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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

COORDINATION PROCEEDING
SPECIAL TITLE [RULE 3.550]

Judicial Council Coordination Proceeding
No.: CJC-22-005249

SUPER DUPER BURGERS WAGE AND
HOUR CASES

Honorable Ethan P. Schulman
Department 304

Included actions:

CLASS ACTION

Martinez v. Back of the House, Inc., et al.,
No. RG21113642 (Alameda County Super.
Ct.)

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

Martinez v. Back of the House, Inc., et al.,
No. CGC-21-594380 (San Francisco County
Super. Ct.)

[Declaration of Proposed Class Counsel
(Tara Zabehi); Declaration of Proposed
Settlement Class Representative (Erickson
Martinez); and [Proposed] Order filed
concurrently herewith]

Lopez v. Back of the House, Inc., et al.,
No. CGC-19-579624 (San Francisco County
Super. Ct.)

Date: March 4, 2025
Time: 11:00 a.m.
Department: 304

*[Hearing date and time approved by Dept.
304]*

**TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF
RECORD:**

PLEASE TAKE NOTICE that on March 4, 2025 at 11:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Ethan P. Schulman in Department 304 of the Superior Court of California for the County of San Francisco, located at 400 McAllister Street, San Francisco, California 94102, Plaintiff Erickson Martinez (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the First Amended Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 2**” to the Declaration of Tara Zabehi, including, but not limited to, the means of allocation and distribution of funds, which includes the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Class Counsel Fees Payment and Litigation Expenses Payment to Class Counsel, Class Representative Service Payment to Plaintiff, and Settlement Administration Expenses to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Erickson Martinez as Class Representative;
- Preliminarily appointing Arby Aiwezian, Joanna Ghosh, and Tara Zabehi of Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Settlement Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing and emailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving CPT Group, Inc. as the Settlement Administrator; and

- Scheduling a hearing to decide whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Class Counsel Fees Payment and Litigation Expenses Payment to Class Counsel, Class Representative Service Payment to Plaintiff, and Settlement Administration Expenses to the Settlement Administrator.

This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes, and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Tara Zabehi) and Proposed Class Representative (Erickson Martinez) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: January 31, 2025

LAWYERS for JUSTICE, PC

By:

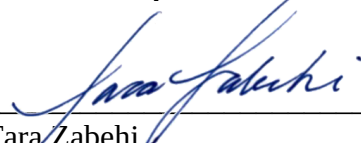

Tara Zabehi
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	SUMMARY OF MOTION.....	1
II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....	3
III.	SUMMARY OF THE SETTLEMENT TERMS	6
IV.	LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS.....	10
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT	11
A.	The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.	12
B.	The Settlement Is Fair, Reasonable, and Adequate.....	14
C.	The Settlement Is of Significant Value.....	15
D.	The PAGA Release is Appropriate.....	15
VI.	CERTIFICATION OF THE CLASS IS APPROPRIATE.	16
A.	The Class Is Ascertainable and Sufficiently Numerous.	17
B.	The Class Members Share a Well-Defined Community of Interest....	17
VII.	APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS’ FEES AND COSTS	19
VIII.	THE PROPOSED CLASS NOTICE IS ADEQUATE.	22
IX.	APPOINTMENT OF CPT GROUP, INC. AS THE SETTLEMENT ADMINISTRATOR.....	23
X.	PROPOSED DEADLINES FOR THE NOTICE PROCESS	24
XI.	APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE ENHANCEMENT AWARD	266
XII.	CONCLUSION	27

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	11
<i>Amaro v. Anaheim Arena Mgmt., LLC</i> (2021) 69 Cal. App. 5th 521	16
<i>Bartold v. Glendale Federal Bank</i> (2000) 81 Cal.App.4th 816	17
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195	21
<i>Capitol People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676	17
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	21, 22
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	21
<i>City of Detroit v. Grinnell Corporation</i> (2d Cir. 1974) 495 F.2d 448	11
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1982) 955 F.2d 1268	10
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	10, 11
<i>Estrada v. Dr. Pepper/Seven-Up</i> , Los Angeles County Superior Court, Case No. BC 262247 (May 2005)	21
<i>Gina Johnson v. Maxim Healthcare Services, Inc.</i> (2021) 66 Cal.App.5th 924	16
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	10, 11
<i>Hicks v. Kaufman & Broad Home Corp.</i> (2001) 89 Cal.App.4th 908	16
<i>Hutcheson v. Superior Ct.</i> (2022) 74 Cal. App. 5th 932	16
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127 F.Supp.2d 418	15
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494	21
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	20
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4 th 116	15
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480	20, 21
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19	20
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	17
<i>Marshall v. Holiday Magic</i> (9th Cir. 1977) 550 F.2d 1173	21
<i>Mendoza v. United States</i> (9th Cir. 1980) 623 F.2d 1338	21

1	<i>Moore v. IKEA</i> , Los Angeles Superior Court, Case No. BC 263646 (Sept. 2006).....	21
2	<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	11
3	<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	17
4	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	16, 17
5	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	10
6	<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	26
7	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	10, 11
8	Statutes	
9	Cal. Code Civ. Proc. § 382.....	16
10	Cal. Code Civ. Proc. § 1781.....	21
11	Cal. Code Civ. Proc. § 1781(f).....	10
12	Other Authorities	
13	Conte & Newberg, Newberg on Class Actions § 11.25 (4th Ed.)	11
14	Conte & Newberg, Newberg on Class Actions § 11.26 (4th Ed.)	24
15	Conte & Newberg, Newberg on Class Actions § 11.47 (4 th Ed.)	15
16	Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.)	21
17	Conte & Newberg, Newberg on Class Actions § 8.21 (4th Ed.)	22
18	Conte & Newberg, Newberg on Class Actions § 8.39 (4th Ed.)	22
19	<i>Manual for Complex Litigation</i> § 21.311 (4th ed. 2007)	22
20	<i>Manual for Complex Litigation</i> § 21.312 (4th ed. 2007)	22
21	Rules	
22	Fed. R. Civ. P. 23(c)(2)	22

