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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

REYNA SANCHEZ NAVA, individually and
on behalf of others similarly situated, and as an
aggrieved employee and Private Attorney
General,

Plaintiff,

vs.

S & S COASTAL FOODS, LLC, a Delaware
Limited Liability Company; SAMIR
ABRAHAM aka SAM ABRAHAM, an
individual; SUHAD ABRAHAM aka SUE
PRESTON, an individual; and DOES 1
through 50, inclusive,

Defendants.

Case No. 21STCV34779

*Assigned for All Purposes to: Hon. Lia
Martin, Dept. 3*

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS, COLLECTIVE, AND
REPRESENTATIVE SETTLEMENT
AGREEMENT AND CLASS NOTICE**

Hearing Date: September 25, 2024
Hearing Time: 9:00 A.M.
Department: 3

Reservation ID: 151343951236

Complaint Filed: September 21, 2021
Trial Date: None Set

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE THAT** on September 25, 2024, at 9:00 a.m. in Department 3
4 of the above-captioned Court located at 111 North Hill Street, Los Angeles, California 90012,
5 pursuant to Code of Civil Procedure §382 and California Rules of Court 3.769, Named Plaintiff
6 REYNA SANCHEZ NAVA (“Plaintiff”) will and hereby does move the Court for an Order
7 granting preliminary approval of the proposed class action settlement between Plaintiff and
8 Defendants S & S COASTAL FOODS, LLC, SAMIR ABRAHAM aka SAM ABRAHAM, and
9 SUHAD ABRAHAM aka SUE PRESTON (“Defendants”).

10 Specifically, Plaintiff requests that the Court enter an Order:

11 1. Preliminarily approving the Class, Collective, and Representative Settlement
12 Agreement and Class Notice (“Agreement” or “Settlement Agreement”) attached as Exhibit 1 to
13 the Declaration of Heather M. Davis (“Davis Decl.”);

14 2. Certifying a Class for settlement purposes;

15 3. Appointing Plaintiff Reyna Sanchez Nava as the Class Representative for
16 settlement purposes;

17 4. Appointing Heather M. Davis, Amir Nayebdadash, and Brendan J. Burton of
18 Protection Law Group LLP as Class Counsel for settlement purposes;

19 5. Approving the proposed Notice of Proposed Class, Collective, and Representative
20 Settlement Agreement and Class Notice (“Notice of Settlement”) attached as Exhibit A to the
21 Settlement Agreement to be mailed to the Class;

22 6. Approving the opt-out and objection procedures provided in the Settlement
23 Agreement and set forth in the Notice of Settlement;

24 7. Directing Defendants to furnish each Class Member’s name, employee ID number
25 (if applicable), last known address, telephone number, email address (if known), social security
26 number, workweeks worked during the Class Period, pay periods worked during the PAGA Period
27 to the Settlement Administrator within fourteen (14) calendar days after the Court grants
28

1 preliminary approval of the Settlement as well as any other information the Settlement
2 Administrator may reasonably need to administer this Settlement; and

3 8. Setting a date for a hearing on final approval of the proposed settlement.

4 Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Settlement
5 Agreement, as well as the hearing date, time and location for the scheduled preliminary approval
6 hearing on this Action, were submitted to the California Labor Workforce Development Agency
7 via online filing at [https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
8 [General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html) on July 11, 2024. *See* Davis Decl. Ex. 5.

9 The motion is based upon this notice, the attached memorandum of points and authorities,
10 the Declaration of Heather M. Davis, the pleadings and other records on file with the Court in this
11 Action, and any other further evidence or argument that the Court may properly receive at or before
12 the hearing.

13
14 DATED: August 20, 2024

Respectfully submitted,

15
16 **PROTECTION LAW GROUP, LLP**

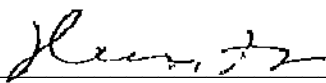
17 By: 
18 Heather Davis
19 Amir Nayebdadash
20 Brendan J. Burton
21 *Attorneys for Plaintiff*
22 REYNA SANCHEZ NAVA
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25
26
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Table of Contents

<u>I. INTRODUCTION</u>	1
<u>II. FACTUAL AND PROCEDURAL BACKGROUND</u>	2
<u>III. THE SETTLEMENT TERMS</u>	6
<u>A. Class Definition</u>	6
<u>B. Amount of Settlement</u>	7
<u>C. Allocation of the Gross Settlement Amount</u>	7
<u>D. Release of Wage and Hour Claims</u>	9
<u>IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL</u>	9
<u>V. THE SETTLEMENT IS PRESUMED FAIR</u>	10
<u>A. Arm’s-Length Bargaining</u>	10
<u>B. Sufficient Investigation and Discovery by Experienced Class Counsel</u>	11
<u>C. The Settlement is Fair and Reasonable in Light of the Parties’ Respective Legal Positions and Recovery Risks</u>	11
<u>1. Class Counsel’s Expert’s Analysis of the Maximum Defendant Could Pay</u>	Error! Bookmark not defined.
<u>2. Plaintiff’s Counsel’s Analysis of the Maximum Available Liability and Damages</u>	12
<u>3. Plaintiff’s Counsel’s Risk-Based Analysis and Risk-Based Adjustments</u>	13
<u>VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED</u>	17
<u>A. An Ascertainable and Numerous Class Exists</u>	17
<u>B. The Class Shares a Well-Defined Community of Interest</u>	18
<u>C. A Class Action is Superior to a Multiplicity of Litigation</u>	19
<u>VII. THE REQUESTED SERVICE PAYMENT IS REASONABLE</u>	20

<u>VIII.</u>	<u>REQUESTED ATTORNEYS’ FEES AND COSTS</u>	20
<u>IX.</u>	<u>NOTICE TO THE CLASS, THE OPT OUT AND OBJECTION PROCESS MEETS DUE</u>	
	<u>PROCESS REQUIREMENTS</u>	21
<u>X.</u>	<u>CONCLUSION</u>	24

Table of Authorities

Cases

<i>Armstrong v. Board of School Directors of City of Milwaukee</i> , 616 F.2d 305 (7th Cir. 1980)	8
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987).....	18
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1051 (2012);	13
<i>Caliber Bodyworks, Inc. v. Superior Court</i> , 134 Cal.4th 365 (2005)	16
<i>Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010).....	22
<i>Choate v. Celite Corp.</i> , 215 Cal App. 4th 1460 (2013)	14
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009).....	9
<i>Clothesrigger, Inc. v. GTE Corp.</i> , 191 Cal.App.3d 605 (1987).....	17
<i>Daar v. Yellow Cab Co.</i> , 67 Cal. 2d 695 (1967).....	17, 18
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	8, 10, 16, 18
<i>Duran v. U.S. Bank Nat. Assn.</i> , 59 Cal.4th 1 (2014).....	13
<i>Jaimez v. DAIOHS USA, Inc.</i> , 181 Cal.App.4th 1286 (2010).....	14
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	11
<i>Lealao v. Beneficial Cal, Inc.</i> , 82 Cal.App.4th 19 (2000)	20, 21
<i>Linder v. Thrifty Oil Co.</i> , 23 Cal.4th 429 (2000)	19
<i>McGee v. Bank of America</i> , 60 Cal.App.3d 442 (1976)	19
<i>Miller v. Woods</i> , 148 Cal.App.3d 862 (1983).....	17
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal.App.4th 399 (2010)	20
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> , 688 F.2d 615 (1982).....	9
<i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011).....	14
<i>Rose v. City of Haywood</i> , 126 Cal.App.3d 926 (1981).....	17
<i>Seastrom v. Neways, Inc.</i> , 149 Cal.App. 4th 1496 (2007)	18
<i>See In re Microsoft I-V Cases</i> , 135 Cal.App.4th 706 (2006).....	9
<i>Van Vranken</i> , 901 F.Supp. 294 (N.D. Cal. 1995)	20

