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10 **SUPERIOR COURT OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF LOS ANGELES**

12 KAILEE WHITTAKER and ARMANDO
13 LEMUS, on behalf of themselves, the State of
14 California, and others similarly situated and
aggrieved,

15 Plaintiff,

16 vs.

17 YHB LONG BEACH, LLC, a California limited
liability company; L.A. KOREANA, INC., a
18 California corporation; and DOES 1-100,
Inclusive,

19 Defendants.
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CASE NO. 22STCV34593

Assigned for All Purposes to:
Hon. Carolyn B. Kuhl
Dept. SSC-12

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

[Filed Concurrently with Notice of Motion
and Motion; Declarations of Brandon
Brouillette, Kailee Whittaker, Armando
Lemus, and Jodey Lawrence; [Proposed]
Order]

Date: August 2, 2023
Time: 10:30 a.m.
Dept.: SSC-12

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1 **I. INTRODUCTION**

2 Plaintiffs Kailee Whittaker and Armando Lemus respectfully request that the Court
3 preliminarily approve the Class Action and PAGA Settlement Agreement (“Agreement”) entered
4 into between Plaintiffs and Defendants YHB Long Beach, LLP and L.A. Koreana, Inc. (together
5 “YHB” or “Defendants”). The proposed settlement seeks to resolve claims in the above captioned
6 matter in exchange for a non-reversionary \$550,000 Gross Settlement Amount. The settlement
7 class is comprised of all individuals “employed by Defendants in California and classified as a
8 non-exempt hourly employee who worked for Defendants during the Class Period of May 3, 2018
9 to June 19, 2023.”

10 The Agreement and notice distribution plan are the products of adversarial, arm’s-length
11 negotiations by informed counsel and parties, facilitated by an experienced mediator. The
12 settlement is fair, reasonable, and adequate to all. Plaintiffs have analyzed the strengths and
13 vulnerabilities of the claims with Defendants’ potential exposure and determined the \$550,000
14 proposed settlement is well within the range of reasonableness and is in the Class Members’ best
15 interests. The length and risks of trial and perils of litigation that affect the values of the claims
16 were all carefully weighed. In addition, the defenses asserted by Defendants, the uncertainty of
17 class certification, the difficulties of complex litigation, the lengthy process of establishing
18 specific damages and various possible delays and appeals, were also considered by Plaintiffs and
19 counsel in negotiating the proposed settlement. The proposed settlement satisfies the criteria for
20 preliminary approval under California Rule of Court 3.769.

21 Accordingly, Plaintiffs seek: (1) preliminary approval of the settlement; (2) provisional
22 certification of the Class; (3) appointment of Plaintiffs as the Class Representatives; (4)
23 appointment of Crosner Legal, P.C. as Class Counsel; (5) approval of the Parties’ proposed
24 Notice of Class Action Settlement (“Notice”) and method of notifying the Class Members; (6) a
25 hearing date for Plaintiffs’ Motion for Final Approval of Class Action Settlement; and (7) entry of
26 an Order Granting Preliminary Approval of Class Action Settlement.

27 **II. BACKGROUND/LITIGATION HISTORY**

28 YHB owns and operates several hotels in Southern California, including the Holiday Inn

1 and Stay Bridge Suites Long Beach Airport hotels. Plaintiff Whittaker worked at these two hotels
2 from approximately September 2020 through January 2021 as a front desk agent. Plaintiff
3 Lemus worked for Defendants from about March 28, 2022 to May 30, 2022, as a night
4 auditor/front desk associate. (Brouillette Decl., ¶ 21.)

5 On October 28, 2022, Plaintiff Whittaker filed a class action and PAGA complaint against
6 Defendant, alleging claims for failure to pay wages, including overtime wages, meal and rest
7 break violations, inaccurate wage statements, waiting time penalties, failure to reimburse
8 expenses, and unfair competition. (Brouillette Decl., ¶ 22.) Plaintiffs also submitted the required
9 notice letter, followed by three additional notice letters, to the LWDA under PAGA and thus have
10 timely exhausted their administrative remedies with the LWDA. (Brouillette Decl. ¶ 22; Exhs. 4-
11 7.) Plaintiffs have not received notice from the LWDA that it intended to investigate the alleged
12 violations outlined in the PAGA letters. (Brouillette Decl., ¶ 22.) Plaintiff Whittaker later filed an
13 amended complaint adding Plaintiff Lemus as a party-plaintiff and alleging additional claims
14 against Defendants for violation of the Long Beach Municipal Code. (Brouillette Decl., ¶ 22.)

15 In April 2023, the Parties participated in mediation with Steve Pearl, Esq., a respected
16 wage and hour class action mediator. The mediation lasted a full day and with the mediator's
17 assistance the Parties reached agreement on all major issues and ultimately prepared and executed
18 a Memorandum of Understanding. They then formally reduced the proposed settlement to the
19 Agreement now before the Court for approval. The Agreement meets the requirements in the
20 LASC Checklist for Preliminary Approval. As noted, as part of the Settlement, Plaintiff
21 Whittaker filed a First Amended Complaint adding Plaintiff Lemus and additional claims, and the
22 FAC is the Operative Complaint. Both the FAC and the Agreement have been uploaded to the
23 LWDA. (Brouillette Decl., ¶ 23; Exhs. 8-9.)