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Erickson Martinez (“Plaintiff” or “Class Representative”) seeks preliminary approval of the First Amended Joint Stipulation of Class Action and PAGA Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, on the one hand, and Defendants Back of the House, Inc.; EBurger, LLC; JBurger, LLC; Mission 98 Super, LLC; MBurger, LLC; 2355 Telegraph Ave, LLC; The Veranda Super, LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger, LLC; MetBurger, LLC; Super Novato, LLC; Super Los Gatos, LLC; KBurger, LLC; Adriano Paganini; and Edmondo Sarti (together, “Defendants”), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00).¹ The Gross Settlement Amount includes the following: (1) the Net Settlement Amount to be paid to the Participating Class Members²; (2) the Class Representative Service Payment of Ten Thousand Dollars (\$10,000.00) to Plaintiff³; (3) the Class Counsel Fees Payment to Class Counsel, consisting of attorneys’ fees not to exceed one-third (1/3) of the Gross Settlement Amount (currently estimated to be up to \$266,666.67) and reimbursement of litigation costs and expenses (“Litigation Expenses Payment”) not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00)⁴; (4) the Settlement Administration Expenses to the Settlement Administrator in the amount not to exceed Thirty-Seven Thousand and Five Hundred Dollars and Zero Cents (\$37,500.00);⁵ and (5) the amount of Fifty Thousand Dollars (\$50,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$37,500.00) will be distributed to the Labor and Workforce Development Agency

¹ Settlement Agreement, attached as “**EXHIBIT 2**” to Declaration of Tara Zabehi (“Zabehi Decl.”), § I.P.

² *Id.*, § I.V.

³ *Id.*, § V.B.1.

⁴ *Id.*, § V.B.2.

⁵ *Id.*, § V.B.4.

1 (“LWDA Payment”) and 25% (i.e., \$12,5000.00) will be distributed to PAGA Group Members
2 on a *pro rata* basis based on PAGA Group Members’ Workweeks during the PAGA Period.⁶

3 Plaintiff also seeks to provisionally certify the following Class for settlement purposes,
4 which Defendants do not oppose:

5 All current and former hourly-paid or non-exempt employees who worked for any
6 of the Defendants or Employers at a Super Duper Burgers restaurants within the
7 State of California at any time during the period from September 16, 2015 through
8 March 4, 2025. (“Class” or “Class Members”).⁷

9 Based on information provided by Defendants, as of approximately September 9, 2024,
10 the Class is estimated to consist of approximately 1,425 current and former employees who
11 worked a total of 98,555 Workweeks during the Class Period, and the PAGA Group Members
12 is estimated to consist of approximately 1,368 current and former employees who worked a total
13 of 46,561 Workweeks during the PAGA Period.⁸

14 Class Members who do not submit a timely and valid Request for Exclusion from the
15 Class Settlement (“Participating Class Members”) will receive a share of the Net Settlement
16 Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks
17 during which Class Members worked in an hourly-paid or non-exempt position at a Super
18 Burgers restaurant during the Class Period, excluding periods of time when Class Members’
19 employment with Employers were separated or the Employers’ businesses were closed based
20 on COVID-19 related closures (“Workweeks”).⁹ PAGA Group Members will receive a share
21 of the 25% portion of the PAGA Payment (“Individual PAGA Payment”) on a *pro rata* basis,
22 based on the number of Workweeks during the PAGA Period.¹⁰

23
24
25
26 ⁶ Settlement Agreement, § V.B.3. “PAGA Period” is defined as the period of time from May 17, 2018 through
March 4, 2025. *See id.*, § I.Z.

27 ⁷ Settlement Agreement, § I.B. “Class Period” is defined as the period of time from September 16, 2015 through
March 4, 2025. *See id.*, § I.H.

28 ⁸ Zabehi Decl, ¶ 10.

⁹ Settlement Agreement, §§ I.S., I.BB., and I.KK.

¹⁰ *Id.*, § I.Q.

The Settlement resolves the Released Class Claims of Plaintiff and Participating Class Members, and the Released PAGA Claims of Plaintiff, PAGA Group Members, and the State of California, against the Released Parties.¹¹

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants do business as Super Duper Burgers and operate food and burger restaurants located throughout the Bay Area. Plaintiff Erickson Martinez is a former employee of Defendants.

On May 17, 2019, Plaintiff Magaly Olayo Lopez (“Plaintiff Lopez”) sent a letter to the LWDA and Defendants, regarding her intent to pursue civil penalties for claimed violations of California Labor Code sections 201, 202, 203, 204, 226(a)-(e), 226.3, 226.7, 510, 512, 558, 1194, and IWC Wage Orders, including *inter alia*, Wage Orders 5-2001, and any other applicable IWC Wage Order (“Lopez LWDA Letter”).

On September 16, 2019, Plaintiff Lopez filed a Class Action Complaint (“Lopez Complaint”) against Defendants Back of the House, Inc., Mission 98 Super, LLC, MBurger, LLC, and JBurger, LLC in the Superior Court of the State of California for the County of San Francisco, Case No. CGC-19-579264, entitled *Magaly Olayo Lopez v. Back of the House, Inc., et al.*, alleging causes of action for violations of (1) California Labor Code §§ 201, 204 and 1194 (Failure to Pay All Wages), (2) California Labor Code §§ 226.7 and 512 (Failure to Pay Compensation for Missed and Improper Meal Periods), (3) California Labor Code § 226.7 (Failure to Pay Compensation for Missed and Improper Rest Periods), (4) California Labor Code § 226 (Failure to Provide Accurate/Itemized Wage Statements), (5) California Labor Code §§ 201, 202 and 203 (Waiting Time Penalties); (6) California Private Attorneys General Act § 2698 *et seq.* (PAGA), and (7) California Business & Professions Code § 17200, *et seq.* (“Lopez Action”).

