2021, March 1, 2021, March 2,
27 2021, March 3, 2021, March 4, 2021, March 9, 2021, March 12, 2021, March 18, 2021, March 19, 2021,
28 March 20, 2021, March 21, 2021, March 22, 2021, March 27, 2021, March 28, 2021, March 29, 2021,
March 31, 2021, April 3, 2021, April 5, 2021 and April 10, 2021 for a total of 43.9 hours. Finally,
Plaintiff and the Class Members were made to work seven consecutive days without being given any
rest days.

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B. Procedural History, Informal Discovery, and Mediation

On July 20, 2021, Plaintiff sent a notice letter to the LWDA alleging claims under the PAGA based on Defendant's alleged violation of provisions of the California Labor Code and applicable Industrial Welfare Commission Wage Orders. On October 13, 2021, Plaintiff filed a Complaint against Defendant in Orange Superior Court. The Complaint alleges causes of action for (1) failure to pay Plaintiff and his fellow employees in California all wages owed; (2) failure to pay Plaintiff and his fellow employees in California all overtime wages owed; (3) failure to provide Plaintiff and his fellow employees meal periods and pay missed meal period premiums; (4) failure to provide Plaintiff and his fellow employees paid rest breaks and pay rest break premiums; (5) failure to provide accurate wage statements to Plaintiff and his fellow employees within the four years prior to the filing of this Complaint; (6) failure to pay all wages owed in a timely manner; (7) failure to pay all wages due to former employees based on the foregoing; (8) failure to provide a day of rest; (9) violation of PAGA; and (9) unfair business practices based on the foregoing. (Treglio Decl. at ¶ 12). Plaintiff subsequently amended his Complaint to include claims for unreimbursed business expenses pursuant to Section 2802 of the Labor Code and claims for failure to provide sick pay in violation of Sections 245-248 of the California Labor Code.

At some point in first half of 2022, and leading up to the mediation, Defendant began a process of contacting class members and settled with them individually, as allowed under *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796. According to the Defendant, of the 1,189 individuals in the Class, 1,047 agreed to the settlement, and Defendant, in total, paid out \$1,320,000 to these class members. (*Id.* at 13).

On August 10, 2022, the Parties attended an all-day mediation with the Hon. Judge Andrew Guilford. During the mediation, the Parties subsequently reached an agreement to settle the case after ongoing settlement discussions. (*Id.* at ¶ 14). In November 2022, Plaintiff subsequently amended his class action complaint and PAGA letter to the LWDA to include claims of failure to reimburse business expenses and failure to comply with California's paid sick leave laws.

1 Finally, the Parties were able to execute the long form Settlement Agreement now before the
2 Court for preliminary approval. (*Id.* at ¶ 15). Pursuant to the long form Settlement Agreement, Plaintiff
3 dismissed with prejudice Defendant, and submitted a Stipulation and Proposed Order. . (*Id.* at ¶ 16).

4 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

5 **A. Overview**

6 Under the terms of the Settlement Agreement (“S.A.”) Defendant is discharged of all the claims
7 asserted in the pending lawsuit in exchange for Defendant’s to pay the Gross Settlement Amount (GSA)
8 of \$390,000 The fees and expenses of the Settlement Administrator, not to exceed \$13,000.00 (S.A., ¶
9 I.B). Plaintiff’s proposed Class Representative Enhancement Payment of \$10,000.00 (S.A., ¶ I.L).
10 Attorneys’ fees of up to \$130,000.00 (S.A., ¶ I.D). Litigation expenses and costs of up to \$20,000.00
11 (S.A., ¶ I.N). Payment to the LWDA for their portion of the PAGA penalties in the amount of
12 \$45,000.00 as its share of the settlement for civil penalties pursuant to PAGA (the \$15,000.00 of PAGA
13 penalties allocated to the aggrieved employees are included in the Net Settlement Amount)³. (*Id.*). The
14 remaining amount, an estimated \$225,000 (the “Net Settlement Amount”) will be available to be
15 claimed by all Class Members, which is in addition to the \$1,320,000 already paid out.

16 Individual Settlement Amounts to be paid to Settlement Class Participants shall be paid from the
17 Net Settlement Amount. The Net Settlement Amount shall be divided up and paid to Settlement Class
18 Members based on the pro rata number of eligible workweeks that each Claimant worked during the
19 Class Period⁴ divided by the total number of eligible workweeks worked by all Class Members during
20 the Class Period. No money will revert to the Defendant.

21 Thirty calendar days after Preliminary Approval of the Settlement, Defendant shall provide the
22 Claims Administrator with the names, last known mailing address, and other information needed to
23 calculate the disbursement of funds (collectively “Class List and Data”). Prior to mailing, the Claims
24 Administrator will perform a search based on the National Change of Address Database information to

25 ³ The \$60,000.00 PAGA allocation pursuant to the settlement agreement is reasonable even though a significant portion of
26 the Gross Settlement Amount can be attributed to the PAGA penalties due to Defendant’s arbitration agreements with all
27 Class Members. *See O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1134-35 (2016) (if settlement provides for
important injunctive relief, it may support PAGA’s interest in augmenting the state’s enforcement capabilities, encouraging
compliance with the Labor Code provisions, and deterring non-compliance).

28 ⁴ The “Class Period” is defined as the period from October 14, 2017 through the date the Court enters a preliminary approval
order for this settlement.

1 update and correct for any known or identifiable address changes. Within fifteen (15) days of receipt of
2 the database from Defendant, the Settlement Administrator shall determine the number of pay periods
3 for each Settlement Class Member, populate the Settlement Class for each accordingly, and send each
4 Settlement Class Member the Class Notice and Notice of Settlement Payment.

