

1 Adam Rose (210880)
adam@frontierlawcenter.com
2 FRONTIER LAW CENTER
23901 Calabasas Road, #2074
3 Calabasas, CA 91302
Telephone: (818) 914-3433
4 Facsimile: (818) 914-3433

5 Attorneys for Plaintiffs
6 Mirian Marroquin, et al.

7
8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10 MIRIAM MARROQUIN, HUMBERTO
11 MORALES, on behalf of themselves and all
similarly situated individuals,

12 Plaintiffs,

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14 v.

15 TELEFÈRIC BARCELONA PA, LLC, and
DOES 1 to 100,

16 Defendants.
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CASE NO. 21CV388821

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
ADAM ROSE; EXHIBIT; DECLARATION
OF MIRIAN MARROQUIN;
DECLARATION OF HUMBERTO
MORALES; PROPOSED ORDER**

Date: October 6, 2022
Dept: 1
Time: 1:30 p.m.

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 6, 2022, at 1:30 p.m. in Department 1 of the Santa
3 Clara Superior Court located at 191 N. First St., San Jose, CA 95113, pursuant to Rule of Court
4 3.769(c) and Code of Civil Procedure section 382, plaintiffs Mirian Marroquin and Humberto
5 Morales will move the court for an order for the following: (1) preliminarily approving the
6 settlement, (2) provisionally certifying the class, (3) approving the class notice and plan, (4)
7 appointing class representatives and class counsel, (5) appointing a settlement administrator, and
8 (6) scheduling a final approval hearing.

9 The motion will be unopposed and is based on the memorandum of points and authorities
10 and the declaration of Adam Rose with exhibits including the settlement agreement and proposed
11 notice to class members.

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13 Date: September 12, 2022

FRONTIER LAW CENTER

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/s/ Adam Rose
Attorney for Plaintiffs
Mirian Marroquin, et al.

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Table of Contents

I.	INTRODUCTION	5
II.	BACKGROUND	5
III.	THE SETTLEMENT TERMS.....	7
A.	Scope of the Class Release.....	7
IV.	PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE	8
A.	The Settlement Was from Arms' Length Negotiations and Presumptively Fair	8
B.	The Parties Settled After Factual Investigation and Informal Discovery	9
C.	Class Counsel is Highly Experienced and Support Preliminary Approval.....	10
D.	The Settlement Provides Substantial Monetary Relief to the Class.....	10
1.	The Settlement Is Fair, Reasonable, and Adequate Considering the Risks of Proceeding Further	11
2.	The Settlement Has No Obvious Deficiencies and Does Not Grant Preferential Treatment	13
V.	PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE	14
A.	There is an Ascertainable and Sufficiently Numerous Class.....	14
B.	There is a Well-Defined Community of Interest / Commanality.....	14
C.	Plaintiff's Claims are Typical, and the Adequacy Requirement is Met.....	15
VI.	THE PROPOSED CLASS NOTICE is ACCEPTABLE.....	15
A.	The Notice is Accurate and Informative and Appropriate	15
B.	The Notice Plan Satisfies Due Process	16
VII.	CONCLUSION.....	17

Table of Authorities

Cases

<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F.Supp.610.....	10
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal. App. 4th 43, 66 n.11.....	15
<i>Clark v. American Residential Services LLC</i> (2009) 175 Cal. App. 4th 785	8
<i>Classen v. Weller</i> (1983) 145 Cal. App. 3d 27	13
<i>Clothesrigger, Inc. v. GTE Corp.</i> (1987) 191 Cal. App. 3d 605;	13
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal. App. 4th 1794.....	8
<i>Fernandez v. Victoria Secret Stores LLC</i> , 2008 WL 8150856 at *16 n. 59 (C.D. Cal. July 21, 2008)	15
<i>Fleming v. Covidien</i> , No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011).....	11
<i>Gaskill v. Gordon</i> (7 th Cir. 1998) 160 F.3d 361	15
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal. App. 4th 116.....	8
<i>Laffitte v. Robert Half Int’l.</i> (2016) 1 Cal. 5th 480.....	15
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429.....	13
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , 186 Cal. App. 4th (2010) 399	8
<i>Phillips Petroleum Co. v. Shutts</i> (1985) 472 U.S. 797,	14
<i>Ryan v. Cal. Interscholastic Fed’n – San Diego Section</i> (2001) 94 Cal. App. 4th 1048	13
<i>State v. Levi Strauss & Co.</i> (1986) 41 Cal. 3d 460.....	9
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal. App. 4th 224.....	8