On December 19, 2019, Defendants Back of the House, Inc., Mission 98 Super, LLC, MBurger, LLC, and JBurger, LLC filed an Answer to the *Lopez* Complaint.

¹¹ See *id.* at § I.DD., for the full scope of the “Released Class Claims,” *id.* at § I.EE., for the full scope of the “Released PAGA Claims,” and *id.* at § I.FF., for the definition of the “Released Parties.”

On July 16, 2020, Plaintiff Lopez filed an Amendment to the *Lopez* Complaint, thereby adding the following additional Defendants: 2355 Telegraph Ave, LLC; The Veranda Super, LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger, LLC; EBurger, LLC; MetBurger, LLC; Super Novato, LLC; Super Los Gatos, LLC; and KBurger, LLC.

On December 14, 2020, Defendants 2355 Telegraph Ave, LLC; The Veranda Super, LLC; 5399 Prospect Road, LLC; Super Emeryville, LLC; DBurger, LLC; EBurger, LLC; MetBurger, LLC; Super Novato, LLC; Super Los Gatos, LLC; and KBurger, LLC filed an Answer to the *Lopez* Complaint.

On July 19, 2021, Plaintiff Martinez sent a letter to the LWDA and Defendants, regarding his intent to pursue civil penalties for claimed violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and IWC Wage Orders, including *inter alia*, Wage Orders 4-2001, 5-2001, 7-2001, and any other applicable IWC Wage Order (“*Martinez* LWDA Letter”).

On August 9, 2021, Plaintiff Martinez filed a Class Action Complaint for Damages (“*Martinez* Class Complaint”) against Defendants Back of the House, Inc., EBurger, LLC, and JBurger, LLC in the Superior Court of the State of California for the County of San Francisco, Case No. CGC-21-594380, entitled *Erickson Martinez v. Back of the House, Inc., et al.*, alleging causes of action for violation of (1) California Labor Code §§ 510 and 1198 (Failure to Pay Overtime), (2) California Labor Code §§ 226.7 and 512(a) (Failure to Provide Compliant Meal Periods and Associated Premiums), (3) California Labor Code § 226.7 (Failure to Provide Compliant Rest Periods and Associated Premiums), (4) California Labor Code §§ 1194, 1197 and 1197.1 (Failure to Pay Minimum Wages), (5) California Labor Code §§ 201 and 202 (Failure to Timely Pay Final Wages), (6) California Labor Code § 204 (Failure to Timely Pay Wages During Employment), (7) California Labor Code § 226(a) (Failure to Provide Compliant Wage Statements), (8) California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records), (9) California Labor Code §§ 2800 and 2802 (Failure to Reimburse Business Expenses), and (10) California Business & Professions Code § 17200, et seq. (“*Martinez* Class Action”).

On September 22, 2021, Plaintiff Martinez filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“Martinez PAGA Complaint”) against Defendants Back of the House, Inc., EBurger, LLC, Adriano Paganini, and Edmondo Sarti for penalties under the California Private Attorneys General Act in the Superior Court of the State of California for the County of Alameda, Case No. RG21113642, entitled *Erickson Martinez v. Back of the House, Inc., et al.* (“Martinez PAGA Action”).

On December 3, 2021, Defendants Back of the House, Inc., EBurger, LLC, and JBurger, LLC filed an Answer to the *Martinez* Class Complaint.

On December 3, 2021, Defendants Back of the House, Inc., EBurger, LLC, Adriano Paganini, and Edmondo Sarti filed an Answer to the *Martinez* PAGA Complaint.

On September 15, 2022, the Court entered the Order Granting Petition for Coordination, thereby coordinating the *Lopez* Action, *Martinez* Class Action, and *Martinez* PAGA Action in the coordinated proceeding entitled *Super Duper Burgers Wage and Hour Cases* in the Superior Court of the State of California for the County of San Francisco, Case No. CJC-22-005249 and Judicial Council Coordination Proceeding No. 5249 (i.e., the “Action”).

On January 13, 2023, Plaintiff (and Plaintiff Lopez) filed the Consolidated Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“Operative Complaint”) against Defendants in the Action.

On March 17, 2023, Defendants filed an Answer to the Operative Complaint.

The Operative Complaint’s core allegations are that Defendants have violated the California Labor Code by engaging in uniform practices and procedures, with respect to Plaintiffs, the Class Members, and PAGA Group Members of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby also engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to civil penalties pursuant to PAGA. The Operative

Complaint contends that Plaintiffs, the Class Members, and PAGA Group Members are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees and costs.

Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further deny that the Action is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

Plaintiff and Defendant have actively litigated the Action since commencement of the claims. On September 13, 2023, Plaintiff, Plaintiff Lopez, and Defendants participated in a Mandatory Settlement Conference before settlement officer Pang Ly, and ultimately Plaintiff and Defendants reached the Settlement described herein to resolve the Action in its entirety.