24 **III. INVESTIGATION**

25 Prior to the mediation, Defendants provided Plaintiffs with extensive informal discovery,
26 including Plaintiffs' personnel, time, and payroll records, time and payroll records for a randomly
27 selected sampling of Class Members, wage statement exemplars, Defendants' employee
28 handbooks, including Defendants' policies and procedures regarding the payment of wages, the

1 provision of meal and rest breaks, timekeeping policies (including recording hours), issuance of
2 wage statements, and termination wages, expense reimbursement policies, as well as information
3 regarding the number of putative Class Members who are current and former employees, the
4 number of Aggrieved Employees, the number of workweeks throughout the Class Period, and the
5 number of pay periods throughout the PAGA Period. From this information, Plaintiff analyzed
6 Defendants' liability for the claims asserted and, with the assistance of Plaintiffs' experts at
7 Berger Consulting Group, the potential exposure and damages. (Brouillette Decl., ¶ 24.)

8 Based on this informal discovery, Plaintiffs contend the Class Members were not paid all
9 wages due, not provided with legally compliant meal and rest periods, did not receive compliant
10 wage statements, did not receive required expense reimbursement, and did not receive all wages
11 due on separation of employment. In considering the reasonableness of the proposed settlement,
12 Plaintiffs considered each of Defendants' counterarguments, which sharply contested Plaintiffs'
13 claims. Plaintiffs and counsel weighed the strength of Defendants' arguments, including the risks
14 of prevailing at class certification and on the merits, and determined the proposed settlement is in
15 the best interests of the Class. Although confident in the strength of their claims, these factors led
16 Plaintiffs to discount the exposure analysis, as discussed below. (Brouillette Decl., ¶ 25.)

17 **IV. TERMS OF THE PROPOSED SETTLEMENT**

18 **A. Deductions from the Settlement**

19 The Parties have agreed (subject to the Court's approval) to resolve this matter for the
20 non-reversionary total sum of \$550,000.00 ("Gross Settlement Amount" or "GSA") (Agreement,
21 § 3.1.), which includes: (a) reasonable attorney's fees of up to \$183,333.00 (33.33% of the GSA)¹
22 to compensate Class Counsel for work already performed and all work remaining to be performed
23 (Agreement, § 3.2.2.); (b) actual litigation expenses as documented and not to exceed \$15,000.00²
24 (Agreement, § 3.2.2.); (c) Enhancement Awards to Plaintiffs in an amount not to exceed
25

26 ¹ The percentage method, with or without a lodestar cross-check, may be used in common fund cases like this one.
27 *Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal.5th 480, 503. In support of their fee request at Final Approval,
28 Class Counsel will provide the Court with lodestar information to permit the Court to do a lodestar cross-check in
connection with Class Counsel's request for attorney's fees.

² At Final Approval, Class Counsel will provide documentation regarding actual expenses incurred to support Class
Counsel's request for reimbursement of actual expenses.

1 \$7,500.00 each (Agreement, § 3.2.1.); (d) Administration Costs to Phoenix Settlement
2 Administrators (the proposed settlement administrator) in an amount not to exceed \$15,000.00
3 (Agreement, § 3.2.3.); and (e) PAGA penalties to the LWDA of \$37,500.00 (which is 75% of the
4 \$50,000.00 PAGA Payment, with the remaining 25% or \$12,500.00 to Aggrieved Employees)
5 (Agreement, § 3.2.5.). Employer-side payroll taxes (including FICA, FUTA, and SDI) will be
6 paid by Defendant separate and apart from the GSA. (Agreement, § 3.1.)

7 **B. Calculation of the Individual Settlement Payments to Class and Aggrieved**
8 **Employees**

9 After all Court-approved deductions from the GSA, it is estimated that at least
10 \$271,667.00 (“Net Settlement Amount” or “NSA”), less all applicable employee-side taxes, will
11 be distributed to the estimated 235 Class Members, with an average individual settlement amount
12 of around \$1,156.³ Additionally, it is estimated that the 25% PAGA Payment (\$12,500.00) will be
13 distributed to the estimated 137 Aggrieved Employees, resulting in an average payment of
14 \$91.24⁴ per Aggrieved Employees. (Brouillette Decl., ¶ 27.) Under no circumstances will any
15 portion of the Settlement revert to Defendant. (Agreement, § 3.1.)

16 Phoenix will calculate and issue Individual Class Payments to Participating Class
17 Members by “(a) dividing the Net Settlement Amount by the total number of Workweeks worked
18 by all Participating Class Members during the Class Period and (b) multiplying the result by each
19 Participating Class Member’s Workweeks.” (Agreement, § 3.2.4.) Phoenix also will calculate and
20 issue payments to Aggrieved Employees based (a) dividing the amount of the Aggrieved
21 Employees’ 25% share of PAGA Penalties (\$12,500) by the total number of PAGA Period Pay
22 Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the
23 result by each Aggrieved Employee’s PAGA Period Pay Periods.” (Agreement, § 3.2.5.1.)