1 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224 (2001) 8, 9, 10

2 **Statutes**

3 Cal. Labor Code §§ 2698, *et seq.*..... 2

4 California Code of Civil Procedure § 382 15

5 California Code of Civil Procedure § 384 7

6 Labor Code § 210(c)..... 14

7 Labor Code §§ 1174(d)..... 12, 14

8 Labor Code §§ 204 12, 14

9 Labor Code §203 13

10 Labor Code §210 14

11 **Other Authorities**

12 *Findings of the Study of California Class Action Litigation*, 2000-2006, available at [http:// www.courts.ca.gov/](http://www.courts.ca.gov/documents/class-action-lit-study.pdf)
13 documents/class-action-lit-study.pdf..... 12

14 **Rules**

15 Cal. Rules of Court, Rule 3.769(c) 8

16 Cal. Rules of Court, Rule3.769(g) 8

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Named Plaintiff REYNA SANCHEZ NAVA (“Plaintiff”) seeks preliminary approval of
4 a Class, Collective, and Representative Settlement Agreement and Class Notice (“Settlement
5 Agreement” or “Settlement”) on behalf of all current and former non-exempt employees of
6 Defendants S &S COASTAL FOODS, LLC, SAMIR ABRAHAM aka SAM ABRAHAM, and
7 SUHAD ABRAHAM aka SUE PRESTON (“Defendants”) who worked in the state of California
8 at any time from August 12, 2017, through June 15, 2022. This includes a Participating Class
9 Member or Non-Participating Class Member (including a Non-Participating Class Member who
10 qualifies as an Aggrieved Employee). The Settlement terms are outlined as follows:

- 11 • Size of the Class: approximately 306 individuals.
- 12 • Gross Settlement Amount: \$750,000.00, exclusive of employer-side payroll taxes.
- 13 • Settlement Administration Costs: not to exceed \$9,000.00.
- 14 • Requested Class Representative Service Payment: \$7,500.00 to Plaintiff.
- 15 • PAGA Payment: \$50,000.00, 75% (\$37,500.00) of which will be paid to the California
16 Labor and Workforce Development Agency (“LWDA”) with the remaining 25%
17 (\$12,500.00) distributed to PAGA Members.
- 18 • Requested Class Counsel’s Fees and Costs: \$262,500.00 plus actual litigation costs and
19 expenses not to exceed \$20,000.00.
- 20 • Net Settlement Amount: approximately \$282,500.00 to be distributed to Participating
21 Class Members.

22 As set forth herein, the Settlement is the product of informed discovery, arms-length
23 negotiations, and provides a fair, adequate, and reasonable recovery for the Class in light of the
24 relative strength of Plaintiff’s claims, the risk, expense and uncertainty of further litigation, and
25 the benefit conferred by the Settlement. Plaintiff therefore respectfully requests that the Court
26 grant preliminary approval of the proposed Settlement, conditionally certify the Class, approve
27 the proposed Notice, and set a hearing date for final settlement approval, among other requested
28

1 relief.

2 **II. FACTUAL AND PROCEDURAL BACKGROUND**

3 Defendants S & S COASTAL FOODS, LLC, SAMIR ABRAHAM aka SAM
4 ABRAHAM, and SUHAD ABRAHAM aka SUE PRESTON (“Defendants”) are owners of
5 numerous Jack-in-the-Box franchise locations, and at all times Sam Abraham and Sue Abraham
6 were officers and owner(s) and/or Chief Executive Officer thereof. *See* Declaration of Heather
7 M. Davis in Support of Motion for Preliminary Approval (“Davis Decl.”) ¶14. Plaintiff worked
8 for Defendants as an hourly paid, non-exempt employee from approximately 2007 to
9 approximately April 2021. *See* Declaration of Reyna Sanchez Nava (“Sanchez Decl.”) ¶2.
10 Settlement Agreement, ¶2.1. Plaintiff is also over forty (40) years of age. Davis Decl. ¶15.

11 **Class Action Complaint**

12 On August 12, 2021, Plaintiff filed a putative class action Complaint, in Orange County
13 Superior Court, Case No. 30-2021-01216425-CU-OE-CXC, alleging nine (9) causes of action
14 against Defendant S & S Coastal Foods, LLC (“Defendant Coastal”) for: (1) Violation of Labor
15 Code sections 510 and 1198 (Unpaid Overtime), (2) Violation of Labor Code sections 226.7
16 and 512(a) (Unpaid Meal Period Premiums), (3) Violation of Cal. Labor Code section 226.7
17 (Unpaid Rest Period Premiums), (4) Violation of Labor Code sections 1194, 1197 and 1197.1
18 (Unpaid Minimum Wages), (5) Violation of Labor Code sections 201, 202 and 203 (Final Wages
19 Not Timely Paid), (6) Violation of Labor Code sections 204 and 210 (Wages Not Timely Paid
20 During Employment), (7) Violation of Labor Code section 226(a) (Failure to Provide Accurate
21 Wage Statements), (8) Violation of Labor Code section 2800 and 2802 (Failure to Reimburse
22 Necessary Business Expenses), and (9) Violation of Business & Professions Code section 17200,
23 *et seq.* (the “Class Complaint”). Defendant Coastal denies the allegations in the Class Complaint
24 in Orange County Superior Court, Case No. 30-2021-01216425-CU-OE-CXC, and denies any
25 failure to comply with the laws identified in the Class Complaint and denies any and all liability
26 for the causes of action alleged. Davis Decl. ¶16. Settlement Agreement, ¶2.2.

27 On September 13, 2021, Plaintiff filed a First Amended Complaint (“FAC”) adding
28

1 Defendants Samir Abraham aka Sam Abraham and Suhad Abraham aka Sue Preston as named
2 defendants. Defendants deny the allegations in the FAC in Orange County Superior Court Case
3 No. 30-2021-01216425-CU-OE-CXC, and deny any failure to comply with the laws identified
4 in the Class Complaint and deny any and all liability for the causes of action alleged. Davis Decl.
5 ¶17. Settlement Agreement, ¶2.2.