5 In order for a Class Member to validly exclude himself or herself from the Class and this
6 Settlement (i.e., to validly opt-out), the Class Member must sign and submit a written request to the
7 Claim Administrator requesting that he or she be excluded from the settlement (“Request for
8 Exclusion”). (S.A., ¶ I.T). The Request for Exclusion must be sent to the Claims Administrator by mail,
9 postmarked no later than ten calendar days from the original date the Claims Administrator mails the
10 Notice Packet to the Class Members (the “Opt Out Period”). (*Id.*). Any Class Member who timely and
11 validly opts out of the Class and this Settlement will not be entitled to any recovery from this
12 Settlement, will not be bound by the terms and conditions of this Agreement, and will not have any right
13 to object, appeal or comment thereon.

14 In order to object to this Agreement, or any term of it, the person making the objection must be a
15 Class Member, must not opt-out, and must, by no later than forty-five calendar days after the Notice
16 Packet is first mailed, file the written objection with the Superior Court in which the Action is pending,
17 and serve on Class Counsel and Defendant’s counsel, a written statement of the grounds of objection,
18 signed by the objecting Class Member or his or her attorney, along with all supporting papers, in
19 accordance with the instructions in the Notice of Class Action Settlement. (S.A., ¶ I.PP).

20 Defendant’s records will be presumed determinative, absent evidence to rebut Defendant’s
21 records, but the Claims Administrator will evaluate the evidence submitted by the Class Member and
22 make the final decision as to the validity of such evidence.

23 All Individual Settlement Payments will be allocated as follows: twenty percent (20%) wages
24 and eighty percent (80%) interest, penalties, and reimbursements. (*Id.*, ¶ 5.b). The portion allocated to
25 wages shall be reported on an IRS Form W-2, and the portion allocated to non-wage premiums,
26 penalties, and interest shall be reported on an IRS Form 1099. (*Id.*). To the extent that Individual
27 Settlement Payment checks are uncashed 90 days after the date listed on the check, the Settlement
28 Administrator will deem the checks to be void and return the amount of uncashed checks to the *cy pres*

1 recipient Legal Aid at Work.. (*Id.*, ¶ 6.10)

2 **B. Scope of the Release**

3 The proposed release for the putative class members is tailored to the claims that were asserted in
4 the lawsuit or are based on the facts alleged in the complaint. The notice to the putative class members
5 includes a detailed recitation of the release, including how and when it applies to the members of the
6 class. The proposed release for the putative class member is as follows: Upon final approval of this
7 Stipulation of Settlement by the Court, and except as to such rights or claims as may be created by this
8 Stipulation of Settlement, the Settlement Class and each member of the Settlement Class who has not
9 submitted a valid Request for Exclusion, fully releases and discharges Defendant, and all subsidiary and
10 affiliated corporations and business entities and customers of Defendant and all shareholders, officers,
11 directors, agents, managers, associates, employees, representatives, attorneys, insurers, successors and
12 assigns of those corporations and entities (collectively “Released Parties”), from any and all claims
13 alleged in the Action, arising during the Class Period, including state wage and hour claims, claims for
14 wages, fees, expenses, overtime, minimum wage, noncompliant meal periods, noncompliant rest
15 periods, timely payment violations, accurate and complete wage statements violations, final pay,
16 expense reimbursements, sick pay, waiting time penalties, unfair business practices or competition, and
17 penalties and all claims under the Private Attorneys General Act of 2004 based on the foregoing. This
18 release includes claims alleging violations of Labor Code §§ 201-203, 204, 226(a), 226.2, 226.7,
19 246(a)(1), 245-248 510, 512, 551, 552, 1194, 1194.2, 1198, 17200 *et. seq.* and 2698 *et. seq.* and IWC
20 Wage Order No. 1. This release excludes the release of claims not permitted by law.

21 The proposed release for Plaintiff is as follows: Plaintiff and the Participating Class Members,
22 on their own behalf, and on behalf of their respective current, former and future heirs, spouses,
23 executors, administrators, agents, and attorneys, release the Released Parties from the Released Claims
24 for the Class Period. The Plaintiff and Participating Class Members shall be deemed to have, and, upon
25 Defendant’s fully funding of the Settlement and by operation of the Final Approval, shall have, fully,
26 finally, and forever settled and released all of the Released Claims as defined in this Agreement. The
27 Parties further acknowledge, understand and agree that this release is a material part of the consideration
28 for this Agreement; was critical in justifying the agreed-upon economic value of this Settlement, and

without it Defendant would not have agreed to the consideration provided; and is narrowly drafted and necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of claims that were or could have been alleged based on the facts and legal theories contained in the Complaint.

IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CONSIDERATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a “lesser standard of scrutiny” for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807, n.19. The reasons include that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted; and the trial court’s fairness review of the settlement protects the interests of the non-representative class members. *Id.*; *see also Officers for Justice*, 688 F.2d at 633 (“Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process [C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1987) (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.”). As discussed below, for settlement purposes only, the Parties ask this Court to provisionally certify the Class, as defined above, under Section 382 of the Code of Civil Procedure.

A. Numerosity and Ascertainability

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Cal. Code Civ. Proc. § 382. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). Here, Defendant have informed Plaintiffs’ counsel that the proposed Class consists of approximately 1,270 Class Members.

1 **B. Well-Defined Community of Interest**

2 **1. Commonality**

3 To justify certification, the class proponent must show that questions of law or fact common to
4 the class predominate over the questions affecting the individual members. *See Arenas v. El Torito*
5 *Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court*, 24 Cal.
6 4th 906, 913 (2001)). The commonality element is satisfied here.