Rules

Rules of Court, rule 3.769(f).....	14
------------------------------------	----

Treatises

<i>Newberg on Class Actions</i> § 13:45 (5th ed. 2011-2017).....	10
<i>Newberg on Class Actions</i> § 13:53 (5th ed. 2011-2017).....	11

1 **I. INTRODUCTION**

2 Plaintiffs Mirian Marroquin and Humberto Morales seek preliminary approval of a
3 \$150,000 class action settlement with defendant Telefèric Barcelona PA, LLC (“Telefèric;”
4 together with Plaintiffs, the “Parties”). The settlement will provide a recovery to the 344 class
5 members who worked at Telefèric’s restaurant in Palo Alto from the date on which class members
6 first performed work for Telefèric¹ through the date on which the parties’ settlement is
7 preliminarily approved (the “Class Period”). The class is defined as all individuals employed by
8 Telefèric at any time during the Class Period as non-exempt employees. The aggrieved employees
9 are all individuals employed by Telefèric at any time between October 21, 2020 and the date on
10 which the parties’ settlement is preliminarily approved (the “PAGA Period”).

11 The settlement was reached after two sessions of mediation conducted pursuant to Santa
12 Clara County Civil Local Rule 3 (the “Civil Judges ADR Program”) with Hon. Patricia Lucas; the
13 first session was in person on April 21, 2022 and the second session was held remotely on May 11,
14 2022. The settlement agreement was fully signed on June 3, 2022. Plaintiffs’ attorney had back-to-
15 back mediations in June and pressing deadlines throughout July, and a trial in August, which is
16 why the motion is being filed at this point. The settlement was reached after an informal exchange
17 of data, which is described more fully below. The settlement is strongly supported by experienced
18 counsel, who considered the strength of the claims and potential defenses, as well as the risks of
19 continued litigation. The settlement satisfies all the criteria for preliminary approval.

20 **II. BACKGROUND**

21 On October 21, 2021, Plaintiffs filed a notice with the Labor and Workforce Development
22 Agency that explained the basis for PAGA penalties and sent the letter by certified mail to
23 Telefèric. That same day, Plaintiffs filed initiated this litigation in The Superior Court of the State
24 of California for Santa Clara County (the “Action”). Since the case has been stayed, Plaintiffs have
25 not been able to amend to include the PAGA allegations yet. Prior to the initial case management
26 conference, the Parties filed a stipulated request to participate in the Civil Judges ADR Program,
27

28

¹ Telefèric first employed class members in September 2019, in preparation for its October 2019 public opening.

1 which was granted on March 7, 2022.

2 Plaintiffs alleged that Telefèric did not provide compliant meal and rest breaks or pay
3 associated penalties, did not pay class members for all hours worked, and that Telefèric's
4 distribution of gratuities left by customers violated the Labor Code.

5 On March 30, 2022, Telefèric produced data pursuant to the Parties' agreement to engage in
6 an informal exchange of information and documents in connection with their participation in the
7 Civil Judges ADR Program. Telefèric's production included the following: 1) excerpts from the
8 2021 iteration of Telefèric's employee handbook that included examples of the "Agreement to
9 Take Lunches and Breaks as Required;" 2) an Excel sheet (the "Overall Tip Distribution Chart")
10 maintained by Telefèric to track how tips were collected and distributed to staff from the date of the
11 restaurant's opening in September 2019 through September 2021 (after September 2021, Telefèric
12 represented that it implemented a mandatory service charge policy that did not involve a tip-
13 pooling component, yet tips left in addition to the mandatory service charge were allocated 50% to
14 the server and 50% to the kitchen staff); 3) another Excel sheet (the "Kitchen Tip Distribution
15 Chart") maintained by Telefèric to track tip distribution amongst employees working in the kitchen
16 (the Overall Tip Distribution Chart shows only the overall amount distributed to kitchen staff as
17 whole; the Kitchen Tip Distribution Chart shows how this overall amount was distributed to
18 individual kitchen staff employees); and 4) an Excel spreadsheet containing approximately 50% of
19 all punch-in and punch-out time records during the Class Period as well as instances in which
20 premiums were paid for records of non-compliant meal periods. In addition, Plaintiffs provided
21 responses to questions submitted to them by Telefèric regarding Plaintiffs' allegations, claims, and
22 damages.