24 Each Class Member’s settlement award will be apportioned as follows: twenty percent
25 (20%) wages and eighty percent penalties and interest. (Agreement, § 3.2.4.1.) Phoenix will be
26 responsible for issuing W-2s for amounts deemed wages and 1099s for the portions allocated to

27 _____
28 ³ \$271,667 estimated NSA/235 Class Members

⁴ \$12,500 (25% PAGA Payment) /137 Aggrieved Employees

1 penalties and interest. (Agreement, §§ 3.2.4.1. and 3.2.5.2.)

2 **C. Uncashed Funds to Unclaimed Property Fund**

3 Settlement checks must be cashed or deposited within 180 days after issuance.
4 (Agreement, § 4.4.1.) In the event a settlement check remains uncashed, such uncashed funds
5 shall be transmitted to the State Controller's Office Unclaimed Property Fund in the name of the
6 Participating Class Member and/or Aggrieved Employee. (Agreement, § 4.4.3.). Therefore, there
7 will be no unpaid residue or unclaimed or abandoned Class Member funds under California Code
8 of Civil Procedure section 384(a).

9 **D. Notice and Extended Response Deadline for Re-Mailed Notices**

10 Within fifteen (15) days after entry of the Preliminary Approval Order, Defendants will
11 provide Phoenix with the Class Data, which Phoenix will maintain as private and confidential.
12 (Agreement, § 4.2.)

13 Prior to mailing, Phoenix will perform a search for updated addresses in the National
14 Change of Address database, and will use the NCOA database and skip traces to attempt to find
15 current addresses for any Notice returned as undeliverable. (Agreement, § 7.4.2.) If Phoenix is
16 unable to obtain a better address for a Class Member, it will be under no obligation to make
17 further attempts to locate or notice the Class Member. (Agreement, § 7.4.3.) Within fourteen days
18 after receipt of the Class Data, Phoenix will mail the Notice to all Class Members via First-Class
19 mail. (Agreement, § 7.4.2.)

20 The contents of the Notice are consistent with the terms of the Agreement and California
21 Rule of Court 3.769. The Notice informs Class Members how and when to request exclusion from
22 or object to the settlement, and the estimated payment they will automatically receive if they do
23 nothing. (Brouillette Decl., ¶ 33; Exh. 3.)

24 **E. Responses to the Settlement and Deadlines**

25 Class Members will have forty-five (45) days from the initial mailing of the Notice to
26 respond to the settlement by submitting a challenge to the number of weeks or pay periods
27 attributed to them, objecting, or requesting exclusion. (Agreement, § 1.44.) Class Members can
28 object to the settlement in writing by submitting a document with their name, the words "Notice

1 of Objection” or “Formal Objection” and a description of the arguments supporting their
2 objection, or they may be heard at the Final Approval Hearing. (Agreement, § 7.7.)

3 Class Members can also request for exclusion from the settlement by mailing or faxing a
4 written request, including his or her name, address, phone number or email address, last four
5 digits of their Social Security Number or Employment Authorization number, and a statement
6 demonstrating his or her intent to opt out of the settlement. (Agreement, § 7.5.1.)

7 The Notice also informs the Class Members/Aggrieved Employees that they can dispute
8 the number of workweeks/pay periods used to calculate their settlement payments by contacting
9 Phoenix before the Response Deadline and providing documentation to support their dispute.
10 Phoenix will investigate the dispute, request additional information from Defendant, and make a
11 final decision as to the number of eligible work weeks/pay periods. (Agreement, § 7.6.)

12 **F. Funding and Distribution of the Settlement**

13 Defendant will fund the settlement within fourteen (14) calendar days after the Effective
14 Date, and Phoenix will disburse all payments required under this Settlement within fourteen (14)
15 calendar days of receipt of the GSA. (Agreement, § 4.3-4.)

16 **G. Release of Claims**

17 Upon final approval, Participating Class Members shall forever release the Released
18 Parties⁵ for the Released Claims for the Class Period, including all claims pleaded in the
19 Operative Complaint, and which could reasonably have been alleged, based on the Class Period
20 facts, allegations, and/or claims stated in the Operative Complaint, for work performed during the
21 Class Period, and as specifically detailed in Section 5.2 of the Agreement. Additionally, the
22 Aggrieved Employees will the Released Parties from all claims for PAGA penalties that were
23 alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the
24 Operative Complaint, and PAGA Notice, and as more specifically detailed in Section 5.3 of the
25 Agreement.

26 _____
27 ⁵ “Released Parties” means Defendants and each of their former and present directors, officers,
28 shareholders, owners, members, managers (including general managers and supervisors),
attorneys, insurers, reinsurers, predecessors, successors, assigns, subsidiaries, and affiliates
(Agreement, § 1.42.)