7 In this case, there are common legal and factual question as to whether (1) Defendant
8 violated sections 1194, 1194.2, and 1198 of the Labor Code by failing to pay Plaintiff and the
9 members of the Class for all wages owed during the Class Period; (2) Defendant violated Section 12
10 of IWC Wage Order No. 1 by failing to provide paid rest periods to Plaintiff and the members of the
11 Class in California during the Class Period; (3) Defendant violated Labor Code section 226.7 by
12 failing to provide one hour of premium pay to each member of the Class for each day that a paid rest
13 period was not provided in California during the Class Period; (4) Defendant violated Labor Code
14 sections 512 and 226.7, and section 11 of IWC Wage Order No. 1 by failing to pay one hour of
15 premium pay to each member of the Class for each day that an unpaid meal break was not provided
16 during the Class Period; (5) Defendant violated Sections 510, 1194, 1194.2, and 1198 of the Labor
17 Code and IWC Wage Order No. 1 during the Class Period by failing to pay Plaintiff and the Class
18 Members all overtime wages owed; (6) Defendant violated Labor Code sections 221, 400-410, and
19 Wage Order no. 1, section 8, by deducting uniform and 401(k) costs from the pay of Plaintiff and
20 the Class Members in accordance with Defendant's policies; (7) Defendant violated Labor Code
21 sections 204 and 210 by failing to pay Plaintiff and the Class Members all wages owed with seven
22 days of the close of payroll; (8) Defendant violated Section 203 of the Labor Code by failing to pay
23 members of the Waiting Time Penalty Subclass (those class members who have terminated their
24 employment with the Defendant) for all wages due to them (including their pay due for unpaid rest
25 breaks) upon their separation of employment from Defendant; (9) Defendant failed to provide
26 Plaintiff and the Class Members complete wage statements in violation of Labor Code Section
27 226(a); (10) Defendant violated Labor Code sections 551 and 552 by failing to provide Plaintiff and
28 the Class Members a day of rest; (11) Defendant engaged in an unfair practice and violated section

1 17200 of the California Business and Professions Code by failing to pay Plaintiff and the members
2 of the Class for all wages and overtimes wages owed during the Class Period; (12) Defendant
3 engaged in an unfair practice and violated section 17200 of the California Business and Professions
4 Code by failing to provide paid rest breaks to members of the Class in violation of Labor Code
5 section 226.7 and Section 12 of IWC Wage Order No. 1; (13) Defendant engaged in an unfair
6 practice and violated section 17200 of the California Business and Professions Code by failing to
7 provide off-duty meal breaks to members of the Class in violation of Labor Code sections 512,
8 226.7 and Section 11 of IWC Wage Order No. 1; (14) Defendant engaged in an unfair practice and
9 violated section 17200 of the California Business and Professions Code by failing to provide rest
10 days to members of the Class in violation of Labor Code sections 551 and 552; (15) Plaintiff and the
11 Class are entitled to restitution under Business and Professions Code § 17200; (16) The proper
12 formula(s) for calculating damages, interest, and restitution owed to Plaintiff and the Class
13 Members; and (17) The nature and extent of class-wide damages.

14 **2. Typicality**

15 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims and the
16 claims alleged on behalf of the class.” *Newberg*, § 3:13. Here, Plaintiff’s claims are typical of the Class
17 because they sustained injuries and damages, and were deprived of property rightly belonging to them,
18 arising out of and caused by Defendant’s common course of conduct in violation of law as alleged
19 herein, in similar ways and for the same types of unpaid wages. Plaintiff seeks wage and penalties, for
20 themselves and the rest of the Class.

21 **3. Adequacy of Representation**

22 The proposed class representative must establish that he or she will adequately represent the
23 proposed class. *See Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009).
24 Specifically, Plaintiff is a member of the Class and will fairly and adequately represent and protect the
25 interests of the Class and Class Members. Plaintiff’s interests do not conflict with those of Class and
26 Class Members. Plaintiff provided counsel with information which was crucial to the drafting of the
27 class complaint and mediation brief, discussed settlement strategy with their counsel, spoke to other
28

1 Class Members about their experiences working for Defendant, and was available for the duration of the
2 all-day mediation, all of which demonstrated his commitment to the Class.

3 Adequacy may be established by the fact that counsel are experienced practitioners. *See Local*
4 *Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th
5 Cir. 2001). Plaintiff is represented by counsel experienced in the litigation of wage and hour class
6 actions, who have no interests averse to Plaintiffs or the Class, who have and will continue to vigorously
7 prosecute this action on behalf of the Class alongside Plaintiff, and who have the financial resources to
8 handle this case. (Treglio Decl., ¶¶ 4-9).

9 **4. Superiority**

10 Certification of the Class for settlement purposes is superior here because there will be a global
11 resolution of all claims at once, which fosters judicial economy. Class certification is also vastly
12 superior to litigation of numerous individual claims because most of the claims are too small to litigate
13 outside of the class context.

14 **5. Predominance**

15 The common issues here, concerning uniform deficiencies to Defendant's compensation, meal
16 and rest break, final pay, wage statement⁵, and overtime policies raise predominating factual and legal
17 issues supporting certification of a settlement class.

18 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT,** 19 **WHICH IS FAIR, ADEQUATE, AND REASONABLE**

20 **A. Class Action Settlements are Subject to Judicial Review and Approval Under** 21 **the California Rules of Court**

22 The decision to approve or reject a proposed settlement is committed to the Court's sound
23 discretion. *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1117. The Court has broad
24 powers to determine whether the proposed settlement is fair under the circumstances of the case. *In re*
25 *Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.

26 This is the preliminary approval stage, and final approval will come in a few months, after the
27 Class members have had an opportunity to participate in the settlement, object, or request exclusion

28 ⁵ See, e.g. *McKenzie*, 275 F.R.D. at 299-300; see also *Willner v. Manpower, Inc.*, 2012 U.S. Dist. LEXIS 62227 (N.D. Cal.
May 3, 2012 (certifying settlement class for purposes of wage statement settlement)).