6 On July 18, 2023, Plaintiff filed a Request for Dismissal in Orange County Superior Court
7 Case No. 30-2021-01216425-CU-OE-CXC. On July 19, 2023, the Court ordered that the case be
8 dismissed without prejudice. Davis Decl. ¶18. Settlement Agreement, ¶2.2.

9 **PAGA Complaint**

10 On July 2, 2021, pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave written
11 notice to Defendant Coastal and the LWDA by sending and submitting a PAGA Notice. Davis
12 Decl. ¶19, Exhibit (“Ex.”) 2. Settlement Agreement, ¶2.3.

13 On September 21, 2021, Plaintiff filed a Representative Action Complaint for alleged
14 Violation of California Labor Code section 2699, *et seq.* (the “Complaint”) against Defendant
15 Coastal in Los Angeles Superior Court, Case No. 21STCV34779. Defendant Coastal denies the
16 allegations in the Complaint in Los Angeles Superior Court Case No. 21STCV34779 (the
17 “Action”) and denies any failure to comply with the laws identified in the Complaint and denies
18 any and all liability for the causes of action alleged. Davis Decl. ¶20. Settlement Agreement, ¶2.2.

19 On September 13, 2021, pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave
20 an updated written notice to the LWDA, adding two additional alleged employers, Samir
21 Abraham aka Sam Abraham, and Suhad Abraham aka Sue Preston. Davis Decl. ¶21, Ex. 3.
22 Settlement Agreement, ¶2.3.

23 On November 18, 2021, Plaintiff filed a FAC adding Defendants Samir Abraham aka Sam
24 Abraham and Suhad Abraham aka Sue Preston as named defendants in the Action. The FAC in
25 the Action alleges Defendants violated California Labor Code section 2699, *et seq.* by failing to
26 pay all earned minimum wages (Cal. Labor Code §§ 1194 and 1198); failing to pay all overtime
27 compensation (Cal. Labor Code §§ 204, 510, 1194 and 1198, *et seq.*); failing to provide legally

1 required meal periods and premium pay (Cal. Labor Code §§ 226.7, and 512); failing to provide,
2 authorize and permit rest breaks and failing to pay premium pay (Cal. Labor Code § 226.7 and
3 512); failing to timely pay all wages at termination (Cal. Labor Code § 203); failing to furnish
4 complete, accurate, itemized wage statements (Cal. Labor Code § 226); failing to maintain accurate
5 records related to work periods, meal periods, total daily hours, hours per pay period, total wages
6 and compensation, and applicable pay rates (Cal. Labor Code § 1174(d) and the applicable
7 IWC Wage Order); failing to reimburse necessary business-related expenses (Cal. Labor Code
8 §§ 2800 & 2802); failure to pay reporting time wages (Cal. Labor Code § 1198 and the
9 applicable IWC Wage Order); and civil penalties under the Private Attorneys General Act (Cal.
10 Labor Code §§ 2698-2699, *et seq.*). Defendants deny the allegations in the FAC in the Action and
11 deny any failure to comply with the laws identified in the FAC and deny any and all liability for
12 the claims alleged. Davis Decl. ¶22. Settlement Agreement, ¶2.2.

13 On May 5, 2023, the Parties filed a Joint Stipulation for Plaintiff to file a Second Amended
14 Complaint (“SAC”) in the Action (*Nava v. S & S Coastal Foods, LLC, et al.*, Los Angeles County
15 Superior Court Case no. 21STCV34779) to add the same class claims that were asserted in the
16 Class Complaint (Orange County Superior Court Case No. 30-2021-01216425-CU-OE-CXC)
17 such that a judgment in the Action would entirely preclude the Class Complaint. Davis Decl. ¶23.
18 Settlement Agreement, ¶2.2.

19 The SAC in Los Angeles Superior Court Case No. 21STCV34779 purports to allege
20 causes of action for: California Labor Code section 2699, *et seq.*; failing to pay all earned
21 minimum wages (Cal. Labor Code §§ 1194 and 1198); failing to pay all overtime compensation
22 (Cal. Labor Code §§ 204, 510, 1194 and 1198, *et seq.*); failing to provide legally required meal
23 periods and premium pay (Cal. Labor Code §§ 226.7, and 512); failing to provide, authorize and
24 permit rest breaks and failing to pay premium pay (Cal. Labor Code § 226.7 and 512); failing to
25 timely pay all wages at termination (Cal. Labor Code § 203); failing to furnish complete, accurate,
26 itemized wage statements (Cal. Labor Code § 226); failing to maintain accurate records related to
27 work periods, meal periods, total daily hours, hours per pay period, total wages and compensation,
28

1 and applicable pay rates (Cal. Labor Code § 1174(d) and the applicable IWC Wage Order);
2 failing to reimburse necessary business-related expenses (Cal. Labor Code §§ 2800 & 2802);
3 failure to pay reporting time wages (Cal. Labor Code § 1198 and the applicable IWC Wage
4 Order); and civil penalties under the Private Attorneys General Act (Cal. Labor Code §§ 2698-
5 2699, *et seq.*). Defendants deny the allegations in the SAC in Los Angeles Superior Court
6 Case No. 21STCV34779 and deny any failure to comply with the laws identified in the SAC and
7 deny any and all liability for the claims alleged. Davis Decl. ¶24. Settlement Agreement, ¶2.2.

8 **Mediation Efforts**

9 The Parties agreed to attend an all-day mediation on November 28, 2022, presided over
10 by Jeffrey Krivis, Esq., in an effort to resolve the Action. Davis Decl. ¶25. Settlement Agreement,
11 ¶2.4.

12 Pursuant to this agreement, Defendant provided Plaintiff with extensive discovery
13 including a 20% sampling of time and payroll records for all pay periods at issue. The 20%
14 sampling included all employees employed during the identified pay periods, and the Parties made
15 efforts to ensure that the sampling included pay periods throughout the class period. Davis Decl.
16 ¶26. Settlement Agreement, ¶2.5.

17 In addition, Defendant also produced their respective employee handbooks and/or relevant
18 standalone policies, which included all applicable policies relating to meal breaks, rest breaks,
19 timekeeping, the payment of wages and other relevant areas of investigation. Finally, Defendant
20 produced information regarding the number of putative class members, the number of current
21 versus former employees, the total workweeks and pay periods worked by the Class, and the
22 average rate of pay for hourly employees during the class period. This formal and informal
23 discovery and investigation allowed Plaintiff's Counsel to perform a comprehensive damages
24 analysis and estimate Defendant's potential liability on a class and PAGA basis. Davis Decl. ¶27.
25 Settlement Agreement, ¶ 2.5.

26 After a thorough investigation and analysis of this data, on November 28, 2022, the Parties
27 attended a full-day mediation with Jeff Krivis, Esq. ("Mediator"), a neutral and highly respected
28

mediator with extensive experience in complex wage and hour matters. At the mediation, the Parties engaged in intensive settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims. Davis Decl. ¶28.