On April 5, 2024, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement. On July 1, 2024, the Court denied Plaintiff's Motion for Preliminary Approval without prejudice citing issues with Plaintiff's Motion for Preliminary Approval ("July 1, 2024 Order"). Since then, Plaintiff has worked diligently to address the Court's concerns and now files a Renewed Motion for Preliminary Approval.¹²

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Participating Settlement Class Members), and the Released PAGA Claims of Plaintiff, the PAGA Group Members, and the State of California, with respect to the Released Parties.¹³ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed one-third (1/3) of the Gross Settlement Amount (currently estimated to be up to \$266,666.67) ("Class Counsel Fees Payment"), and reimbursement of costs and expenses in an amount not to exceed Fifteen

¹² See Zabehi Decl.

¹³ Settlement Agreement, §§ V.E.1-3.

Thousand Dollars and Zero Cents (\$15,000.00) (“Litigation Expenses Payment”) to Class Counsel; (2) settlement administration costs, which are currently estimated not to exceed Thirty-Seven Thousand and Five Hundred Dollars and Zero Cents (\$37,500.00) to the Settlement Administrator (“Settlement Administration Expenses”);¹⁴ (3) the amount of Fifty Thousand Dollars (\$50,000.00) allocated to PAGA penalties, of which 75% (i.e., \$37,500.00) will be distributed to the LWDA as the LWDA Payment and 25% (i.e., \$12,500.00) will be distributed to PAGA Group Members; and (4) payment in the amount of up to Ten Thousand Dollars (\$10,000.00) to Plaintiff Erickson Martinez (“Class Representative Service Payment”).¹⁵

The Parties have agreed to retain CPT Group, Inc. (“Settlement Administrator”) to handle the notice and settlement administration process. The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member’s share of the available Net Settlement Amount (“Individual Settlement Share”), in accordance with the Settlement Agreement and as follows:

- a. After Preliminary Approval of the Settlement, the Settlement Administrator will determine the Workweeks each Class Member worked during the Class Period, divide the Net Settlement Amount by the Workweeks of all Class Members during the Class Period to yield the “Estimated Workweek Value,” and multiply each Class Member’s individual Workweeks during the Class Period by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.¹⁶
- b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Participating Class Members during the Class Period to yield the “Final Workweek Value,” and multiply each Participating Class Member’s individual Workweeks during the Class Period by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁷

Each Class Member’s Individual Settlement Share will be considered: twenty percent (20%) wages that will be reported on an IRS Form W-2; and eighty percent (80%) penalties, interest, and non-wage damages that will be reported on an IRS Form 1099.¹⁸ The Settlement Administrator will withhold the employee’s share of taxes and withholdings in connection with

¹⁴ The Settlement Administrator estimated bid is approximately \$29,000.00. Out of an abundance of caution, the Settlement Agreement requests Settlement Administration Expenses not to exceed \$37,500.00 in the event of any unforeseen expenses beyond the estimated bid of \$29,000.00.

¹⁵ Settlement Agreement, § I.V.; see also §§ V.B.1-V.B.4.

¹⁶ Settlement Agreement, § V.C.2.a.

¹⁷ *Id.*, § V.C.2.b.

¹⁸ *Id.*, § V.C.3.

the wages portion of the Individual Settlement Shares, and issue checks to Participating Class Members for their Individual Settlement Payment (i.e., payment of their Individual Settlement Share net of these taxes and withholdings).¹⁹ Defendants’ share of any payroll taxes attributable to the wages portion of the Individual Settlement Shares (“Employer Taxes”) will be paid separately and in addition to the Gross Settlement Amount.²⁰

Each Individual Settlement Payment check will remain valid and negotiable for one hundred eighty (180) calendar days from the date the checks are issued and shall be cancelled thereafter.²¹ Funds associated with such cancelled checks will be transmitted to Children of Shelters.²²

Class Members who do not want to participate in the Class Settlement (i.e., who wish to opt out) must submit a timely, written letter to be excluded from the Class Settlement (“Request for Exclusion”) to the Settlement Administrator, by mail or email, postmarked by the date that is forty-five (45) calendar days from the initial mailing of the Class Notice (“Response Deadline”).²³ The Request for Exclusion must: (1) contain the case name and number of the Action; (2) state the Class Member’s full name, address, telephone number, and last four digits of his or her Social Security number; (3) be signed; and (4) clearly state that the Class Member requests to be excluded from the Class Settlement; and (5) be returned by mail or submitted via e-mail to the Settlement Administrator at the specified address or e-mail address, postmarked on or before the Response Deadline.²⁴ A Class Member who timely submits a valid Request for Exclusion will not be bound by the Class Settlement, will not receive any benefits under the Class Settlement, and will not have any right to object or appeal to the Class Settlement.²⁵ PAGA Group Members may not opt-out of the PAGA Settlement and will still be paid their respective share for the Individual PAGA Payment.²⁶

¹⁹ Settlement Agreement, § V.C.3.

²⁰ *Ibid.*

²¹ *Id.*, § V.D.11.

²² *Ibid.*

²³ *Id.*, §§ I.GG & V.D.3.a.

²⁴ *Id.*, § V.D.3.a.