1 from the settlement. The purpose of the preliminary evaluation of a class action settlement is to
2 determine whether the proposed settlement is within the range of possible approval, and thus whether
3 notice to the class of the settlement terms and the scheduling of a formal fairness hearing is worthwhile.
4 *Wershba*, supra, 91 Cal.App.4th at 234–35; 4 Newberg on Class Actions § 13:13 (5th ed.).

5 The Court’s ultimate duty is to determine whether the settlement is fair, adequate, and
6 reasonable. See *Dunk v. Ford Motor Co.* 9 (“*Dunk*”), 48 Cal. App. 4th 1794, 1801 (1996) (setting forth
7 the “fair, adequate, and reasonable” standard) (citing *Officers for Justice*, 688 F.2d at 625); *Cho v.*
8 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742 43 (2009) (a trial court must approve a class
9 action settlement agreement, but only after determining that it is “‘fair, adequate and reasonable,’”
10 considering factors such as the “‘risk, expense, [and] complexity’” of continued litigation) (citations
11 omitted). The Court enjoys broad discretion in making its fairness determination, and should consider
12 factors including, but not limited to:

13 [T]he strength of Plaintiff’s case, the risk, expense, complexity and likely duration of
14 further litigation, the risk of maintaining class action status through trial, the amount
15 offered in settlement, the extent of discovery completed and the stage of the proceedings,
16 the experience and views of counsel . . . and the reaction of the class members to the
proposed settlement.

17 *Dunk*, 48 Cal. App. 4th at 1801 (setting forth a non-exhaustive list of factors for the court’s
18 consideration at final approval).

19 The above factors are not exclusive, “. . . and the court is free to engage in a balancing and
20 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at 245.
21 However, in doing so, the Court must give “[due] regard to what is otherwise a private consensual
22 agreement between the parties.” (*Id.*) The inquiry must be limited “to the extent necessary to reach a
23 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
24 between, the negotiating parties.” (*Id.*, citation and internal quotation marks omitted).

25 At the preliminary approval stage, the Court need only determine that the settlement falls within
26 the “range of possible judicial approval,” so that notice to the class and the scheduling of the fairness
27 hearing are worthwhile. See Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* (“*Newberg*”)
28 § 11:25 (4th ed. 2002). Indeed, the Court should grant preliminary approval if there are no “grounds to

doubt its fairness or other obvious deficiencies . . . and [the settlement] appears to fall within the range of possible approval.” *Manual For Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal. App. 4th at 1802. 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 is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*, 48 Cal. App. 4th at 1802 (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of approval because there are no grounds to doubt its fairness.

B. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations

The Settlement is fair and reasonable, and was negotiated at arm’s length between counsel that included a mediator and lasted for nearly a year. (Treglio Decl., ¶ 31). Counsel for both parties were thoroughly familiar with the complex legal and factual questions at issue in this litigation. (*Id.*). The Settlement is a product of intensive negotiations, supported by investigation and direct exchanges of information through formal and informal discovery, and during the course of settlement negotiations, including a full-day mediation. (*Id.*).

C. The Potential Partial Reversion Here is Justifiable in Light of the Lack of Collusion

Although class action settlements that are completely reversionary and where class counsel’s attorneys’ fees are fixed as a percentage of the settlement fund regardless of the claim rate are generally disfavored in California, *see Kakani Oracle Corp.*, 2007 U.S. Dist. Lexis 47515 at 13 (ND Cal. 2007), claims-made class action settlements with a certain percentage floor on distribution of the net settlement amount (also known as partially reversionary settlements), have repeatedly been approved. *See e.g., Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. Lexis 53416 (S.D. Cal. 2010) (approving claims made settlement with a 50 percent floor on distribution and fees at 1/3 of the common fund because at least half of settlement fund would be distributed and the court could examine the claim rate and settlement notice results prior to final approval); *Bond v. Ferguson Enterprises, Inc.* No. 1:09-cv-1662-OWW-MSJ, 2011 WL 2648879, at *2-3 (E.D. Cal. 2011) (approving a \$2,250,000 deal with a 60 percent floor in Fresno eastern district federal court); and *Clayton v. Knight Transportation*,

No. 1:11-cv-00735-SAV, 2013 WL 5877213, at *2 (E.D. Cal. 2013) (approving a settlement with a 40 percent floor).

Here, completely unlike the situation in *Kakani*, there is no indication whatsoever of any collusion between counsel for the parties. After informal discovery and an all-day arm's length mediation followed by several months of continued negotiations, the opposite conclusion is demonstrably obvious. Here, regardless of the claim rate, the class recovery will be at least \$559,500 in both monetary and injunctive relief—a far cry from the collusive settlement in *Kakani*. *Id.* Finally, class counsel's fees will be supported based on their lodestar hours and a reasonable percentage of the total settlement value, here estimated at \$1.16 million (though the value of the injunctive relief is greater than the \$325,000).

D. The Extent of the Pre-Litigation Discovery and Investigation was More Than Sufficient to Permit Preliminary Approval of the Settlement

Notably, the parties spent months prior to the mediation developing the factual record for this case, engaging in formal and informal discovery and exchanges of documents and information, and drafting detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and weaknesses of their respective positions at the mediation and during subsequent settlement negotiations. (Treglio Decl., ¶ 14). The Parties and their counsel attended a full-day mediation session before an experienced and well-respected mediator, the Honorable Judge Andrew Guilford which resulted to an agreement to settle the case. (*Id.*). In addition, the parties are represented by skilled and experienced counsel with extensive backgrounds in complex litigation and experience litigating and settling similar wage and hour class actions. (Treglio Decl., ¶¶ 4-9). Plaintiff's counsel shares the view that this settlement is fair, adequate, and reasonable, in the best interests of Class Members, and should be preliminarily approved. (Treglio Decl. ¶ 34).