23 The Parties utilized the documents and information informally exchanged during this
24 process to prepare mediation briefs, which were exchanged prior to the mediation sessions and
25 discussed during the sessions. As explained below, Plaintiffs' counsel strongly believes the
26 settlement is in the best interests of the class and aggrieved employees given the risks that might
27 have arisen down the line.

28 ///

1 **III. THE SETTLEMENT TERMS**

2 Telefèric will pay a total of \$150,000 on a non-reversionary basis within fourteen calendar
3 days after the judgment becomes final (i.e., after the appeals period). Of this gross amount, to be
4 distributed as follows: 1) \$5,000 class representative enhancement to Mirian Marroquin, 2) \$5,000
5 class representative enhancement to Humberto Morales, 3) \$15,000 allocated to PAGA, 4) \$52,500
6 for attorney fees, 5) \$5,000 for attorney costs, and 6) \$9,250 for settlement administration.

7 This leaves a net amount of \$67,250. The average recovery for the 344 class members is
8 therefore \$195.50, yet as stated in the settlement agreement the calculation of the individual
9 payments will add up the total workweeks, and then the workweeks for each class member will be
10 divided by the total workweeks, resulting in each class member's payment ratio. The payment ratio
11 will then be multiplied by the net settlement amount (i.e., \$67,250) to calculate individual
12 settlement payments.

13 For tax purposes, the individual settlement payments are allocated as 15% for wages, and
14 85% for penalties and interest. The wage portion is subject to withholdings, and the non-wage
15 portion is not subject to withholdings. The settlement payments will be mailed to the class
16 members' last known addresses 29 days after the judgment becomes final.

17 Any checks that are not returned but remain uncashed one hundred and eighty days after
18 mailing or re-mailing shall be sent to the nonprofit organization Legal Aid at Work, which is based
19 in San Francisco and provides services to workers on a range of issues.

20
21 **A. Scope of the Class Release**

22 As stated in paragraph I.Z. of the settlement agreement, "Released Class Claims" means all
23 claims that were or could have been asserted against Telefèric based on the facts alleged at any
24 point in the Action during the Class Period (October 21, 2017 through the date on which
25 preliminary approval of the Settlement is granted), which include all claims for violations of the
26 Labor Code relating to unpaid wages including overtime wages, off the clock claims, minimum
27 wage claims, meal period violations, rest period violations, wage statement violations, claims for
28 failure to timely pay wages, violations of the UCL, or any law applicable to Telefèric's policies and

practices of collecting and distributing tips. As shown below, the settlement terms satisfy the criteria for preliminary approval.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

The purpose of preliminary evaluation of class action settlements is to determine whether the proposed settlement is within the range of possible approval, whether notice to the class of the settlement terms and conditions should be sent, and to the schedule a fairness hearing. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 234-35.)

For determining whether a class settlement is fair, adequate and reasonable, a court must be provided with “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” (*Clark v. American Residential Services LLC* (2009) 175 Cal. App. 4th 785, 799.) Thus, the court exercises discretion through applying several well-recognized factors when deciding whether a class action settlement is fair. (*Id.* at 799.)

The list of factors, which “is not exhaustive and should be tailored to each case,” includes “the strength of 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 views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 128.)

The most important factor the trial court should consider in determining whether to approve a class action settlement is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th (2010) 399, 407-408; *Kullar, supra*, 168 Cal. App. 4th at 130.) This is analyzed below.

A. The Settlement is the Result of Informed, Arms’ Length Negotiations

Courts recognize that a “presumption of fairness exists where (1) the settlement is reached through arm’s-length bargaining; (2) sufficient investigation allows counsel and the court to act

intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Dunk, supra*, 48 Cal. App. 4th at p. 1802.) “[W]hat transpires in settlement negotiations [including mediation] is highly relevant to the assessment of a proposed settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal. 3d 460, 482.) In short, there is a presumption that the negotiations were conducted in good faith. (William B. Rubenstein, et al., *Newberg on Class Actions* § 13:45 (5th ed. 2011-2017).)