With the assistance of the Mediator, the Parties were able to resolve the Action for a Gross Settlement Amount of Seven Hundred and Fifty Thousand Dollars and Zero Cents (\$750,000.00). Thereafter, the Parties spent more than three (3) months, and numerous revisions, negotiating and finalizing the terms of a Memorandum of Understanding (“MOU”). Numerous revisions were required to sort out which action would need to be dismissed, and which action the approval motions would be filed in. On March 15, 2023, the Parties executed the MOU. Davis Decl. ¶29.

While the Parties were in the process of negotiating a long form settlement agreement, Plaintiff reached out to the Court to reserve a date for a Motion for Preliminary Approval. However, the earliest available date was in September 2024. Thereafter, the Parties spent significant time negotiating and finalizing the terms of the Class, Collective, and Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”). Davis Decl. ¶30.

On May 31, 2024, the Parties fully executed the Settlement Agreement. As a negotiated term of the Settlement Agreement, Plaintiff’s Motion for Preliminary Approval must be filed within thirty (30) days of execution of the Settlement Agreement. Davis Decl. ¶31. Ex. 1.

Now, following significant investigation into the alleged claims, and lengthy settlement discussions, Plaintiff hereby moves for preliminary approval of the proposed Settlement Agreement and have notified the LWDA of the proposed Agreement. Davis Decl. ¶32.

III. THE SETTLEMENT TERMS

A. Class Definition

For purposes of settlement only, the parties have agreed that the Class shall be defined as: all current and former non-exempt employees of Defendants who worked in the State of California at any time during the Class Period. Davis Decl. ¶35; Settlement Agreement ¶¶1.8, 1.11, 5.1. The Class Period and release of claims covers the time period from August 12, 2017,

1 through June 15, 2022. *Id*; Settlement Agreement ¶¶1.8, 1.11. It is estimated that as of the
2 mediation on November 28, 2022, there were approximately 306 Class Members within the Class
3 Period.. Davis Decl. ¶36.

4 **B. Amount of Settlement**

5 The Parties have agreed to settle the Class and PAGA claims at issue for a non-
6 reversionary Gross Settlement Amount of \$750,000.00, exclusive of any employer-side payroll
7 taxes. Davis Decl. ¶37; Settlement Agreement ¶3.1.

8 **C. Allocation of the Gross Settlement Amount**

9 The Gross Settlement Amount is a Common Fund and therefore, includes all requested
10 costs, fees, and other allocations. As stated above, the Gross Settlement Amount includes: (1)
11 attorneys' fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount,
12 equaling \$262,500.00; (2) litigation costs, not to exceed \$20,000.00; (3) settlement administrator
13 costs currently estimated at \$9,000.00; (4) class representative service payment in the amount of
14 \$7,500.00 to Plaintiff; and (5) PAGA Payment of \$50,000.00, 75% of which shall be distributed
15 to the LWDA and 25% of which will be distributed to PAGA Members. Davis Decl. ¶38; *see also*
16 Settlement Agreement ¶¶3.2.1, 3.2.2, 3.2.3, 3.2.5..

17 After the above-estimated amounts are deducted from the Gross Settlement Amount,
18 approximately 306 potential Class Members will share in a Net Settlement Amount of
19 approximately \$282,500.00. Davis Decl. ¶39. The Net Settlement Amount will be calculated and
20 distributed/paid to Participating Class Members on a *pro-rata* basis by (a) dividing the Net
21 Settlement Amount by the total number of Workweeks worked by all Participating Class
22 Members during the Class Period, and (b) multiplying the result by each Participating Class
23 Member's Workweeks. Davis Decl. ¶40; Settlement Agreement ¶3.2.4. In addition, PAGA
24 Members will receive a pro-rata share of the 25% portion of the PAGA Payment allocated for
25 PAGA Members. Davis Decl. ¶41; Settlement Agreement ¶¶ 3.2.5.1, 3.2.5.2. For tax purposes,
26 the Individual PAGA Payments will be allocated as 100% penalties and reported on an IRS-Form
27 1099. All Individual Class Payments will be allocated as follows: ten percent (10%) of each
28

1 Individual Class Payment will be allocated as wages and ninety percent (90%) will be allocated
2 as non-wages. Davis Decl. ¶42; Settlement Agreement ¶6.1. The portion of the Individual
3 Settlement Payment allocated towards wages will be reported on IRS Form W-2 and the portion
4 allocated to non-wages will be reported on an IRS Form-1099 by the Claims Administrator. Davis
5 Decl. ¶43; Settlement Agreement ¶6.1. Defendants shall be responsible for all employer-side
6 payroll taxes on the wage portion of each settlement payment. Davis Decl. ¶44; Settlement
7 Agreement ¶¶ 1.14. The proposed Agreement is a non-reversionary, non-claims made settlement.
8 All money from the Net Settlement Amount will be distributed to Participating Class Members.
9 No money from the Settlement will revert back to Defendant. Davis Decl. ¶45; Settlement
10 Agreement ¶¶3.1, 4.4.3.

11 The Parties have agreed that Defendants shall fully fund the Gross Settlement Amount,
12 and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by
13 transmitting the funds to the Claims Administrator no later than sixty (60) days following the
14 Effective Date. The Settlement Administrator shall deposit the settlement payment into a federally
15 insured bank accounts (i.e., FDIC) so that all money held by the Settlement Administrator is in
16 federally insured bank accounts. Davis Decl. ¶46; Settlement Agreement ¶¶1.17, 2.7, 4.3

17 Then, within fourteen (14) calendar days after Defendants fund the Gross Settlement
18 Amount, the Claims Administrator will mail checks for all Individual Class Payments, all
19 Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment,
20 the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class
21 Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class
22 Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall not
23 precede disbursement of Individual Class Payments and Individual PAGA Payments. Davis Decl.
24 ¶47; Settlement Agreement ¶¶1.13, 1.14, 1.4, 1.21, 1.22, 1.24, 1.3, 1.5, 4.4.

25 Any checks issued by the Claims Administrator to Class Members will be negotiable for
26 one-hundred and eighty (180) calendar days. After one-hundred and eighty (180) calendar days
27 from the date of mailing, the checks shall become null and void. Funds associated with cancelled
28

1 checks shall be forwarded to the Controller of the State of California pursuant to the Unclaimed
2 Property Law, California Civil Code 1500, et seq., to be held in trust for those Participating Class
3 Members and/or Aggrieved Employees who did not timely cash their Settlement checks. The
4 Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure
5 Code 384, as all payments to the Participating Class members and Aggrieved Employees will be
6 paid out, whether these individuals cash their Settlement checks. Therefore, Defendants will not
7 be required to pay any interest on such amounts. Davis Decl. ¶48; Settlement Agreement ¶4.4.3

8 **D. Release of Wage and Hour Claims**

9 In exchange for participating in the Settlement, Participating Class Members will release
10 their wage and hour claims, including claims that are alleged or reasonably could have been
11 asserted, against Defendants and the Released Parties, as defined in the Settlement Agreement.
12 Davis Decl. ¶49; Settlement Agreement ¶5.1. However, the release for Participating Class
13 Members will only occur upon the complete funding of the Gross Settlement Amount and is
14 narrowly tailored to only release claims based upon the facts alleged in the operative complaint
15 in the Action, for the Class Period. The proposed Settlement also resolves all of the PAGA
16 Members’ claims arising under the PAGA for the PAGA Period. *Id.*; Settlement Agreement ¶¶5.2,
17 5.3.