1 **H. The Class Representative Service Award Is Justified Given the Risks and**
2 **Should be Preliminarily Approved**

3 The Agreement provides for a service payment not to exceed \$7,500.00 to each Plaintiff.
4 (Agreement, § 3.2.1.) Courts routinely approve service payments, or incentive awards, to
5 compensate named plaintiffs for the services they provide and the risks they incur during class
6 litigation. *In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393 (“These
7 awards are discretionary...and are intended to compensate class representatives for work done on
8 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
9 and, sometimes, to recognize their willingness to act as a private attorney general.”); *Bell v.*
10 *Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
11 representatives); Manual § 21.62 n. 971 (noting that service payments are warranted).

12 The requested service awards are reasonable in light of the benefits Plaintiffs conferred
13 upon the entire Class, resulting in a benefit to all Class Members and the State of California, the
14 time spent assisting counsel with the investigation and prosecution of these claims, commitment
15 to responding to discovery, and consenting to the proposed Agreement. Furthermore, by attaching
16 her name to this lawsuit, Plaintiffs also took on the reputational risk that future employers would
17 learn of their participation in this case and would unfairly associate them with costly litigation,
18 costing them future employment opportunities. Any future employer could easily perform a
19 simple Google search – an unauthorized simple background check unknown to Plaintiffs that can
20 still provide a plethora of information – and conclude that Plaintiffs are not worth the risk of
21 hiring given their involvement in a lawsuit against a former employer. This is the kind of
22 reputational risk, borne by Plaintiffs alone, that the incentive award is meant to compensate.
23 Furthermore, in pursuing this action on behalf of the Class, Plaintiffs risked a judgment against
24 them for attorney’s fees and costs in the event this matter should Defendants prevail. For these
25 reasons, at final approval, Plaintiffs each will request the Court award an enhancement payment
26 in an amount that does not exceed \$7,500. (Brouillette Decl., ¶ 39; Declaration of Kailee
27 Whittaker, ¶¶ 2-9; Declaration of Armando Lemus, ¶¶ 2-9.)

28 ////

1 **IV. ARGUMENT**

2 In deciding whether to approve a proposed class action settlement under Code of Civil
3 Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and
4 reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 [quoting *Officers for*
5 *Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, cert. den. (1983) 459 U.S.
6 1217]. A proposed class action settlement is **presumed** fair under the following circumstances:
7 (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery
8 were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
9 similar litigation; and (4) the percentage of objectors is small. *Id.* at 1802. As the following
10 shows, all of these elements are present here and the Court should grant of preliminary approval.

11 **A. The Settlement was Reached as a Result of Arm’s Length Negotiations**

12 The proposed settlement was reached as a result of arm’s-length negotiations facilitated
13 by respected mediator, Steve Pearl. Though cordial and professional, the settlement negotiations
14 have been, at all times, adversarial and non-collusive. Following mediation, counsel for the
15 Parties conducted further extensive and arm’s length negotiations on the settlement terms
16 memorialized in the Agreement. (Brouillette Decl., ¶ 40.)

17 While Plaintiffs believe in the merits of the case, they also recognize the inherent risks of
18 litigation and understand the benefit of Class Members receiving significant settlement funds
19 immediately as opposed to risking continued litigation in achieving class certification, the merits
20 of the case before and after trial, the damages awarded and/or an appeal that can take several
21 more years to litigate. (Brouillette Decl., ¶ 41.)

22 **B. The Settlement is the Result of Thorough Investigation and Discovery**

23 The Parties thoroughly investigated and evaluated the strengths and weaknesses of their
24 factual and legal arguments before reaching the proposed settlement, and engaged in sufficient
25 investigation, research and discovery to support the settlement. The proposed settlement was only
26 possible following significant analysis and evaluation of Defendants’ relevant policies and
27 procedures, as well as the data it produced for the putative Class. (Brouillette Decl., ¶¶ 24-25, 42.)
28 This litigation has reached the stage where “the Parties certainly have a clear view of the

1 strengths and weaknesses of their cases” sufficient to support the Settlement. *Boyd v. Bechtel*
2 *Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

3 C. **Counsel for the Parties are Experienced in Similar Litigation**

4 Counsel for the Parties are particularly experienced in wage and hour employment law,
5 class actions and PAGA actions. Plaintiffs’ Counsel has prosecuted numerous cases on behalf of
6 employees for wage and hour violations and thus are experienced and qualified to evaluate the
7 class and PAGA claims, evaluate settlement versus trial on a fully informed basis, and to evaluate
8 the viability of the defenses. This experience informed Plaintiffs’ Counsel on the risks and
9 uncertainties of further litigation and guided their determination to endorse the proposed
10 settlement.⁶ (Brouillette Decl. ¶¶ 9-20.)