As stated above, the parties participated in two sessions with Hon. Patricia Lucas, and using Hon. Lucas’ extensive experience as a fulcrum, reached an agreement in principle on May 13, 2022. The settlement agreement was subsequently fully signed on June 3, 2022.

Counsel came prepared with their clients and intelligently discussed the case, including the strengths and weaknesses of the claims, the risks of further litigation, the state of the law as it related to the claims, and the competing valuations. The negotiations were thorough and conducted at arm’s length between attorneys with substantial wage and hour class action experience.

B. The Parties Settled After Factual Investigation and Informal Discovery

There is a presumption that a proposed settlement is fair and reasonable when there was an investigation and discovery to permit counsel and the court to act intelligently, and counsel are experienced in similar litigation. (*Dunk, supra*, 48 Cal. App. 4th at p. 1802.)

As described above, pursuant to the Parties’ agreement to an informal exchange of information in connection to their participation in the Civil Judges ADR Program, Plaintiffs’ counsel requested and reviewed relevant documents produced by Telefèric and invested significant time and effort in scrutinizing the documents. Certain data from the informal exchange was used to create a damages analysis which guided the mediation brief. From there, factual and legal research was performed regarding the potential success of the claims.

The documents included the following, in addition to both Plaintiffs’ personnel files: 1) excerpts from the 2021 iteration of Telefèric’s employee handbook that included examples of the “Agreement to Take Lunches and Breaks as Required;” 2) an Excel sheet (the “Overall Tip Distribution Chart”) maintained by Telefèric to track how tips were collected and distributed to

1 staff from the date of the restaurant's opening in September 2019 through September 2021 (after
2 September 2021, Telefèric represented that it implemented a mandatory service charge policy that
3 did not involve a tip-pooling component, yet tips left in addition to the mandatory service charge
4 were allocated 50% to the server and 50% to the kitchen staff); 3) another Excel sheet (the
5 "Kitchen Tip Distribution Chart") maintained by Telefèric to track tip distribution amongst
6 employees working in the kitchen (the Overall Tip Distribution Chart shows only the overall
7 amount distributed to kitchen staff as whole; the Kitchen Tip Distribution Chart shows how this
8 overall amount was distributed to individual kitchen staff employees); and 4) an Excel spreadsheet
9 containing approximately 50% of all punch-in and punch-out time records during the Class Period
10 as well as instances in which premiums were paid for records of non-compliant meal periods. Rose
11 Decl., ¶ X. In addition, Plaintiffs provided responses to questions submitted to them by Telefèric
12 regarding Plaintiffs' allegations, claims, and damages.

13 Based on this analysis, class counsel evaluated the likelihood of succeeding in
14 demonstrating liability, the potential recovery should Plaintiffs establish liability, and the costs and
15 risks of continued proceedings. Through this evaluation, Plaintiffs' counsel identified three primary
16 claims at issue in this case: the allegations of missed breaks, unpaid off the clock work, and
17 allegations of improper tip sharing are highlighted below.

18
19 **C. Class Counsel is Highly Experienced and Support Preliminary Approval**

20 Plaintiffs and the class are represented by well-qualified counsel with significant experience
21 in wage and hour class action litigation. Class counsel's recommendations receive a presumption of
22 reasonableness when there is familiarity with the lawsuit, are competent, have ample experience
23 with the type of litigation, and discovery has been completed. (*Boyd v. Bechtel Corp.* (N.D. Cal.
24 1979) 485 F.Supp.610; *Newberg on Class Actions* § 13:53 (5th ed. 2011-2017).)

25
26 **D. The Settlement Provides Substantial Monetary Relief to the Class**

27 The party seeking approval provides information about the nature of the claims and the
28 asserted basis for concluding that the settlement is fair. (*Kullar, supra*, 168 Cal. App. 4th at p. 133.)