²⁵ *Ibid.*

²⁶ *Ibid.*

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Participating Class Members) may object to the Class Settlement, either in writing to the Settlement Administrator, by mail or email, postmarked by the Response Deadline, or by directly presenting his or her objection orally to the Court at the Final Approval Hearing with or without submitting a written objection to the Class Settlement.²⁷ A written objection must: (1) contain the case name and number of the Action; (2) state the Participating Class Member's full name, address, telephone number, and last four digits of his or her Social Security number; (3) be signed; (4) clearly set forth the grounds for the objection; (5) attach any documentation that the objection is based upon; and (6) identify any counsel representing the Participating Class Member with respect to the objection and (7) be returned by mail or email to the Settlement Administrator at the specified physical address or email address, postmarked on or before the Response Deadline.²⁸ In addition to submitting a written objection, alternatively, Participating Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Class Settlement.²⁹

Class Members or PAGA Group Members will have an opportunity to dispute the number of Workweeks that are credited to him or her, as reflected in the Class Notice. In order to dispute Workweeks, Class Members and/or PAGA Group Members may submit a written letter ("Workweeks Dispute"), by mail or email, to the Settlement Administrator that: (1) contain the case name and number of the Action; (2) state the Class Member's or PAGA Group Member's full name, address, telephone number, and last four digits of his or her Social Security number; (3) be signed; (4) clearly state that the Class Member or PAGA Group Member disputes the number of Workweeks credited to him or her and state the number of Workweeks he or she believes are correct; and (5) attach any documentation to support the dispute; and (6) is returned by mail or email to the Settlement Administrator at the specified physical address or email address, postmarked on or before the Response Deadline.³⁰

²⁷ Settlement Agreement, § V.D.3.b.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Id.*, § V.D.3.c.

The Response Deadline noted above shall be extended by fifteen (15) calendar days for any mailings returned to the Settlement Administrator by the Response Deadline.³¹

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's decision to approve a class action settlement may be reversed only upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002). This procedure, which is commonly utilized by both federal and state courts, assures class members of the protection of procedural due process safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement class.

Preliminary approval of a settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. Cal. R. Ct. 3.769(g).

³¹ Settlement Agreement, § V.D.3.d.

In considering a potential class settlement, a court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including "the strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Dunk, supra*, 48 Cal.App.4th at 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give "proper deference to the private consensual decision of the parties." *Hanlon, supra*, 150 F.3d at 1027 (citation omitted).

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. "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." *Id.*; *Dunk, supra*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

1 A. The Settlement Resulted from Arm's-Length Negotiations Based Upon
2 Extensive Investigation and Discovery.

3 The Parties actively litigated the Action since commencement of the claims. Class
4 Counsel used the pre-settlement conference time period to investigate the veracity, strength, and
5 scope of the claims, and Class Counsel was actively preparing the case for class certification
6 and trial.³²

7 Prior to reaching the Settlement, Class Counsel conducted significant investigation and
8 formal and informal discovery regarding the facts of the case, including and not limited to, the
9 exchange, review, and analysis of a large volume of documents and data produced by
10 Defendants.³³ The volume of data and documents that Class Counsel reviewed and analyzed
11 included and was not limited to: Plaintiff's employment records, putative class members'
12 payroll and timekeeping records, Defendants' Employee Handbooks and relevant policies and
13 procedures, Training Checklist, employee orientation materials, Meal Period Policy (including
14 Meal Period Waivers), Meal and Rest Break Acknowledgment, Pandemic Prevention Plan, Job
15 Descriptions, and Wage Statements, among other information and documents.³⁴ Class Counsel
16 interviewed Plaintiff to gather facts and circumstances surrounding Plaintiff's and putative class
17 members' employment.³⁵ Class Counsel served multiple sets of formal written discovery
18 requests on Defendants, including requests for production of documents, form interrogatories,
19 and multiple sets of special interrogatories; Class Counsel took the depositions of Defendants'
20 two Person Most Knowledgeable designees; and Class Counsel also defended the deposition of
21 Plaintiff.³⁶ Counsel for the Parties also met and conferred on numerous occasions, e.g., to
22 discuss issues relating to the pleadings, discovery, and the production of documents and data
23 prior to settlement negotiations.³⁷ Class Counsel also drafted pleadings and prepared for and
24 attended court proceedings, settlement negotiations, and the mandatory settlement conference,
25

26 ³² Zabehe Decl., ¶¶ 12-13.

27 ³³ *Ibid.*

28 ³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

1 among other tasks.³⁸

2 The Parties engaged in extensive settlement negotiations and participated in a Mandatory
3 Settlement Conference.³⁹ In the course of litigation and in connection with settlement
4 discussions, the Parties exchanged class member and aggrieved employee information and
5 engaged in an intensive discussion regarding their evaluations of the claims and various aspects
6 of the Action, including but not limited to, the risks and delays of further litigation, the risks to
7 the Parties of proceeding with class certification and/or representative adjudication, the law
8 relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA
9 representative claims, as well as the evidence produced and analyzed, and the possibility of
10 appeals, among other things.⁴⁰ During all settlement discussions, the Parties conducted their
11 negotiations at arm's length in an adversarial position.⁴¹ Arriving at a settlement that was
12 acceptable to the Parties was not easy. Defendants and their counsel felt strongly about their
13 ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that
14 they would be able to obtain class certification and prevail at trial.⁴² After conducting
15 investigations, significant formal and informal discovery, and extensive settlement negotiations,
16 the Parties have agreed that the matter is well-suited for settlement given the legal issues relating
17 to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend
18 further litigation.⁴³

19 The Settlement takes into account the strengths and weaknesses of each side's position
20 and the uncertainty of how the case might have concluded at certification and trial.⁴⁴ The Parties
21 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁵
22 Counsel for the Parties have also reviewed documents and information relating to Plaintiff and
23 the Class Members' and PAGA Group Members' employment with Defendants and performed
24

25 ³⁸ Zabehi Decl., ¶¶ 12-13.

26 ³⁹ *Ibid.*

27 ⁴⁰ *Id.*, ¶ 12.

28 ⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Id.*, ¶¶ 12 & 19.

⁴⁴ *Id.*, ¶¶ 18 & 19.