11 D. **The Proposed Settlement is a Reasonable Compromise of Claims**

12 An understanding of the amount in controversy is an important factor into whether the
13 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of
14 the claims and the risks of the particular litigation.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168
15 Cal.App.4th 116, 129; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
16 Cal.App.4th 399, 409. The most important factor in this regard is “the strength of the case for
17 plaintiffs on the merits, balanced against the amount offered in settlement.” *Kullar*, 168
18 Cal.App.4th at 129.

19 In weighing the strength of Plaintiffs’ case, *Kullar* instructs that the court is not to “decide
20 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of
21 the attorneys.” 168 Cal.App.4th at 133. Further, this analysis does not require an explicit
22 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,
23 provided there is a record which allows “an understanding of the amount that is in controversy
24 and the realistic range of outcomes of the litigation.” *Munoz*, 186 Cal. App. 4th at 409. Put
25 differently, “as the court does when it approves a settlement as in good faith under Code of Civil
26 Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the

27 ⁶ The final factor mentioned in *Dunk* - the number of objectors - is not determinable until the Notice of Class Action
28 Settlement has been provided to the Class and they have had an opportunity to respond. This information will be
provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

1 ‘ballpark’ of reasonableness.” *Kullar*, 168 Cal. App. 4th at 133 citing *Tech-Bilt v. Woodward-*
2 *Clyde & Associates* (1985) 38 Cal. 3d 488, 499-500. As shown below, the Parties’ investigation
3 and discovery revealed several reasons to discount claims and agree to this settlement.

4 E. **The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff’s**
5 **Case and the Risks and Costs of Further Litigation**

6 The proposed settlement was only possible following significant analysis and evaluation
7 of Defendant’s relevant policies and procedures, as well as the data that Defendants produced for
8 the Class. This permitted Plaintiffs’ Counsel to engage in a comprehensive analysis of liability
9 and potential damages. The discovery conducted resulted in Plaintiffs’ central theories of liability,
10 which are based on Plaintiffs’ claims that Defendants failed to provide compliant meal and rest
11 periods, failed to pay all minimum and overtime wages, failed to provide accurate, itemized wage
12 statements and failed to pay all wages due on separation of employment As explained above,
13 Defendants maintain that the discovery produced demonstrates it likely would prevail on both
14 class certification and the merits. (Brouillette Decl., ¶¶ 23-24, 41.)

15 Plaintiffs believe this case is suitable for certification and contend there are company-wide
16 policies that violate California law and uniformly affect the Class Members. Defendants’
17 counterarguments, however, raise uncertainties with respect to both class certification and success
18 on the merits. As the California Supreme Court emphasized in *Sav-On v. Superior Court* (2004)
19 34 Cal.4th 319, class certification is always a matter of the trial court’s sound discretion, and
20 decisions following *Sav-On* have reached different conclusions with respect to certification of
21 wage and hour claims.⁷ While remaining confident in the strengths of their claims, these factors
22 led Plaintiffs to discount the maximum potential damage claims. (Brouillette Decl., ¶ 43.)

23 **1. The Settlement Amount is Reasonable**

24 Defendants provided Plaintiffs with class-wide data from which Plaintiffs’ Counsel

26 ⁷ E.g., *Harris v. Superior Court*, 154 Cal.App.4th 164 (2007) (reversing decertification of class claiming
27 misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007)
28 (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal.App.4th
1440 (2007) (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*, 144
Cal.App.4th 121 (2006) (reversing denial of certification); *Dunbar v. Albertson’s Inc.*, 141 Cal.App.4th 1422 (2006)
(affirming denial of certification).

1 extrapolated a damage analysis in preparation of mediation. For purposes of the mediation, there
2 were a total of 235 Class Members who worked approximately 15,001 work weeks in the
3 limitations period, and 137 aggrieved employees and 2,252 pay periods within the PAGA Period.
4 (Brouillette Decl., ¶ 44.)

5 First, Plaintiffs contend Defendants failed to pay all wages due by rounding employee
6 time punches off to the nearest quarter hour. Coupled with Defendants' strict attendance policies
7 that required employees to be on the clock before the scheduled start of a shift and after the
8 schedules end of a shift, the rounding policy resulted in a systematic loss of hours worked and
9 corresponding pay by the class. Plaintiffs further argued that Defendants likewise rounded
10 employee time punches for meal breaks, resulting in additional lost time in violation of the
11 California Supreme Court's decision in *Donohue v. AMN Servs., LLC*, (2021) 11 Cal.5th 58. In
12 response, Defendants contend they accurately tracked employee time and paid class members all
13 wages due as required under applicable law. Defendants further argued its rounding policy is
14 "fair and neutral on its face and 'it is used in such a manner that it will not result, over a period of
15 time, in failure to compensate the employees properly for all the time they have actually
16 worked,'" and accordingly is permissible under applicable law. *See's Candies Shops, Inc. v.*
17 *Superior Court* (2012) 210 Cal.App.4th 889. Without taking into consideration any of
18 Defendants' defenses to certification or on the merits, Plaintiffs' expert calculated Defendants'
19 maximum exposure for this claim **\$13,410** in damages for unpaid wages based on a total of about
20 507 uncompensated hours worked due to Defendants' rounding policies. (Brouillette Decl., ¶ 45.)