18 **IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL**

19 The settlement of a class action requires court approval. *See Dunk v. Ford Motor Co.*, 48
20 Cal. App. 4th 1794 (1996). “In general, questions whether a settlement was fair and reasonable,
21 whether certification of the class was proper, and whether the attorney fee award was proper are
22 matters addressed to the trial court’s broad discretion.” *Wershba v. Apple Computer, Inc.*, 91
23 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds).

24 The review and approval of a proposed class action settlement involves a two-step process.
25 *See* Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of settlement
26 and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently
27 within the range of a fair settlement to justify providing notice of the proposed settlement to class
28

1 members. After notice is provided to the class, the Court must conduct a second inquiry into
2 whether the proposed settlement is fair, reasonable and adequate. *See id.*

3 The initial evaluation of the settlement at the preliminary approval step “is not a fairness
4 hearing.” *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th
5 Cir. 1980). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level,
6 only whether the proposed settlement is within the range of possible approval and, as a result,
7 “whether there is any reason to notify the class members of the proposed settlement and to proceed
8 with a fairness hearing.” A presumption of fairness exists where: (1) the settlement is reached
9 through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel
10 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
11 percentage of objectors is small. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).

12 Preliminary approval does not require a court to make a final determination that the
13 settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval
14 stage, after notice of the settlement has been given to the class members and they have had an
15 opportunity to object or exclude themselves from the settlement. *See* Cal. R. Ct. 3.769(g). In
16 considering a potential class settlement, the court need not reach any ultimate conclusions on the
17 issues of fact and law which underlie the merits of the dispute, and need not engage in a trial on
18 the merits. *See Officers for Justice v. Civil Service Commission of City and County of San*
19 *Francisco*, 688 F.2d 615, 625 (1982).

20 **V. THE SETTLEMENT IS PRESUMED FAIR**

21 **A. Arm’s-Length Bargaining**

22 California courts recognize that “a presumption of fairness exists where . . . [a] settlement
23 is reached through arm’s-length bargaining.” *Wershba*, 91 Cal.App.4th at 245 (disapproved on
24 other grounds); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009).
25 Here, Defendants disputed liability, and settlement negotiations were at all times at arm’s length
26 and adversarial. Indeed, the material terms of the Settlement were only reached after extensive
27 settlement discussions including a full day of mediation with a highly respected mediator.

1 Thereafter, once an agreement was reached, the Parties also engaged in extensive negotiations
2 before finalizing the Settlement Agreement presently before the Court. At all times, Plaintiff was
3 willing and prepared to litigate this Action if the Parties had been unable to reach a favorable
4 resolution. Davis Decl. ¶¶14-32, 53-56.

5 **B. Sufficient Investigation and Discovery by Experienced Class Counsel**

6 Courts typically assess the status of discovery in determining whether a class action
7 settlement agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. As
8 discussed above, the parties engaged in extensive formal and informal discovery prior to reaching
9 a settlement following a full-day of mediation. Through a combination of formal and informal
10 discovery, Defendant produced a class wide sampling of time records, payroll records, sample
11 pay stubs, written policies including the employee handbooks in effect during the Class Period,
12 and other relevant documents. Defendant also provided information regarding the number of
13 putative class members, the number of current versus former employees, the total workweeks and
14 pay periods worked by the Class, and the Class Members' average rate of pay. This allowed
15 Plaintiff to conduct a class-wide assessment and analysis of potential damages. The parties
16 extensively briefed issues regarding class certification and liability and provided their analyses to
17 the mediator who helped the parties debate the strengths and weakness of their positions. Davis
18 Decl. ¶¶14-32, 57-59.

19 Additionally, settlement negotiations were conducted by highly capable and experienced
20 counsel. Plaintiff's Counsel are respected members of the bar with strong records of vigorous and
21 effective advocacy and are experienced in handling complex wage and hour class action litigation.
22 Davis Decl. ¶¶2-13, 70. Accordingly, Plaintiff's Counsel had sufficient information and
23 experience to act intelligently in negotiating the Settlement.

24 **C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal 25 Positions and Recovery Risks**

26 A settlement is not judged against what might have been recovered had a plaintiff
27 prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair
28 and reasonable. *Wershba*, 91 Cal.App.4th at 246, 250 (disapproved on other grounds). In

1 evaluating the reasonableness of a settlement, a trial court must consider “the strength of
2 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of
3 maintaining class action status through trial, the amount offered in settlement, the extent of
4 discovery completed and the stage of the proceedings, the experience and views of counsel, the
5 presence of a governmental participant, and the reaction of the class members to the proposed
6 settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008).

7 Here, the reasonableness of the Settlement is underscored by the fact that Defendants have
8 legal and factual grounds for defending the action. Based upon Plaintiff’s Counsel’s experience
9 litigating similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense
10 to both class certification and the merits absent a settlement. Davis Decl. ¶¶14-32, 60.

11 **1. Plaintiff’s Counsel’s Analysis of the Maximum Available Liability and**
12 **Damages**

13 Prior to mediation, my office analyzed a sampling of time and payroll records for the
14 putative class provided by Defendants and other relevant documents and discovery. The randomly
15 selected sampling included records for putative class members who were employed throughout
16 different time periods during the Covered Period, that is representative of the Class. With this
17 sampling, my office was able to perform a comprehensive damages analysis and estimate
18 Defendants’ potential violations, liability, and exposure, including, and not limited to, analyzing
19 time and pay data, considering potential meal period violations, potential rest period violations,
20 potential synthetic meal period recordings, unpaid meal or rest period premiums, overtime and
21 premium payments, etc. Davis Decl. ¶61. Based on the discovery provided, my office estimated
22 with respect to the claims at issue, with all claims adjudicated in favor of the Class, Defendants
23 faced a maximum potential liability of \$22,996,294.82. This estimated maximum liability
24 (excluding claims for violations of Labor Code sections 204, 210, 221 and 224) includes:
25 \$2,965,038.88 for meal period and rest period violations; \$841,862.26 for unpaid off-the-clock
26 work, overtime and for unpaid minimum wages, waiting time penalties of \$184,089.60, penalties
27 for inaccurate wage statements in the amount of \$795,450.00, and \$85,500.00 for unreimbursed

business expenses. Plaintiff also estimated non-duplicative PAGA penalties of approximately \$18,124,354.08 which includes penalties under Labor Code §§ 204 and 1174(d). Davis Decl. ¶62.