⁴⁵ *Id.*, ¶ 13.

significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendants' defenses thereto, as well as facts discovered.⁴⁶ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁷

B. The Settlement Is Fair, Reasonable, and Adequate.

The Settlement, which provides for a Gross Settlement Amount of Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁸ The Settlement was arrived at using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁴⁹ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁵⁰ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵¹

Assuming that the Class Counsel Fees Payment and Litigation Expenses Payment, Class Representative Service Payment, PAGA Payment, and Settlement Administration Expenses are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Four Hundred Twenty Thousand Eight Hundred Thirty Three Dollars and Thirty Three Cents Dollars (\$420,833.33).⁵² As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Settlement Share will be calculated based on his or her Workweeks during the Class Period and the amount of each PAGA Group

⁴⁶ Zabehi Decl., ¶¶ 12-14.

⁴⁷ *Id.*, ¶¶ 2-6.

⁴⁸ *Id.*, ¶ 15.

⁴⁹ *Id.*, ¶¶ 12-13.

⁵⁰ *Id.*, ¶ 12.

⁵¹ *Id.*, ¶¶ 12, 14, 19 & 22.

⁵² *Id.*, ¶ 15.

Member's Individual PAGA Payment will be based on his or her Workweeks during the PAGA Period.⁵³ There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵⁴ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged a large volume of documents, data, and information prior to the mandatory settlement conference and settlement negotiations.⁵⁵ The discovery and information that Class Counsel obtained from Defendants and through other sources allowed Class Counsel to evaluate the potential value and merit of the claims and Defendants' defenses thereto.⁵⁶ See Zabehi Declaration.

D. The PAGA Release is Appropriate.

Pursuant to the Court's July 1, 2024 Order denying Preliminary Approval of Class Action Settlement without prejudice, Plaintiff Martinez Amended the Settlement Agreement to address the Court's concerns. *See generally* Settlement Agreement; Zabehi Declaration. As part of that amendment, Plaintiff Martinez seeks to release the PAGA claims raised in his LWDA letter

⁵³ Settlement Agreement, §§ V.B.3.a & V.C.2.

⁵⁴ Zabehi Decl., ¶¶ 12, 14, 18, & 22.

⁵⁵ *Id.*, ¶¶ 12-19.

⁵⁶ *Ibid.*

which has cited labor code violations that are not in the *Lopez* LWDA Letter, contains more robust allegations, and legal theories.

Moreover, pursuant to *Gina Johnson v. Maxim Healthcare Services, Inc.* (2021) 66 Cal.App.5th 924, based on the *Martinez* LWDA Letter having been provided on July 19, 2021, Plaintiff contends that his PAGA claim can reach back to at least as far back as July 19, 2018. Further, Defendants have agreed to waive any statute of limitations defense to Plaintiff's PAGA claim so that the PAGA period and release of class members' PAGA claims extends back to May 17, 2018 and as such the Parties have contractually agreed to settle and resolve Released PAGA Claims for the period commencing on and from May 17, 2018.⁵⁷ (See *Hutcheson v. Superior Ct.* (2022) 74 Cal. App. 5th 932, 942; *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal. App. 5th 521, 542.) Accordingly, the PAGA release is appropriate, and the Court may approve this Class Action and PAGA Settlement.

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁸ California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiff's claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Finally, prosecution of separate actions by individual Class Members would create the

⁵⁷ Settlement Agreement, § I.Z.

⁵⁸ *Id.*, § III.A.

1 risk of inconsistent or varying adjudications, and a class action is superior to other available
2 means for the fair and efficient adjudication of the case. The Class is amenable to class
3 certification for settlement purposes as discussed below.

4 **A. The Class Is Ascertainable and Sufficiently Numerous.**

5 “Ascertainability is required in order to give notice to putative class members as to whom
6 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
7 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
8 by describing a set of common characteristics sufficient to allow a member of that group to
9 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
10 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
11 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

12 This action involves a class of approximately 1,425 current and former employees who
13 worked a total of 98,555 Workweeks during the Class Period, based on information provided
14 by Defendants.⁵⁹ This class is, therefore, sufficiently numerous. See *Rose v. City of Hayward*
15 (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the
16 numerosity requirement as joinder is not practical at that point). Further, all Class Members can
17 be identified by Defendants to the Settlement Administrator through a review of Defendants’
18 employment records. As such, the Class is ascertainable and sufficiently numerous.

19 **B. The Class Members Share a Well-Defined Community of Interest.**

20 The community of interest requirement “embodies three factors: (1) predominant
21 common questions of law or fact; (2) class representative with claims or defenses typical of the
22 class; and (3) class representative who can adequately represent the class.” *Sav-On, supra*, 34
23 Cal.4th at 326. “[T]he community of interest requirement for certification *does not mandate*

24
25 ⁵⁹ Zabehi Decl., ¶ 10; Settlement Agreement, § V.C.5. Defendants previously represented that for the period of
26 September 16, 2015 through September 11, 2023, there were approximately 3,086 Class Members and
27 approximately 103,252 Workweeks worked by Class Members. On December 17, 2024, Defendants confirmed that
28 due to extraneous information and data that had inadvertently been included and analyzed by them, the number of
Class Members and Workweeks provided up to and including September 11, 2023 (3,086 Class Members and
approximately 103,252 Workweeks) were overstated. Defendants now represent that updated and corrected
calculations reflect that for the period of September 16, 2015 through September 9, 2024 there were approximately
1,425 Class Members and approximately 98,555 Workweeks worked by Class Members.

1 that class members have uniform or identical claims.” *Capitol People First v. Dep’t of*
2 *Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts
3 focus on the Defendant’s internal policies and “pattern and practice . . . in order to assess whether
4 that common behavior toward similarly situated plaintiff renders class certification appropriate.”
5 *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

6 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
7 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155
8 Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore,
9 the commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as
10 applied to the potential class. *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524,
11 1534.