E. The Settlement is a Reasonable Compromise of Claims

The Settlement represents a fair compromise given the risks and uncertainties presented by continued litigation. Defendant asserted and would have continued to assert legal and factual grounds to defend against this action, including the possibility of having to pursue only his individual claims in arbitration, non-certification of claims, and factual and legal defenses on the merits. Moreover,

1 continued litigation would be costly, time consuming, and uncertain in outcome. By contrast, this
2 Settlement ensures timely relief and substantial recovery of penalties Plaintiff contends are owed to the
3 Class.

4 **1. Plaintiffs' Claims and Estimated Damages**

5 Plaintiffs' estimated damages are based on the following facts and figures:

6 ***Rest Breaks***

7 Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal
8 or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard,
9 or order of the Industrial Welfare Commission ("IWC"). Under IWC Wage Order 4-2001 an employer
10 must authorize and permit all employees to take ten (10) minute duty free rest periods for every major
11 fraction of four (4) hours worked. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257,
12 269 (concluding that "during rest periods employers must relieve employees of all duties and relinquish
13 control over how employees spend their time."). In *Augustus*, the court expressly rejected the
14 employer's assertion that it could provide an on-duty rest period to employees who worked as security
15 guards and further explained "that employers [must] relinquish any control over how employees spend
16 their break time, and relieve their employees of all duties." *Id.* at 273.

17 California Labor Code Section 226.7 requires an employer to pay an additional hour of
18 compensation for each rest period the employer fails to provide in accordance with the applicable
19 Industrial Welfare Commission Wage Order. Therefore, Plaintiff calculated Defendant's maximum
20 liability for rest breaks as follows: c. \$27.87 per missed rest period * 7 missed meal period/week *
21 7,364 workweeks = \$1,436,642.76 (*Id.*, ¶ 19). The documentation provided indicated that Defendant
22 had adequate rest period policies, which would have complicated class certification.

23 ***Meal Breaks***

24 Labor Code § 512 requires employers to provide employees with thirty (30) minute
25 uninterrupted and duty free meal period within the first five hours of work. Moreover, an employee who
26 works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted
27 and duty free meal period. "An on-duty meal period is permitted only when the nature of the work
28 prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid

meal break." (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932) The written agreement must include a provision allowing the employee to revoke it at any time. *Id.*

California Labor Code Section 226.7 requires an employer to pay an additional hour of compensation for each meal period the employer fails to provide in accordance with the applicable statute or Industrial Welfare Commission Wage Order.

Therefore, Plaintiffs calculated Defendant's maximum liability for meals breaks as follows: \$27.87 per missed rest period * 7 missed meal period/week * 7,364 workweeks = \$1,436,642.76 (*Id.*, ¶ 20). The documentation provided indicated that Defendant had adequate rest period policies, which would have complicated class certification.

Inaccurate Itemized Wage Statements

Labor Code Section 226 requires an employer to furnish its employees with an accurate itemized wage statement in writing, showing among other things, (1) gross wages earned, (2) total hours worked by each respective individual, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual.

Pursuant to Labor Code Section 226(e), Plaintiff and the other current and former employees of Defendant is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and are entitled to an award of costs and reasonable attorneys' fees.

Therefore, Plaintiffs calculated Defendant's maximum liability for inaccurate itemized wage statements as follows:

Initial Violation: 705.14 wage statements * \$50 = \$35,257.00

Subsequent Violations: 940.19 wage statements * \$100 = \$94,019.00

Total Exposure: \$129,276.00 (*Id.*, ¶ 20).

However, of note, the vast majority of the Class Members who signed individual releases were current employees, and within the 1-year statute of limitations. As a result, Class Counsel strongly discounted the wage statement claim.

1 **PAGA Penalties**

2 Under California Labor Code § 2699(f)(2) Defendants are subject to a civil penalty of \$100 for
3 the initial violation of the aforementioned Labor Code violations, and \$200 for each 189 subsequent pay
4 period where the violation occurred. In a recent decision, *Gunther v. Alaska Airlines*, 2021 Cal. App.
5 LEXIS 1008, 2021 WL 5630893 (December 1, 2021) the California Court of Appeal held that the
6 increased \$200 civil penalty for “subsequent violations” does not apply unless the plaintiff presents
7 evidence that the “Labor Commission[er] or a court notified [the employer] that it was in violation of the
8 Labor Code.”

9 Without stacking PAGA penalties, Defendant’s PAGA exposure is:

10 Initial violations:

11 705.14 initial violations * \$100 per pay period = \$70,514.00

12 Subsequent violations:

13 940.19 violations * \$200 per pay period = \$188,038.00

14 Total exposure: \$258,552.00 (*Id.*, ¶ 22).

15 **F. The Risks Inherent in Continued Litigation are Great**

16 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also
17 should consider “[t]he strength of Plaintiff’s case, the risk, expense, complexity and likely duration of
18 further litigation, [and] the risk of maintaining class action status.” *See Dunk*, 48 Cal. App. 4th at 1801.
19 As described above, Defendant has strong defenses to Plaintiff’s claims summarized below, which
20 create a real possibility that the claims might not be certified and/or might fail on the merits. Proceeding
21 with litigation would impose significant risk of no recovery as well as ongoing, substantial additional
22 expenditures of time and resources. If settlement were not achieved, continued litigation of the claims
23 would take substantial time and possibly confer no benefit on Class Members. By contrast, the
24 settlement will yield a prompt, certain, and substantial recovery for Class Members, which also benefits
25 the parties and the Court.