1 A settlement is not judged against what might have been recovered at trial and does not have to
2 provide 100% of the damages sought. (*Wershba, supra*, 91 Cal.App.4th at p. 250.)
3

4 **1. The Settlement Is Fair, Reasonable, and Adequate Considering the**
5 **Risks of Proceeding Further**

6 The risk Plaintiffs faced for the missed meal and rest break claims is that Telefèric may
7 have argued that Telefèric's written break policy in its employee handbook appeared compliant,
8 and that it might be difficult to show typicality since the alleged missed breaks might have been
9 limited to only some of the back of house kitchen workers. Thus, Plaintiffs would need obtain
10 multiple statements from other workers who claimed to experience the same missed break patterns
11 as they did, which could prove costly or unfruitful.

12 In its mediation brief and at the Civil Judges ADR session, Telefèric argued that its written
13 policies were compliant, provided multiple signed declarations (in both English and Spanish)
14 stating that class members generally took lunches together and were offered food provided by the
15 restaurant, demonstrated how Telefèric calculated and distributed tips to class members, and argued
16 that different policies applied to the front of house staff and to back of house staff (both named
17 Plaintiffs worked only in the back of the house). Telefèric also provided a statistical analysis of its
18 time records, demonstrating that class members took compliant meal periods for nearly every
19 qualifying shift and offered evidence demonstrating that its payroll system automatically
20 distributed premiums whenever class member time entries did not indicate that a compliant meal
21 period was taken for a qualifying shift.

22 On the other hand, a strength of the missed break claims is that some of the time records
23 appeared to show meal periods of exactly 30 minutes, which in practical terms was not possible on
24 such a regular basis. Further, Plaintiffs insisted they were told to clock out but continue working.
25 Similarly, Plaintiffs insisted they could not take any rest breaks and were told work straight through
26 their shifts. These factual disparities were considered when weighing out the settlement.

27 The risk for the unpaid off the clock violations was plainly that there was no written
28 evidence of off the clock work. The time records did not show it, and Plaintiffs had no independent

1 written evidence of off the clock work. Thus, like the missed break violations, Plaintiffs would
2 have to obtain the statements of other workers to corroborate that Telefèric's supervisors instructed
3 them to stay after their shifts to continue working. Notably, Telefèric submitted multiple signed
4 declarations (in both English and Spanish) from class members stating that they were paid for all
5 hours worked and that they only worked off the clock in isolated incidents when they forgot to
6 clock in, which they rectified by conferring with Telefèric management to ensure they were paid
7 for all hours worked. These declaration highlight the challenges faced by the off the clock claim,
8 namely that other class members may have had different experiences and may provide contrary
9 testimony regarding whether they worked off the clock. This was also taken into consideration
10 when determining the reasonable settlement value of this case.

11 For the tip misappropriation, the risk is that Telefèric maintained regular records of how
12 tips were distributed to the support staff. Further, Telefèric instituted a mandatory service charge
13 starting in September 2021 that did not incorporate a tip pool. Further, Telefèric argued that all of
14 those who received tips as part of the tip pool were within the chain of service and Telefèric did not
15 mislead its customers regarding tip recipients.

16 Both Plaintiffs had stopped working for Telefèric by the time the mandatory service charge
17 policy was instituted. Telefèric also raised that the restaurant was closed for part of 2020 and 2021
18 for Covid, thereby reducing the potential overall recovery.

19 On the other hand, Plaintiffs noticed drops in their tips before they stopped working for
20 Telefèric, and again if they were able to obtain the statements from other employees that their tips
21 also decreased, it could lead to the inference that management was improperly taking tips from the
22 tip pool in violation of *Leighton v. Old Heidelberg, Ltd.* (1990) 219 Cal.App.3d 1062. Indeed, the
23 wage statements did not reflect payments of any tips, but when viewed in tandem with Telefèric's
24 tip distribution methodology, this would be another challenge to surmount, and this was also
25 considered in the decision to settle.

26 Plaintiffs also considered that the court has discretion to reduce PAGA penalties. (Lab.
27 Code, § 2699(e)(2), see also *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504
28 (reducing PAGA penalties by 90%); and *Fleming v. Covidien*, No. ED CV 10-01487 RGK (OPx),

1 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing penalties for wage statement
2 violations by 82%).