12 Here, common issues of fact and law predominate as to each of the claims alleged and
13 asserted in Action. Based on the documents and information obtained through formal and
14 informal discovery and exchange of information in this case, Plaintiff contends that Class
15 Members were subject to the same or similar job duties and uniform operations and employment
16 practices, policies, and procedures during the time period at issue.⁶⁰ Plaintiff’s claims arise from
17 Defendants’ alleged uniform policies and systematic scheme, with respect to Plaintiff and the
18 Class Members of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
19 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
20 to timely pay wages during employment and upon termination of employment, failing to provide
21 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse
22 necessary business-related expenses.⁶¹ Plaintiff also contends that Defendants’ payroll and
23 recordkeeping practices with respect to Plaintiff and the Class Members were substantially the
24 same during the time period at issue.⁶² As a result, Plaintiff claims that Class Members were
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26

27 ⁶⁰ Zabehi Decl., ¶ 17.

28 ⁶¹ *Ibid.*

⁶² *Ibid.*

uniformly not paid all compensation due to them from Defendants during the time period at issue.⁶³

Plaintiff maintains that the outcome of this litigation would be determined by Defendants' alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt employees who worked at a Super Duper Burgers restaurants within the State of California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS' FEES AND COSTS

Class Counsel has litigated the matter for multiple years and was actively preparing the matter for class certification and trial.⁶⁴ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery. For example, Class Counsel served multiple sets of formal written discovery requests on Defendants, including requests for production of documents, form interrogatories, and multiple sets of special interrogatories; Class Counsel took the depositions of Defendants' two Person Most Knowledgeable designees; and Class Counsel also defended the deposition of Plaintiff.⁶⁵ Class Counsel reviewed a large volume of documents and data and also interviewed and obtained information from Plaintiff and other sources, researched applicable law, evaluated damages, and met and conferred with Defendants' counsel regarding the pleadings, discovery, and the production of documents and data prior to the mandatory settlement conference.⁶⁶ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a Mandatory Settlement Conference which included counsel for the *Lopez* Action.⁶⁷

⁶³ Zabehi Decl., ¶ 17.

⁶⁴ *Id.*, ¶ 12.

⁶⁵ *Id.*, ¶ 13.

⁶⁶ *Id.*, ¶¶ 12-13, 17 & 19.

⁶⁷ *Id.*, ¶¶ 12-13.

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶⁸ The Settlement establishes a Gross Settlement Amount of Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00), and provides for Class Counsel to apply to the Court for Class Counsel Fees and Litigation Expenses, consisting of attorneys' fees in an amount not to exceed one-third (1/3) of the Gross Settlement Amount (currently estimated to be up to \$266,666.67), and an amount not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00) for costs and expenses.⁶⁹ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the cases, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Class Counsel Fees Payment and Litigation Expenses Payment, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁷⁰

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace

⁶⁸ Zabehi Decl., ¶¶ 2-6.

⁶⁹ Settlement Agreement, § V.B.2.

⁷⁰ *Id.*, Exh. A.

in comparable litigation.” *Id.* at 50. In cases where class members present claims against a settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

The propriety of calculating and awarding attorneys’ fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that “[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee,” “they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[,]” and “[t]he percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷¹

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff’s motion for final approval of the Settlement and application for the Class Counsel Fees Payment and Litigation Expenses Payment and at the Final Approval Hearing. Considering the work performed and the risks incurred, the

⁷¹ Zabehi Decl., ¶ 20.

attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it "present[s] a fair recital of the subject matter and proposed terms" of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

The proposed Class Notice⁷² describes the Settlement, the deadlines and procedures to submit a written objection to the Class Settlement, Request for Exclusion from the Class Settlement, and/or Workweeks Dispute, and the date and time set for the Final Approval Hearing.⁷³ Pursuant to the July 1, 2024 Order, the Parties have amended the Settlement Agreement to allow for the Class Notice to be distributed via email, and to allow for Request for Exclusions, Objections, and Workweek Disputes to be submitted by e-mail. Further, the Settlement Administrator will also host the Class Notice via a content-neutral settlement website managed by the Settlement Administrator.

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁴ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁵ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share is calculated and the number of Workweeks credited to them.⁷⁶

⁷² Settlement Agreement, Exh. A.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

The proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 (“The essentials of due process of law in class suits would appear to be afforded by fair representation in the assertion of claims of class members against the opposing parties in any lawsuit, and notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

**IX. APPOINTMENT OF CPT GROUP, INC. AS THE SETTLEMENT
ADMINISTRATOR**

The Parties have selected CPT Group, Inc. to administer the Settlement. The Settlement Administrator will mail and e-mail the Class Notice in English and Spanish to each Class Member by e-mail and First-Class U.S. mail.⁷⁷ With respect to Class Notices that are returned as undeliverable, with a forwarding address, on or before the Response Deadline, the Settlement Administrator will resend the Class Notice to the forwarding address within five (5) calendar days.⁷⁸ With respect to Class Notices that are returned as undeliverable, and without a forwarding address, on or before the Response Deadline, the Settlement Administrator within five (5) calendar days of receipt, search for a more current address for the Class Member by way of skip trace and re-mail the Class Notice to an alternate address located through skip trace.⁷⁹ The Response Deadline shall be extended by fifteen (15) calendar days for any mailings returned to the Settlement Administrator by the Response Deadline.⁸⁰ The Settlement Administrator will receive and process Requests for Exclusion, written objections, and Workweeks Disputes.⁸¹

The Settlement Administrator will be translating, printing, mailing, emailing, and tracking the Court-approved Class Notice in English and Spanish after having updated the physical addresses and email addresses in the Class List via the United States Postal Service’s address search program, performing customary and usual skip-traces on Class Notices returned as undeliverable, calculating Individual Settlement Shares and Individual Settlement Payments,

⁷⁷ Settlement Agreement, § V.D.2.b.