26 **G. Defendant’s Defenses**

27 ***87% of the Putative Class Executed Valid and Enforceable Settlement Agreements***

28 Approximately 87% of the class or 1,029 putative class members (and 89% or 929 of the

1 allegedly aggrieved employees), executed valid and enforceable *Pick-Up Stix* settlements. Defendant
2 contends that release agreements comply with California law and therefore are likely to survive judicial
3 scrutiny. (Treglio Decl. ¶ 25) *First*, Defendant contends the agreements give notice of the pending class
4 action. *Kirby v. Kindred Healthcare Operating, LLC* (C.D. Cal. May 1, 2020) 2020 WL 4639493, at *4
5 (invalidating releases where, among other issues, defendant’s description of the claims relied almost
6 “exclusively on terminology from statutory titles . . . (using, e.g., split shifts . . . reporting time pay),
7 terms with which putative class members are probably not familiar.”). *Id. Second*, Defendant contends
8 that the releases include a brief statement of the claims in plain English. *Id.* (invalidating releases where,
9 among other issues, defendant used terms which a non-lawyer would not understand, such as stating the
10 class had not yet been “certified”). *Id. Third*, Defendant contends that the agreements explicitly state that
11 the employee has a right to contact an attorney. *Cheverez v. Plains All Am. Pipeline, LP* (C.D. Cal. Mar.
12 3, 2016) 2016 WL 861107, at *6 (invalidating releases where defendants failed to advise class members
13 to consult with an attorney or emphasize their right to do so). *Id. Fourth*, Defendant contends that the
14 agreements were presented in a non-coercive manner and employees were free to sign or reject the
15 agreements. *Guifu Li v. A Perfect Day Franchise, Inc.* (N.D. Cal. 2010) 270 F.R.D. 509, 518
16 (invalidating opt-out forms when defendant employer presented the forms in mandatory one-on-one
17 meetings during work hours, failed to provide forms in workers’ primary language, and refused to give
18 workers copies to take home). *Id. Finally*, Defendant contends *the* scope of the release is limited to the
19 claims at issue, does not include a covenant not to sue, and does not mislead employees regarding their
20 ability to pursue or participate in a PAGA claim. *Id. See Slavkov v. Fast Water Heater Partners I, LP*
21 (N.D. Cal. Nov. 2, 2015) 2015 WL 6674575, at *6 (invalidating releases where neither the release nor
22 cover letter informed recipients that all claims asserted were subject to release and otherwise mislead
23 recipients that their acceptance of the consideration would prevent them from participating in the
24 litigation as witness). *Id.*

25 While Plaintiff does not have any particular statement regarding the releases signed, Plaintiff and
26 Class Counsel were well aware of the issues surrounding these releases, and understood that the
27 exposure would have to be reduced by 89%. (Treglio Decl. ¶ 26)

28 ***Defendant Argued Plaintiff Could Not Prevail On the Merits of His Claims***

1 For the remaining 160 class members and 120 aggrieved employees, Defendant contended
2 Plaintiff's theories of liability will fail on the merits, arguing that there was no off the clock work, as
3 Defendant contends its policies for time-keeping were legally compliant. (Treglio Decl. ¶ 27) Further,
4 Defendant contended that its meal and rest break policies adequately provided Plaintiff and the Class
5 Members with breaks, and that meal period premiums are paid when a meal period is missed. *Id.*

6 While Plaintiff disputes these contentions, and believes the documentation received supports
7 Plaintiff's allegations, the fact that Defendant had facially legal policies indicates that Plaintiff may have
8 had difficulty on class certification and trial. (Treglio Decl. ¶ 28) There should be no question that these
9 defenses pose a real threat to any recovery for Plaintiff or the Class Members, and taking those defenses
10 into account, Class Counsel determined, based on the recommendation of Judge Guilford, that \$390,000
11 was a fair and reasonable settlement amount. *Id.*

12 ***Discounts on the PAGA Penalties***

13 Under Labor Code section 2699(e)(2) a court may award a lesser amount than the maximum
14 civil penalty specified under PAGA, if based on the facts and circumstances of the particular case, to do
15 otherwise would result in an award that is unjust, arbitrary, and oppressive or confiscatory. (Treglio
16 Decl. ¶ 29) Courts often exercise their discretion to reduce the amount of PAGA penalties to as little as
17 \$5.00 per pay period or 18% of the available PAGA penalties.⁶ Additionally, the Labor Commissioner
18 has specifically stated as recently as last year that the main purpose for assessing PAGA penalties by the
19 Labor and Workforce Development Agency is to enforce California's Labor Code, and obtain
20 compliance. *Id.* Specifically, with regard to assessing the adequacy of settlements, the penalty amounts
21 are resigned to "promote PAGA's compliance and deterrence goals." Amicus Curiae Brief submitted by
22 the State Labor Commissioner, *Price v. Uber Technologies*, June 16, 2017. *Id.*

23 Therefore, considering Defendant's maximum damages as calculated and applying the
24 discounts, Defendant's realistic exposure is as follows:

- 25 a. Defendant's maximum liability for on-duty rest periods: \$1,436,642.76
26

27 ⁶ See e.g., *Kileigh Carrington v. Starbucks Corporation, et al.*, San Diego Superior Court Case No. 37-2014-00018637-CU-
28 OE-CTL (Apr. 3, 2017) holding that the plaintiff was only entitled to collect the reduced penalty amount of \$5.00 for each
pay period in which a meal period violation occurred or 5% of the PAGA penalties at issue); *Fleming v. Covidien, Inc.* (C.D.
Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties by 82%).