2. Plaintiff's Counsel's Risk-Based Analysis and Risk-Based Adjustments

While Plaintiff believes Defendants faced significant exposure, substantial barriers to a class recovery exist and Plaintiff faced numerous challenges attempting to bring the alleged claims on a class and representative basis. Davis Decl. ¶63. Defendants contended that Plaintiff's claims in general were not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1051 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014). While Plaintiff and Plaintiff's Counsel disagree with Defendants' predictions, they also recognize that there is a significant risk that the Court may deny class certification; *see also, Findings of the Study of California Class Action Litigation*, 2000-2006, available at <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of class actions were certified either as part of a settlement *or* as part of a contested certification motion). As with all class actions, these complex cases raise difficult management and proof issues and consideration of these risks factored into the decision to enter this Settlement. Davis Decl. ¶64

Meal and Rest Period Claims

For instance, a large portion of Defendants' estimated liability lies in Plaintiff's meal period claims. Meal period claims have become increasingly difficult to certify in recent years and Defendants contended their practices were lawful. *See Brinker*, 53 Cal. 4th at 1034-35. Defendants argued that they had compliant practices and my office had to consider the risk that the Court would find validity in the individualized proof defense to the certification of Plaintiff's meal period claim. Similarly, Plaintiff will likely face difficulties proving the alleged rest period violations, as Defendants were not required to record these breaks. Defendants claimed they allowed employees to take their state mandated rest periods and given the lack of records demonstrating rest period violations, there were legitimate concerns Plaintiff would not be able to certify this claim or prove substantial damages. Davis Decl. ¶65.

1 ***Minimum Wage and Overtime Claims***

2 Plaintiff also faced challenges certifying and proving liability for his minimum wage and
3 overtime claims. These claims were largely based on alleged unrecorded, off-the-clock work
4 performed by Class Members both before and after their shifts. Defendants also argued that the
5 individualized nature of such damages presented substantial concerns regarding the manageability
6 of the case and the risk the Court could find these issues prevented certification. Davis Decl. ¶66.

7 ***Unreimbursed Business Expenses Claim***

8 Plaintiff's reimbursement claim would likely present similar problems of individualized
9 proof. Plaintiff's reimbursement claim was based on the use of employees' personal vehicles
10 driving to and from various job sites, purchasing protective glasses, bringing, or purchasing
11 personal tools to use at work. However, Defendants disputed that Plaintiff, and any putative class
12 member were required to incur these expenses. Defendants further contended that the reason for
13 why a putative class member undertook certain expenses, while not others, and failed to receive
14 reimbursement for certain expenses, would raise individual issues that could not be certified.
15 Davis Decl. ¶67.

16 ***Waiting Time Penalties and Wage Statement Claims***

17 There are also substantial risks associated with Plaintiff's claims for waiting time penalties
18 and wage statement claims. First, these claims were derivative of Plaintiff's previous claims and
19 if certification was denied on those underlying claims, these claims would also likely fail.
20 Moreover, even if Plaintiff prevailed on their underlying off-the-clock claims, they would still be
21 required to demonstrate that Defendants' violations of Labor Code §203 were willful violations,
22 a difficult prospect. *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013) (holding
23 that "an employer's reasonable, good faith belief that wages are not owed may negate a finding
24 of willfulness"). Wage statement claims have also seen varying treatment at the appellate level
25 because such claims have an element of discretion attached to them rather than a pure calculation
26 of damages after liability is proven. *Cf., Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286
27 (2010) *with Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011). Accordingly, these derivative
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1 claims, which comprised a substantial portion of Defendant's estimated potential liability, are
2 extremely risky. Davis Decl. ¶68.

3 Plaintiff's Counsel also recognized that, even if Plaintiff prevailed at class certification,
4 proving the amount of wages due to each Class Member would be an expensive, time-consuming,
5 and extremely uncertain proposition. In order to prove liability and damages, Plaintiff's Counsel
6 would be required to spend hundreds of additional hours obtaining discovery and likely
7 substantial motion practice, in addition to contacting Class Members and obtaining numerous
8 declarations at great expense. Obtaining the cooperation of current employees would also be
9 difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer.
10 On the other hand, Defendant would likely be able to obtain the cooperation of its employees.
11 Moreover, even if Plaintiff prevailed, possible appeals would substantially delay any recovery by
12 the Class. Davis Decl. ¶69.

13 ***PAGA Claim***

14 Plaintiff's Counsel also separately contemplated the risks of proceeding with the PAGA
15 claim and the potential liability Defendants could face from this claim. As part of the valuation
16 of the potential PAGA claim, Class Counsel also included claims under Labor Code §§204 and
17 1174(d). Davis Decl. ¶70. The Parties agreed during settlement negotiations to allocate
18 \$50,000.00 of the Settlement towards the settlement of the PAGA claim, which represents
19 approximately 6.66% of the Gross Settlement Amount. This percentage of the settlement is well
20 above the range of wage and hour settlements regularly approved in both state and federal court
21 for cases that include both a class and PAGA action. Courts have approved allocations of as little
22 as 1% of the Gross Settlement Amount. Davis Decl. ¶¶71-72. Plaintiff's Counsel also recognizes
23 that the PAGA claims would be subject to the same defenses and risks as Plaintiff's class claims,
24 as well as defenses unique to PAGA, the substantial risk that PAGA penalties may not be stacked
25 for violations based on the same conduct, and the substantial risk that PAGA penalties may be
26 reduced where they are duplicative, arbitrary or oppressive. As part of the valuation of the
27 potential PAGA claims, Plaintiff's Counsel included claims under Labor Code §§ 204, and

1 1174(d). The value of Plaintiff's claim under Labor Code §204 could be recovered either through
2 Labor Code §210 or PAGA, but as a matter of law, Plaintiff is not entitled to a duplicative
3 recovery. Davis Decl. ¶73. The value of Plaintiff's claim under Labor Code §204 could be
4 recovered either through Labor Code §210 or PAGA, but as a matter of law, Plaintiff is not
5 entitled to a duplicative recovery. *See* Labor Code § 210(c) (permitting recovery of penalties
6 through § 210 or PAGA, but not both). Plaintiff's claims under Labor Code §1174(d) were
7 arguably only recoverable under PAGA. *See Caliber Bodyworks, Inc. v. Superior Court*, 134
8 Cal.4th 365, 383 (2005). *Id.*

9 Therefore, taking into consideration the risks regarding certification of the class claims,
10 my office discounted Defendants' estimated liability by 70%. In light of merits-based risk factors
11 even if the claims were brought to trial, Class Counsel reduced Defendants' estimated liability for
12 merits-based risks by 70%. Davis Decl. ¶74.