21 Plaintiffs next contend Defendants failed to provide legally compliant meal and rest
22 breaks. Specifically, as to meal breaks, in addition to providing short lunches and rounding off the
23 time as alleged above, Plaintiffs further contend Defendants had a policy of understaffing their
24 hotels such that it was difficult, and sometimes impossible, to take all breaks on a fully compliant
25 basis. In fact, Plaintiffs' analysis of Defendants' time records suggests class members failed to
26 take a compliant meal period during 48.7% of all shifts worked. Plaintiffs claim this violates
27 Labor Code sections 512, 226.7, and the applicable IWC Wage Orders, as well as *Brinker*
28 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 and *Augustus v. ABM Security Serv.,*

1 *Inc.* (2016) 2 Cal.5th 257 for failure to provide all required meal periods and within the required
2 time frames. Plaintiffs also contend Defendants failed to provide duty-free rest periods to Class
3 Members again due to inadequate staffing. Lastly, Plaintiffs allege Defendants frequently failed
4 to pay the required premium wages even when there were documented violations, although the
5 records produced indicate Defendants did start paying some premiums starting in 2020.
6 (Brouillette Decl., ¶ 46.)

7 Defendants deny Plaintiffs' contentions, claiming they made meal and rest breaks
8 available to Class Members in compliance with California law. YHB contends its meal and rest
9 break policies are lawful and that Class Members were frequently reminded they were required to
10 take all meal and rest breaks. Defendants also contend that time records demonstrate that Class
11 Members took duty-free, timely meal and rest breaks. Defendants further contend the meal and
12 rest break policies and practices comported with the flexibility the *Brinker* court held was integral
13 to California's meal and rest period requirements. Finally, Defendants argued that Plaintiffs' meal
14 and rest break claims are not susceptible to common proof, as the claims would require
15 individualized inquiries, including whether there was an unlawful companywide policy, whether
16 employees had the opportunity to take meal and rest periods, whether they voluntarily chose to
17 forego their meal and rest periods, and whether Defendants ever prevented them from taking meal
18 and rest periods. Accordingly, YHB contends these claims are vulnerable to a ruling that class
19 treatment is not appropriate. (Brouillette Decl., ¶ 47.)

20 Without taking into consideration any of Defendants' defenses to certification or on the
21 merits, Plaintiffs estimate YHB faces around **\$378,400** in damages for meal period violations
22 after accounting for meal period premiums paid. On the rest period claims, Plaintiffs estimate
23 around **\$276,300** in damages assuming a modest 25% violation rate. (Brouillette Decl., ¶ 48.)

24 In the expense reimbursement claim, Plaintiffs claim they and other class members regularly
25 were required to use personal phones to text guest food orders to the kitchen and to receive work-
26 related calls/messages from supervisors to, for example, obtain authorization to work overtime. Class
27 members also had to download an app to their phones to use for clocking in/out for breaks. Plaintiffs
28 claim Defendants paid no reimbursement for this, in violation of California law. *Cochran v. Schwan's*

1 *Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1144. Assuming a reimbursement rate of
2 \$25/month for a reasonable proportion of Class members cellular data plans, Plaintiffs estimate
3 Defendants face over **\$128,400** in unpaid reimbursement under Labor Code section 2802.
4 (Brouillette Decl., ¶ 49.)

5 In response, Defendants argued they provided employees with access to all telephones and
6 other electronics needed to perform their job duties. Thus, per YHB, if employees used their
7 personal phones it was purely for their own convenience rather than business necessity and
8 therefore would not be reimbursable. (Brouillette Decl., ¶ 50.)

9 Plaintiffs also allege YHB violated various provisions of Chapter 5.49 of the Long Beach,
10 California Municipal Code regarding working conditions and pay in the hotel industry. Among
11 other things, Chapter 5.49 addresses the amount of hotel room square feet an employee can be
12 required to clean in an eight-hour shift, requires written employee consent to work more than 10
13 hours per shift, and further requires the employer to maintain records for each housekeeper
14 detailing their name, pay rates received, and the rooms each employee cleaned on each shift.
15 Chapter 5.49 provides for recovery of both actual damages and statutory penalties of \$50 for each
16 day a violation occurred. Plaintiff estimates Defendants face at least **\$1,250,000** in statutory
17 penalties under Chapter 5.49. In response, Defendants countered that they fully complied with all
18 applicable local ordinances and that their housekeeping employees worked within the parameters
19 mandated by the Long Beach Municipal Code. (Brouillette Decl., ¶ 51.)