- b. Defendant's maximum liability for on-duty meal periods: \$1,436,642.76
- c. Defendant's liability for inaccurate itemized wage statements: $\$129,276.00 * 80\%$ discount for Maldonado = \$103,420.80
- d. $\$1,436,642.76 + \$1,436,642.76 + \$103,420.80 = \$2,976,706.32$
- e. $\$2,679,035 * 50\%$ discount for class certification = \$1,488,353.16
- f. $\$1,488,353.16 * 50\%$ discount for possibility of losing on the merits = \$744,176.58
- g. $\$258,552.00$ PAGA penalties * 50% discount for discretionary nature = \$129,276.00
- h. Because PAGA penalties are not subject to the same risks and discounts as the other claims the \$129,276.00 is added on top of the realistic recovery of the other claims, $\$129,276.00 + \$744,168.58 = \$873,452.58$ (without attorneys' fees). (Treglio Decl. ¶ 30)

Therefore, the Gross Settlement Amount obtained represents 44.65% ($\$390,000.00 / \$873,452.58 = 44.65\%$) of Defendant's realistic exposure on Plaintiff's claims and reasonable compromise of the claims. (Treglio Decl. ¶ 31)

In addition, the settlement value was significantly discounted based on the risk that a PAGA claims could be deemed unmanageable. See *Wesson v. Staples the Office Superstore, LLC*, 68 Cal.App.5th 746 (Sept. 9, 2021). For the same reasons discussed above regarding the potential challenge in maintaining a class action, the need for individualized proof regarding whether employees were provided compliant meal and rest breaks raises manageability concerns. Further, because so many of the aggrieved employees released their claims, Class Counsel determined that a higher than normal discount would be appropriate. Therefore, Plaintiff assessed a 90% discount on the maximum liability for PAGA penalties due to the discretionary nature of PAGA penalties. (Treglio Decl. ¶ 24).

In sum, and again, at the suggestion of the overly qualified, and highly respected jurist, \$390,000 was a fair and reasonable amount to resolve this action.

H. Plaintiffs' Counsel are Experienced in Similar Wage-and-Hour Litigation

Plaintiffs' counsel is experienced in wage-and-hour class actions. Numerous state and federal courts have certified them as adequate and competent class counsel in similar wage and hour class actions. (Treglio Decl., ¶ 41). Plaintiffs' counsel shares the view that this settlement is fair, adequate,

1 and reasonable, in the best interests of Class Members, and should be preliminarily approved. (Treglio
2 Decl. ¶ 36).

3 Experienced counsel, operating at arm's length, have weighed the strengths and risks of the case,
4 and endorse the proposed settlement. (Treglio Decl. ¶ 33). The view of the attorneys actively conducting
5 the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v.*
6 *Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981);
7 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (court must take into account "the
8 experience and view of counsel") (internal quotation and citation omitted).

9 **I. The Class Notice Plan Conforms to All Applicable Statutes and Rules**

10 The proposed Class Notice should be approved, as it fully informs the Class members of the
11 nature of the lawsuit and each Class Member's rights under the terms of the Settlement Agreement and
12 applicable law. The manner in which the Class Notice shall be disseminated, as outlined above, shall
13 ensure that all or nearly all of the Class Members shall be properly notified of the proposed settlement.

14 The proposed Class Notice and proposed plan for the Claims Administrator to mail the Class
15 Notice to the last known address of all class members complies with all the requirements of California
16 Rule of Court 3.766(b). The contents of the proposed Class Notice include: (1) the material terms of the
17 settlement; (2) the proposed attorneys' fees, litigation expenses, and the costs of administration; (3)
18 details about the final fairness hearing, how class members may participate in the settlement and receive
19 their settlement share, exclude themselves, or make an objection; and (4) how class members can obtain
20 additional information. *See* Class Notice (S.A., **Exhibit B**). In addition, the Notice of Settlement
21 Payment will inform Class Members of their Settlement Share and afford them the opportunity to make
22 corrections to their "workweeks" information if they have a dispute. *See* Notice of Settlement Payment
23 (*Id.*; **Exhibit C**).

24 The Court has wide discretion in approving the means of providing notice, so long as the class
25 representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching
26 a substantial percentage of class members." *Archibald v. Cinerama Hotels*, 15 Cal. 3d 853, 861 (1976).
27 Here, the parties' notice plan is that notice of the Settlement will be disseminated directly to the class
28 members by first class mail by the Claims Administrator, since Defendant has the last known addresses

1 of all class members and the Settlement Administrator will perform a search based on the National
2 Change of Address Database to update and correct for any identifiable address changes.

3 The notice plan and the class Notice satisfy the requirements of Rule of Court 3.766 and affords
4 Settlement Class Members with all due process protections required by the United States Constitution.
5 Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the
6 Notice includes, without limitation (1) a detailed explanation of the case, including the basic contentions
7 or denials of the parties; (2) a statement that the court will exclude the member from the class if the
8 member so requests by a specified date; (3) a procedure for the member to follow in requesting
9 exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind all
10 members who do not request exclusion; and (5) a statement that any member who does not request
11 exclusion may, if the member so desires, enter an appearance through counsel. The 45-day deadline for
12 Class Members to exclude themselves is reasonable, as it provides Class Members with sufficient time
13 to do so and, if they so choose, to seek independent legal advice in the interim.

14 **J. The Class Representative Enhancement Payment is Fair and Appropriate**

15 The Settlement Agreement provides a class representative enhancement payment of \$10,000 to
16 Plaintiff. The proposed class representative enhancement payment is intended to recognize the time,
17 effort, and risk that the Plaintiff undertook in bringing this case and helping to secure the relief obtained
18 for the members of the Class. *See Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726
19 (2004) (upholding “service payment” to named plaintiff for his efforts in bringing class case); *Rodriguez*
20 *v. West Publishing*, 563 F.3d 948, 959 (9th Cir. 2009) (stating that incentive awards are “intended to
21 compensate class representatives for work done on behalf of the class, to make up for financial or
22 reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act
23 as a private attorney general.”). To determine the propriety of a service award, courts consider the
24 actions protecting class interests, the benefit provided to the class based on those actions, and the
25 amount of time and effort expended by the plaintiff. *Staton v. Boeing Co.*, 327 F.3d 938, 976-7 (9th Cir.
26 1993). The service award must be supported by evidence of the time and effort expended by the named
27 plaintiff and a reasoned explanation of the financial and other risks taken by the named Plaintiff in
28 bringing the case. *See Clark v. American Residential Services LLC*, 175 Cal.App.4th 785, 806-7 (2009).