13 With respect to their PAGA claim, in consideration of the risk faced with establishing that
14 the PAGA claims are manageable, my office applied a discount of 80%. In this regard, Defendants
15 contend that numerous federal and state cases have stricken or dismissed PAGA claims where
16 those claims are deemed unmanageable. Davis Decl. ¶75. Further, in recognition of the additional
17 risks faced by Plaintiff's PAGA claim, including the discretionary nature of such claim and the
18 Court's discretion to reduce penalties, my office applied an additional discount of 80% to PAGA.
19 Indeed, Defendants assert that the court has the discretion to reduce an award of PAGA penalties
20 when they determine that imposition of the maximum amount would be "unjust, arbitrary,
21 oppressive, or confiscatory based on the facts and circumstances of this case." Davis Decl. ¶76.

22 Therefore, after taking into consideration all of the risks mentioned above, Class Counsel
23 applied an adjusted liability of \$748,946.36. Davis Decl. ¶77.

24 In light of the Parties' respective legal positions and the risks to potential recovery, it is
25 clear that the proposed settlement is fair, adequate, and reasonable. The Settlement is in the best
26 interest of the Class Members, PAGA Members, and State of California and is within the accepted
27 range of recoveries for this type of litigation given the inherent risk of litigation, the risk of
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obtaining and maintaining class certification, and the costs of further litigation. Davis Decl. ¶78.

VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

Code of Civil Procedure § 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, *i.e.*, proceeding as a class is superior to other methods. *See Dunk*, 48 Cal.App.4th at 1806. Plaintiff contends that this matter, which is primarily based upon Defendant’s wage and hour policies and practices, satisfies the class certification requirements under California Code of Civil Procedure § 382. Defendant denies Plaintiff’s allegations, but for purposes of this Settlement only, Defendant has stipulated to certification of the proposed class action.

A. An Ascertainable and Numerous Class Exists

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is defined as all current and former non-exempt employees of Defendant employed in the state of California at any time from August 12, 2017, through June 15, 2022. Davis Decl. ¶35; Settlement Agreement ¶¶1.8, 1.11, 5.1. This provides a clear and definite scope for the proposed class.

Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Under the Federal Rules, the minimum number of a class is one-hundred individuals. Under California law, that number is significantly less. *See e.g., Rose v. City of Haywood*, 126 Cal.App.3d 926, 934 (1981) (holding forty-two class members sufficient to satisfy numerosity). Here, the estimated Class size of 306 Class Members plainly favors class certification. Davis Decl. ¶36.

Finally, the question whether class members are easily identifiable turns on whether a plaintiff can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695 at 706 (1967). The existence of an ascertainable class in this case can be established

1 through Defendant’s payroll records, and the class definition is sufficiently specific to enable the
2 parties, potential Class Members and the Court to determine the parameters of the Class. *See*
3 *Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d 605, 617 (1987) (proposed class defined as all
4 persons nationwide subscribing to telephone service since January 1, 1981, who were charged for
5 long distance calls deemed “plainly” ascertainable).

6 **B. The Class Shares a Well-Defined Community of Interest**

7 The community of interest requirement embodies three factors: (1) predominant questions
8 of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
9 representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. Plaintiff
10 easily satisfies all three requirements.

11 The commonality criterion requires the existence of common question of law or fact and
12 is generally established with the issues of predominance and typicality. *See Daar*, 67 Cal. 2d 695,
13 706. What is required is that a common question of fact or law exist which predominates over
14 issues unique to individual plaintiffs. The existence of individual issues or facts—generally
15 present in any case arising from employment—is not a bar to class certification as long as they
16 do not render class litigation unmanageable or predominate over the common issues. *See B.W.I.*
17 *Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

18 In this Action, the alleged claims present sufficient common issues of law and fact that
19 predominate and warrant class certification. Plaintiff alleges that Defendant denied compliant
20 meal and rest periods to employees, failed to properly compensate employees for missed meal or
21 rest periods, required employees to perform work off-the-clock, failed to fully compensate
22 employees for all time worked, and failed to reimburse all business expenses. These policies and
23 practices mean that Defendant failed to pay minimum and overtime wages, and other related
24 claims. Plaintiff alleges that these practices were uniform as to all Class Members and thus, class
25 treatment is appropriate.

26 To satisfy the typicality requirement, California law does not require that a plaintiff have
27 claims identical to the other class members. Rather, the test of typicality for a class representative
28

1 is whether other members have the same or similar injury, whether the action is based on conduct
2 which is not unique to the named plaintiff, and whether other class members have been injured
3 by the same alleged course of conduct. *See Seastrom v. Newways, Inc.*, 149 Cal.App.4th 1496, 1502
4 (2007). The typicality requirement for a class representative refers to the nature of the claim or
5 defense of the representative, and not to the specific facts from which it arose or the relief sought.
6 *See id.*

7 Here, Plaintiff alleges that her claims are similar to those of the other Class Members.
8 Plaintiff alleges her claims arise out of the same alleged facts and course of conduct giving rise
9 to the claims of the other Class Members. Finally, Plaintiff's claims are typical of the other Class
10 Members because she seeks the same relief for the alleged violations. Because Plaintiff's claims
11 are based upon the same alleged conduct and practices as those of Class Members, the typicality
12 requirement has been satisfied.

13 Finally, the question of adequacy of representation "depends on whether the plaintiff's
14 attorney qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic
15 to the interests of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here,
16 these considerations are satisfied. Counsel for Plaintiff include well-regarded and accomplished
17 lawyers who are qualified and experienced in employment-related, class-action litigation. Davis
18 Decl. ¶¶2-13. Plaintiff will vigorously, adequately, and fairly represent the interests of the Class
19 as they have done since this Action was filed. Because Plaintiff's claims are typical of other Class
20 Members and are not based on unique circumstances, there is no antagonism between the interests
21 of Plaintiff and the Class.

22 **C. A Class Action is Superior to a Multiplicity of Litigation**

23 Under the circumstances, proceeding as a class action is a superior means of resolving this
24 Action, as the Class Members and the court will derive substantial benefits. Class certification
25 would serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty*
26 *Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each
27 class member will come forward to prove his or her separate claim and whether the class approach
28

would actually serve to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly burden the courts and could lead to inconsistent results. Therefore, class action proceedings are superior to individual litigation.

VII. THE REQUESTED SERVICE PAYMENT IS REASONABLE

Plaintiffs in class action and PAGA lawsuits are eligible for reasonable service payments as compensation “for the expense or risk they have incurred in conferring a benefit on other members of the class.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. *See Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995) (approving \$50,000 enhancement).

Plaintiff initiated this litigation on behalf of her former co-workers who will now benefit from the settlement. Plaintiff invested substantial time and effort into litigation including conducting his own research, reviewing documents and extensive discussions with Class Counsel. For these reasons, Plaintiff requests service and release award of \$7,500.00 be preliminarily approved by the Court. Further, the requested amount is also extremely reasonable given the benefit gained by other Class Members. Notice of the requested service payment is disclosed to the Class Members in the proposed Notice of Proposed Class Settlement (“Notice”). *See* Settlement Agreement, **Ex. A**. Plaintiff will provide a declaration regarding her efforts throughout this Action and additional reasons the Court should grant the requested service and release award as part of his motion for final approval. Davis Decl. ¶¶79-80.