20 As a result of the above alleged violations, Plaintiffs allege Defendants failed to provide
21 accurate wage statements and failed to timely pay all wages that were due and owing upon
22 separation of employment. In response to these derivative claims, Defendants emphasized that,
23 should the primary claims fail, Plaintiffs' claim for wage statement violations and waiting time
24 penalties would also fail. Defendants further argued they would not be liable for waiting time
25 penalties because a "good faith dispute" exists over the payment of past wages. *Amaral v. Cintas*
26 *Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Further, Defendants contend Plaintiffs would
27 have to prove Defendants "willfully" failed to pay Class Members appropriate wages due upon
28 separation of employment. Without taking into consideration any of Defendants' defenses to

1 certification or on the merits, Plaintiffs calculated Defendants' maximum exposure for wage
2 statement violation at about **\$181,250**, and the exposure for waiting time penalties at about
3 **\$578,100** for approximately 166 terminated class members. (Brouillette Decl., ¶ 52.)

4 As far as potential PAGA liability, the theoretical civil penalties likely are around \$1.08
5 million should Plaintiffs prevail on all claims and establish violations of the multiple Labor Code
6 sections at issue. (Brouillette Decl., ¶ 53.) As with the class claims, Plaintiffs discounted the
7 potential PAGA penalties based on Defendants' various defenses on the merits and also
8 accounted for the Court's wide discretion to reduce such penalties, or to decline to award
9 penalties at all. Labor Code § 2699(e)(2); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th
10 504 (trial court awarded penalties of \$5 per pay period after a bench trial, which decision was
11 upheld on appeal); *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) 2016 U.S.
12 Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated
13 \$50,000 to PAGA penalties. (Agreement, § 3.2.5.)

14 Plaintiffs submit this amount is reasonable under the circumstances and in line with
15 comparable settlements in other wage and hour class actions in California. *E.g.*, *Van Kempen v.*
16 *Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
17 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
18 *Slavkov v. First Water Heater Partners I* (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS
19 116303 (finding a \$7,500 PAGA payment reasonable when measured against the overall
20 settlement of \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total
21 settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the
22 settlement, and will be able to weigh in as necessary. *Jennings v. Open Door Mktg. Inc.* (N.D.
23 Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA
24 penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA,
25 and the LWDA has not objected to the settlement.

26 Thus, Plaintiffs and their counsel discounted the value of the class claims consistent with
27 the risks discussed above, and carefully weighed the likelihood of the class receiving
28 substantially greater benefit if the litigation continued. Plaintiffs and counsel concluded – in light

1 of these very real and substantial risks – settlement on the proposed terms and without prolonged
2 and costly litigation was in the best interests of the class. The overall \$550,000 recovery
3 represents a significant percentage of Defendants’ potential exposure. Given Defendants’ multi-
4 layered defenses and all other potential risks of continued litigation, a total recovery for the class
5 of \$550,000, which will result in average award of around \$1,150 per class member, plus
6 additional sums under PAGA, is a significant result well within the range of reasonableness
7 considering all potential outcomes, and it will provide direct monetary awards to all Class
8 Members without further delay. [Brouillette Decl., ¶ 54.]

9 Importantly, the mere fact that a settlement does not provide the same recovery as might
10 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
11 adequate. *Wershba*, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
12 settlement process...even if the relief afforded by the proposed settlement is substantially
13 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
14 settlement because the public interest may indeed be served by a voluntary settlement in which
15 each side gives ground in the interest of avoiding litigation”); *7-Eleven Owners for Fair*
16 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150 (“The fact that a proposed
17 settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean
18 that the proposed settlement is grossly inadequate and should be disapproved”); *White v.*
19 *Experian Information Solutions, Inc.* (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting
20 contention settlement was not fair and reasonable even though it represented 99% discount off the
21 maximum value of the claims); *Lane v. Facebook, Inc.* (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he
22 question whether a settlement is fundamentally fair . . . is different from the question whether the
23 settlement is perfect in the estimation of the reviewing court”). Importantly as well, the proposed
24 settlement is non-reversionary and will provide immediate benefits to the Class Members without
25 a claims process. *White*, 803 F.Supp.2d at 1098; *c.f.*, Federal Judicial Center, Managing Class
26 Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [at http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
27 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf. (reversionary provisions and/or
28 cumbersome claims process may indicate lack of fairness). Plaintiffs and counsel submit the

1 settlement is within the “range of reasonableness,” and is fair and adequate for the Class.

2 **F. Provisional Class Certification Should be Granted**

3 A class action is appropriate when the class is ascertainable and there is “a well-defined
4 community of interest in the questions of law and fact involved affecting the parties to be
5 represented.” Code Civ. Proc. § 382. Class certification requirements under Section 382 follow
6 Rule 23 of the Federal Rules of Civil Procedure, and require: numerosity, typicality of the class
7 representatives’ claims, adequacy of representation, predominance of common issues, and
8 superiority. Fed.R.Civ.Pro. 23(b)(3); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011,
9 1019. While a court must certify a class for settlement purposes if a class has not already been
10 certified, “it is well established that trial courts should use different standards to determine the
11 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser
12 standard of scrutiny is used for settlement cases.” *Glob. Minerals & Metals Corp. v. Superior*
13 *Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk*, Cal.App.4th 1794, 1807, n.19; *Wershba v.*
14 *Apple Computer* (2001) 91 Cal.App.4th 224, 237-38.