3 Further, courts have held that gross settlements approximating between 8% and 25% of the
4 defendant's potential exposure are fair and reasonable. (See, e.g., *In re Mego Fin. Corp. Secs.*
5 *Litig.*, (9th Cir. 2000) 213 F.3d 454, 459 (holding that class action settlement recovering 16% of
6 potential exposure was fair and reasonable; "[i]t is well-settled law that a cash settlement
7 amounting to only a fraction of the potential recovery does not per se render the settlement
8 inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed
9 relative to risks of pursuing the litigation to judgment" – whether the settlement is fair and adequate
10 depends on the "the difficulties in proving the case")); *Bellinghausen v. Tractor Supply Co.*, No.
11 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (a class action settlement
12 recovering between 8.5% and 25% of the defendant's potential exposure was fair).

13 The maximum liability using Plaintiffs' expert's valuations, excluding PAGA, was
14 estimated at \$2,415,222. This included the following: meal break premiums: \$407,419, rest break
15 premiums: \$927,624, unpaid wages: \$164,783, waiting time penalties: \$924,480, wage statement
16 penalties: \$374,463. This maximum liability figure, however, assumed that Telefèric failed to
17 provide compliant meal and rest breaks for every qualifying shift worked by every class member,
18 which could be an inaccurate assumption. Nonetheless, the settlement represents 5% of this
19 maximum recovery using the expert's valuations.

20 Given the risks described above, a more realistic maximum recovery might be half the
21 \$2,415,222 figure, in which case the settlement represents 11% of the maximum recovery. Using
22 the lens of the risks, as well as the other *Kullar* factors, the amount is fair, reasonable, and
23 adequate. Further, the settlement is non-reversionary, which further weighs in favor of approval.

24 25 **2. The Settlement Has No Obvious Deficiencies and Does Not Grant** 26 **Preferential Treatment**

27 Based on the pro rata distribution to the class members based on their number of
28 workweeks, the settlement does not grant preferential treatment to any class member. The

1 settlement administrator will calculate the number of qualifying workweeks each class member
2 worked. This format does not grant preferential treatment. This is another factor weighing in favor
3 of preliminary approval.

4
5 **V. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

6 Provisional certification is appropriate with preliminary approval where the class has not
7 been certified yet. (Rules of Court, rule 3.769(d), see also *Newberg on Class Actions* §§ 13:16-
8 13:18 (5th ed. 2011-2017). To certify a settlement class, there should be an ascertainable class and
9 a well-defined community of interest in the questions of law and fact. (*Vasquez v. Superior Court*
10 (1971) 4 Cal. 3d 800, 809-811.)

11
12 **A. There is an Ascertainable and Sufficiently Numerous Class**

13 The class members are easily identifiable from Telefèric's records. The information
14 exchanged shows a class size of 344 class members, easily meeting the numerosity requirement.

15
16 **B. There is a Well-Defined Community of Interest / Commonality**

17 The community of interest requirement involves three factors: (1) predominant common
18 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
19 (3) class representatives who can adequately represent the class. (*Linder v. Thrifty Oil Co.* (2000)
20 23 Cal.4th 429, 435.) The predominance factor tests whether a proposed class is sufficiently
21 cohesive to warrant adjudication by representation. (See, e.g., *Clothesrigger, Inc. v. GTE Corp.*
22 (1987) 191 Cal. App. 3d 605; *Lazar v. Hertz Corp.* (1983) 143 Cal. App. 3d 128.)

23 Common issues of fact and law predominate because the action concerns the same
24 violations, namely not providing compliant meal and rest periods, not paying all wages owed, not
25 limiting the tip pool to the chain of service employees, not paying all penalties owed, and the
26 statutory fees that stem from the violations. Resolution of these questions will determine liability
27 for the class overall. To the extent any individual questions exist about unpaid wages, these issues
28

go to damages, not liability, which does not preclude the maintenance of the suit as a class action.
(*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 815.)

C. Plaintiff's Claims are Typical, and the Adequacy Requirement is Met

Plaintiffs' claims are typical of the class because they were subject to the same alleged non-compliant policies and procedures as they worked in the kitchen and restaurant like the other Telefèric employees. Subsequently, adequacy of representation is met with two conditions: first, named plaintiff must be represented by counsel qualified to conduct the pending litigation; second, named plaintiff's interests cannot be antagonistic to those of the class. (*Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47.)