⁷⁸ *Id.*, § V.D.2.c.

⁷⁹ *Ibid.*

⁸⁰ *Id.*, § V.D.3.d.

⁸¹ *Id.*, §§ V.D.3.a – V.D.3.c.

preparing and mailing settlement checks, preparing any appropriate tax forms in connection with the settlement payments and remitting those forms to the appropriate governmental agencies, and other duties and responsibilities set forth to process the Settlement, and as requested by the Parties.⁸² The Settlement Administrator will also create and maintain a neutral settlement website which will provide contact information for Class Counsel and the Settlement Administrator. The Settlement Administration Expenses are currently estimated to be \$29,000.00, and out of an abundance of caution the Settlement Agreement provides for Settlement Administration Expenses up to \$37,500.00 in case of additional unforeseen expenses. Attached as Exhibit 4 to the Declaration of Tara Zabehi is an estimate from CPT Group, Inc. The Settlement Administration Expenses will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸³

Accordingly, Plaintiff respectfully requests that the Court appoint CPT Group, Inc. as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, Plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing and emailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records.⁸⁴

Within twenty (20) business days after entry of the Court order granting preliminary approval of the Settlement Agreement, Defendants will provide the Settlement Administrator the following most up-to-date information about each Class Member and PAGA Group Member in a readable Microsoft Office Excel spreadsheet: (a) full name; (b) last-known mailing address; (c) last known email address; (d) Social Security number; (e) total number of Workweeks during the Class Period; (f) total number of Workweeks during the PAGA Period; (g) such

⁸² Zabehi Decl., ¶ 16.

⁸³ Settlement Agreement, § V.B.4.

⁸⁴ *Id.*, § V.D.2

other information as is necessary for the Settlement Administrator to effectuate the terms of the Settlement (collectively, “Class Data”).⁸⁵

Within ten (10) business days of its receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available for information to update and correct for any known or identifiable address changed, and will mail the Court-approved Class Notice (in English, and Spanish translation) via first-class U.S. mail to all Class Members, using the most current, known mailing addresses identified by the Settlement Administrator.⁸⁶ With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.⁸⁷ Class Members will have until the applicable Response Deadline to mail or use email to Request for Exclusion, Workweeks Dispute, and/or written objection to the Settlement Administrator.⁸⁸

Within thirty (30) calendar days after the Effective Date, Defendants shall transfer the entire Gross Settlement Amount, plus an amount sufficient to cover Employer Taxes, into a qualified settlement account established by the Settlement Administrator.⁸⁹ Within ten (10) business days after Defendants’ funding of the Gross Settlement Amount and Employer Taxes, the Settlement Administrator will issue payments due under the Settlement and approved by the Court, as follows: (a) Individual Settlement Payments to Participating Class Members; (b) Service Payment to Plaintiff; (c) Individual PAGA Payments to PAGA Group Members (d) the LWDA Payment to the LWDA the Class Representative Service Payment to Plaintiff; (e) the Settlement Administration Expenses to itself; and (f) Class Counsel Fees Payment and Litigation Expenses Payment to Class Counsel.⁹⁰

⁸⁵ Settlement Agreement., § I.F.

⁸⁶ *Id.*, § V.D.2.b.

⁸⁷ *Id.*, § V.D.2.c.

⁸⁸ *Id.*, §§ V.D.3.a – V.D.3.c.

⁸⁹ *Id.*, § V.D.9.

⁹⁰ *Id.*, § V.D.10.

Each Individual Settlement Payment check will remain valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and shall be cancelled thereafter.⁹¹ All funds associated with such cancelled checks will be transmitted to Children of Shelters.⁹²

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE ENHANCEMENT AWARD

Plaintiff Erickson Martinez respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Class Representative Service Payment in an amount up to Ten Thousand Dollars (\$10,000.00).⁹³ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Class Representative Service Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁴ Plaintiff was available whenever Class Counsel needed him, actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims, and appeared for his deposition.⁹⁵ Plaintiff's Declaration further explains his adequacy and typicality as a Class Representative. Accordingly, it is appropriate and just for Plaintiff to receive a Class

⁹¹ Settlement Agreement, § V.D.11.

⁹² *Ibid.*

⁹³ *Id.*, § V.B.1.

⁹⁴ Zabehi Decl., ¶ 20; Declaration of Erickson Martinez in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Martinez Decl."), ¶ 8.

⁹⁵ Zabehi Decl., ¶ 20; Martinez Decl., ¶¶ 7-9.

Representative Service Payment for his services on behalf of the Class, PAGA Group Members, and the State of California, in addition to his individual settlement payments.

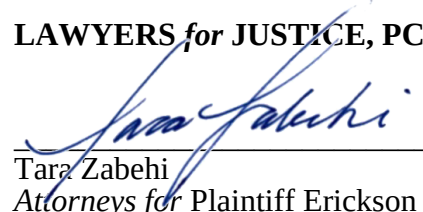
XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminarily appoint and designate Arby Aiwazian, Joanna Ghosh, and Tara Zabehi of Lawyers for Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiff Erickson Martinez as Class Representative; appoint CPT Group, Inc. as Settlement Administrator; preliminarily approve the allocations for Class Counsel Fees Payment and Litigation Expenses Payment, Class Representative Service Payment, PAGA Payment, and Settlement Administration Expenses; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; permit the filing of a memorandum that exceeds the page limit; and schedule a Final Approval Hearing to take place in approximately six (6) months.

Dated: January 31, 2025

LAWYERS for JUSTICE, PC

By:


Tara Zabehi
Attorneys for Plaintiff Erickson Martinez