15 **1. The Proposed Class is Sufficiently Numerous and Ascertainable**

16 First, the class is both sufficiently numerous, consisting of approximately 235 individuals,
17 and ascertainable by reference to Defendants’ personnel and payroll records. (Brouillette Decl.,
18 ¶ 55.) “There is no set number required to maintain a class action, and the statutory test is whether
19 a class is so numerous that ‘it is impracticable to bring them all before the court.’” *Hebbard v.*
20 *Colgrove* (1972) 28 Cal. App. 3d 1017, 1030 (noting that there is no set minimum to meet the
21 numerosity prerequisite, but that a class of as few as 28 is acceptable); *Bowles v. Superior Court*
22 (1995) 44 Cal. 2d 574 (upholding a class of ten members); *Rose v. City of Hayward* (1981) 126
23 Cal. App. 3d 926, 932 (finding that “Class Members are ‘ascertainable’ where they may be
24 readily identified without unreasonable expense or time by reference to official records.”). Thus,
25 the ascertainability requirement is met.

26 **2. The Typicality and Adequacy Requirements Are Met**

27 The typicality requirement is met if the claims of the named representative are typical of
28 those of the Class, though, “they need not be substantially identical.” *Classen v. Weller* (1983)

1 145 Cal.App.3d 27, 46-47. Here, Plaintiffs’ claims are typical of the Class Members’ claims
2 because they arise from the same factual basis and are based on the same legal theories applicable
3 to the Class Members. Plaintiffs further contend Defendants’ policies applied to all Class
4 Members and each Class Member is challenging the same policies and practices. As such, the
5 typicality requirement is satisfied for purposes of settlement. (Whittaker Decl., ¶¶ 2-3; Lemus
6 Decl., ¶¶ 2-3; Brouillette Decl. ¶ 56.)

7 Adequacy requires that the Plaintiff have no interests adverse to the interests of the
8 proposed Class Members and be committed to vigorously prosecuting the case on behalf of the
9 Class. *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51. Plaintiffs have been and
10 will continue to be committed to vigorously prosecuting this case, and have no conflicts of
11 interest with the Class. (Whittaker Decl., ¶¶ 3-7; Lemus Decl., ¶¶ 3-7; Brouillette Decl., ¶ 57.)

12 3. The Commonality Requirement is Met

13 Next, common questions of law and fact predominate – particularly for purposes of a
14 settlement class – as the Class Members all were subject to the same time rounding policies, the
15 same staffing inadequacies that led to alleged “de facto” meal and rest period violations. Since
16 the focus of the claims against Defendants concerns the legality of common policies applied
17 uniformly to the entire class, common issues predominate over individualized inquiries
18 concerning liability. For instance, Defendants’ rounding policy is company-wide policy applied
19 equally and consistently to all class members, and this policy is either compliant with California
20 law or it is not. Similarly, whether Defendants obtained the necessary consent for employees to
21 work overtime and maintained the required records under the Long Beach Municipal Code is
22 another issue common to the entire class. [Brouillette Decl., ¶ 58.]

23 By now it is well-settled a theory of recovery asserting the existence of a uniform policy
24 violating California law is sufficient to satisfy the requirements for class certification. *Jones v.*
25 *Farmers Ins. Exch.* (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
26 consistently applied to a group of employees is in violation of the wage and hour laws are of the
27 sort routinely, and properly, found suitable for class treatment”); *Williams v. Superior Court*
28 (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact

1 or law that supports commonality for class certification”). Lastly, a class action is superior to
2 other means for the fair and efficient adjudication of this controversy. (Brouillette Decl., ¶ 59.)

3 **G. Phoenix Should be Appointed as the Settlement Administrator**

4 The Parties agreed to use Phoenix Settlement Administrators as the Settlement
5 Administrator in this matter. (Agreement, § 7.1.) Phoenix is highly qualified and experienced as a
6 settlement administrator, committed to the security of data (having experienced no data breaches
7 at all), carries insurance for the theft of money or data, and has no relationship with Counsel.
8 (Declaration of Jodey Lawrence, ¶¶ 2-18; Exhs. A, B; Brouillette Decl., ¶ 50.)

9 **V. CONCLUSION**

10 Plaintiffs respectfully submit the proposed settlement is in the best interests of the Class
11 Members, as it is fair, adequate, and reasonable. Plaintiffs accordingly request the Court certify
12 the class for settlement purposes, appoint Plaintiffs as the Class Representatives, appoint
13 Plaintiff’s Counsel as Class Counsel, appoint Phoenix Settlement Administrators as Settlement
14 Administrator, approve the method of notice and the Notice to be sent to the Class, preliminarily
15 approve the Settlement Agreement, enter the proposed order filed herewith, and set a Final
16 Approval hearing date.

17
18 Dated: June 27, 2023

CROSNER LEGAL, P.C.

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21 _____
22 Brandon Brouillette
23 Attorneys for Plaintiffs
24 KAILEE WHITTAKER and ARMANDO LEMUS
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