Frontier Law Center has significant experience prosecuting wage and hour class actions as explained in the attached declaration. Second, Plaintiffs are not aware of any conflicts of interest with the class. Thus, the typicality and adequacy requirements are met.

VI. THE PROPOSED CLASS NOTICE IS ACCEPTABLE

Rules of Court, rule 3.769(f) requires that class members be provided with notice of the final approval hearing, as well as an explanation of the proposed settlement and objection procedures. Procedural due process requires notice reasonably calculated to apprise interested parties of the pendency of the action affecting their interests and an opportunity to present their objections. (*Ryan v. Cal. Interscholastic Fed'n – San Diego Section* (2001) 94 Cal. App. 4th 1048, 1072.) A notice that meets this standard and is neutrally worded satisfies due process. (*Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 812.)

A. The Notice is Accurate, Informative, and Appropriate

The proposed notice provides all the information needed to make a fully informed decision about the settlement. The notice summarizes the lawsuit, including the contentions and denials of the parties, and explains the terms and conditions of the settlement in plain language and in an

1 informative and coherent manner. The notice explains the process class members should follow if
2 want to exclude themselves from the settlement.

3 The notice provides that class members may also at the fairness hearing to object,
4 and it provides that class members who do not object or exclude themselves will have waived all
5 objections to the settlement.

6 Finally, the notice will include an estimated calculation of the class member's estimated
7 share of the net settlement amount based on his or her number of qualifying workweeks, and it
8 explains the process for disputing the number of qualifying workweeks.

9 10 **B. The Notice Plan Satisfies Due Process**

11 The proposed notice plan is consistent with Rule of Court 3.769(f), is the best notice
12 practicable, and is the method to give the best actual notice to the class members. Within 21 days of
13 the court granting preliminary approval, Telefèric will provide the class list to the settlement
14 administrator, who will then send the notice within fifteen days of receiving the class list.

15 If any notice is returned as undeliverable without a forwarding address the administrator
16 will perform a skip trace to locate a better mailing address. If the administrator obtains a more
17 current address from the skip trace, it will resend the notice to that address. Procedural due process
18 is satisfied with the proposed notice plan.

19 20 **VII. THE REQUESTED ATTORNEY FEES AND COSTS ARE REASONABLE**

21 Although the motion for attorney fees and costs will be filed in conjunction with the motion
22 for final approval, in general an award of attorney's fees in common fund wage and hour class
23 action settlements should start with the percentage method. (See *Laffitte v. Robert Half Int'l.* (2016)
24 1 Cal. 5th 480, 503.) Under the percentage of the fund method, the court's objective remains to
25 mimic the market in fixing a reasonable fee. (*Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363
26 ("When a fee is set by a court rather than by contract, the object is to set it at a level that will
27 approximate what the market will set ... The judge, in other words, is trying to mimic the market in
28 legal services.").

1 An award of 33% of the fund in attorneys' fees mimics the marketplace as it is supported by
2 the fact that typical contingency fee agreements provide that class counsel will recover 33% if the
3 case is resolved before trial and 40% if the case is tried." (*Fernandez v. Victoria Secret Stores LLC*,
4 2008 WL 8150856 at *16 n. 59 (C.D. Cal. July 21, 2008). Indeed, "empirical studies [that] show
5 that . . . fee awards in class actions average around one-third of the recovery." (*Chavez v. Netflix*,
6 *Inc.* (2008) 162 Cal. App. 4th 43, 66 n.11.) Thus, Plaintiffs respectfully request the court to
7 consider these principles when analyzing the settlement.

8
9 **VIII. CONCLUSION**

10 Plaintiffs respectfully requests the court to grant preliminary approval, to provisionally
11 certify the class, to direct that notice is sent to the class members, to appoint Plaintiffs as the class
12 representatives and Frontier Law Center as class counsel, appointing Phoenix Class Action
13 Administration Solutions as the settlement administrator, and setting a fairness hearing in
14 approximately three months.

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16 Date: September 12, 2022

FRONTIER LAW CENTER

17
18 /s/ Adam Rose
19 Attorney for Plaintiffs
20 Mirian Marroquin, et al.
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