1 Plaintiff's requested class representative enhancement payment serve to recognize his time and
2 efforts on behalf of the Class, including time spent in meetings with Class Counsel, and his acceptance
3 of the financial risk in pursuing this litigation. (Treglio Decl. ¶¶ 37-40). The service awards also fall
4 within the range of service awards typically awarded to Class Representatives in similar class actions.
5 See e.g. *Bond v. Ferguson Enterprises, Inc.*, No. 1:09-cv-1662 OWW MJS, 2011 WL 2988879 (E.D.
6 Cal. June 30, 2011) (approving \$11,250 service award to each of the two class representatives in a
7 trucker meal break class action; *Ross v. US Bank National Association*, No. C 07-02951 SI, 2010 WL
8 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving \$20,000 enhancement award to Class
9 Representative in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing,*
10 *Inc.*, 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving service awards in the amount of \$10,000 each
11 from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.*, NO. CIV. S-
12 04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (E.D. Cal. Oct. 19, 2006) ("the court finds
13 Plaintiff's enhancement payments of \$15,000 each to be reasonable."); *Glass v. UBS Fin. Servs.*, No. C-
14 06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 (N.D. Cal. Jan. 26, 2007) (finding "requested
15 payment of \$ 25,000 to each of the named plaintiffs is appropriate" in wage and hour settlement); *Louie*
16 *v. Kaiser Found. Health Plan, Inc.*, CASE NO. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at
17 *18 (S.D. Cal. Oct. 6, 2008) (approving "\$25,000 incentive award for each Class Representative" in
18 wage an hour settlement); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010
19 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) ("Numerous courts in the Ninth Circuit and
20 elsewhere have approved incentive awards of \$20,000 or more where, as here, the class representative
21 has demonstrated a strong commitment to the class"). Thus, when examined in the context of the gross
22 funds obtained on behalf of the Class as a result of Plaintiffs' undertaking the role of Class
23 Representative, the requested service awards are proportionally modest, fair and reasonable.

24 **K. The Attorneys' Fee Allocation Under the Settlement Agreement is Fair**

25 In addition, concurrent with final approval, Plaintiffs' counsel will request a Class Counsel Fees
26 Payment of up to \$130,000.00 (i.e., up to one third of the total value of this settlement) and Class
27 Counsel Litigation Expenses Payment of up to \$20,000. (S.A. ¶ I.N.). Recently, the California Supreme
28 Court approved Superior Courts' usage of the common fund method of awarding attorneys' fees in wage

1 and hour class actions, like this one, and upheld a fee award at 1/3 of the total settlement amount
2 obtained for the class. *See Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 506 (2016); *see also*, 4
3 Newberg on Class Actions, § 14:6 at 552 (“fee awards in class actions average around one-third of the
4 recovery”). Specifically, in *Laffitte*, the California Supreme Court wrote: “[w]e join the overwhelming
5 majority of federal and state courts in holding that when class action litigation establishes a monetary
6 fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel
7 a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an
8 appropriate percentage of the fund created”). *Id.* at 506. The California Supreme Court also noted that
9 trial courts have the discretion to award fees as a percentage of the common fund, with or without the
10 necessity to conduct a lodestar cross-check. *Id.* (“...[Courts] ... retain the discretion to forgo a lodestar
11 cross-check and use other means to evaluate the reasonableness of a requested percentage fee.”).

12 The requested fees of up to one-third of the Settlement Amount is also consistent with awards
13 obtained in similar wage and hour class action cases approved by various courts in California. *See e.g.*,
14 *Stuart v. RadioShack Corp.*, No. C-07-4499 EMC, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010)
15 (approving fee award of 1/3 of the total maximum settlement amount of \$4.5 million) (the court noted
16 that the fee award of 1/3 of the total settlement was “well within the range of percentages which courts
17 have upheld as reasonable in other class action lawsuits”); Memorandum & Order, *Monterrubio v. Best*
18 *Buy Stores, L.P.*, Case 2:11-cv-03270-MCE-AC, ECF No. 47, at 23 (E.D. Cal. Nov. 20, 2013)
19 (approving fee award of 30%); *Wilson v. Kiewit Pacific Co.*, No. 09-cv-03630, ECF No. 119 (N.D. Cal.
20 2012) (approving fee award of 1/3 of the common fund and noting that such award is fair, reasonable
21 and appropriate); *Singer v. Becton Dickinson and Co.*, No. 08-cv-821-IEG (BLM), 2010 WL 2196104,
22 at * 8 (S.D. Cal. June 1, 2010) (approving fee award of 33.33% of the common fund); *Romero v.*
23 *Producers Dairy Foods, Inc.*, No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007)
24 (awarding fees of 1/3 of common fund in a wage and hour class action, noting: “[f]ee awards in class
25 actions average around one-third of the recovery.”); *Martin v. FedEx Ground Package System, Inc.*, No.
26 C 06-6883 VRW, 2008 WL 5478576, at *8 (N.D. Cal. Dec. 31, 2008) (approving attorneys’ fees of 1/3
27 of common fund). Moreover, if it becomes necessary to litigate this matter further, counsel have the
28 financial resources and are prepared to devote whatever time and effort are required to zealously

1 advocate on behalf of Plaintiffs and the Class.

2 **VI. CONCLUSION**

3 For these reasons, Plaintiffs’ motion for preliminary approval of the parties’ class action
4 settlement should be granted.

5
6 Dated: January 30, 2023

POTTER HANDY LLP

7 */s/ James M. Treglio*

8

By: James M. Treglio, Esq.
9 Attorney for Plaintiff and the Class