VIII. REQUESTED ATTORNEYS’ FEES AND COSTS

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.*, 82 Cal.App.4th 19, 41 (2000). 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. *Id.* at 47. In cases where class members present claims against a

1 common fund and the defendant agrees to the use of a percentage of the fund as part of the
2 settlement, use of the percentage method is appropriate. *Id.* at 32.

3 Here, the requested attorneys' fees of \$262,500.00, which is thirty-five (35%) of the
4 common fund, are disclosed to Class Members in the proposed Notice. *See* Settlement Agreement,
5 ¶1.3. The requested fee was freely negotiated, is common in the legal marketplace, and is not
6 opposed by Defendant. The Motion for Final Approval will elaborate on the nature of the legal
7 services provided and will also support Plaintiff's Counsel's request for the reimbursement of
8 litigation costs not to exceed \$20,000.00. Davis Decl. ¶81.

9 **IX. NOTICE TO THE CLASS, THE OPT OUT AND OBJECTION PROCESS MEETS**
10 **DUE PROCESS REQUIREMENTS**

11 The Parties have jointly drafted a Notice which will be delivered to the Class Members.
12 *See* Settlement Agreement, Ex. A. The Notice will include information regarding the nature of
13 the lawsuit, a summary of the terms of the Settlement, the Class definition, information on how
14 to object and opt-out, information regarding the release of the class and PAGA claims, and the
15 date of the Final Approval Hearing. The Notice will also list each Class Member's total
16 workweeks and the approximate Individual Settlement Payment to be paid to the Class Member.
17 Davis Decl. ¶¶82-83; Settlement Agreement ¶¶8.1, 8.4. The Notice will indicate that the Court
18 has determined only that there is sufficient evidence to suggest that the proposed settlement might
19 be fair, adequate and reasonable, and a final determination of such issues will be made at the final
20 hearing. *Id.*

21 No later than 14 days after the Court grants preliminary approval of the Settlement,
22 Defendant will provide the Class Data to the Settlement Administrator including each Class
23 Member's name, employee ID number (if applicable), last known address, telephone number,
24 email address (if known), social security number, workweeks worked during the Class Period,
25 workweeks worked during the PAGA Period, amongst other information. The Settlement
26 Administrator shall perform any searches necessary for confirmation of the Class Members'
27 addresses and shall mail the Notice of Settlement to the Class Members prior to mailing the
28 Notices. Davis Decl. ¶84; Settlement Agreement ¶¶1.7, 4.2, 8.4.2. No later than three (3) business

1 days after receipt of the Class Data, the Claims Administrator shall notify Class Counsel that the
2 list has been received and state the number of Class Members, PAGA Members, Workweeks, and
3 Pay Periods in the Class Data. Davis Decl. ¶85; Settlement Agreement ¶8.4.1.

4 No later than fourteen (14) days after receiving the Class Data, the Settlement
5 Administrator will send to all Class Members identified in the Class Data, via first-class USPS
6 Mail, the Class Notice with Spanish translation. The Class Notice shall estimate the dollar
7 amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class
8 Member, and the number of Workweeks and PAGA Periods (if applicable) used to calculate these
9 amounts. Before mailing Class Notices, the Settlement Administrator will run all the addresses
10 provided through the United States Postal Service NCOA database (which provides updated
11 addresses for any individual who has moved in the previous four years who has notified the U.S.
12 Postal Service of a forwarding address) to obtain current address information. Davis Decl. ¶86;
13 Settlement Agreement ¶8.4.2.

14 In determining whether to approve a settlement of a class action, a trial court has virtually
15 complete discretion as to the manner of giving notice to class members, and review on appeal is
16 governed by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186
17 Cal.App.4th 1380 (2010). Here, Plaintiff's Counsel is not aware of an alternative method of
18 providing notice to the Class which would result in a higher likelihood of actual notice. The
19 original source of the mailing addresses is from each Class Member, who provided the
20 information to Defendant. As a fail-safe, additional searches will be performed on any notice
21 returned as non-deliverable. The Settlement Administrator will also report any and all opt outs,
22 objections, and disputes. Davis Decl. ¶¶87-90; Settlement Agreement ¶¶8.4.3, 8.4.4, 8.4.5, 8.5,
23 8.6.

24 Any Class Member who wishes to be excluded from the Settlement must send the
25 Settlement Administrator, by fax, email, or mail, a signed written Request for Exclusion not later
26 than sixty (60) calendar days after mailing of the Class Notice (plus an additional fourteen (14)
27 calendar days for a re-mailed Class Notice), and includes: the case name and number, the

1 Settlement Class Member's name, address, and telephone number, must be signed by the
2 Settlement Class Member, and must reasonably communicate the Settlement Class Member's
3 election to be excluded from the class Settlement. Davis Decl. ¶91; Settlement Agreement ¶¶8.5.1

4 The Settlement Administrator may not reject a Request for Exclusion as invalid because
5 it fails to contain all information specified in the Class Notice. The Settlement Administrator shall
6 accept any Request for Exclusion as valid if the Class Member's identity can reasonably be
7 ascertained. The Settlement Administrator's determination shall be final and not appealable or
8 otherwise susceptible to challenge. If the Settlement Administrator has reason to question the
9 authenticity of a Request for Exclusion, it may demand additional proof of the Class Member's
10 identity. The Settlement Administrator's determination of authenticity shall be final and not
11 appealable or otherwise susceptible to challenge. Davis Decl. ¶92; Settlement Agreement ¶ 8.5.2.
12 The Request for Exclusion must be postmarked no later than sixty (60) calendar days after mailing
13 of the Notice. Davis Decl. ¶93; Settlement Agreement ¶¶8.5.1-8.5.4.

14 Any Class Member wishing to object to the approval of this Settlement shall provide the
15 Settlement Administrator, by fax, email, or mail, a signed written statement stating the specific
16 reason for the objection as well as their full name, address, telephone number, and last four (4)
17 digits of their social security number or employee ID number. Such written statement must be
18 mailed to the Settlement Administrator within sixty (60) calendar days (plus an additional
19 fourteen (14) calendar days for a re-mailed Class Notice) following the initial mailing of the
20 Notice. Class Members may also appear and object at the final approval hearing, regardless of
21 whether they have submitted a written objection. Non-Participating Class Members have no right
22 to object to any of the class action components of the Settlement. Davis Decl. ¶94; Settlement
23 Agreement ¶¶8.7.1, 8.7.2, 8.7.3.

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25 ///

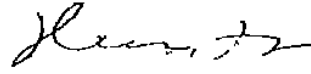
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1 **X. CONCLUSION**

2 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant
3 Plaintiff's Motion for Preliminary Approval and the relief requested herein.

4 Dated: August 20, 2024

PROTECTION LAW GROUP, LLP

6 By: 

7 Heather Davis
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