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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

TONY LUCAS, individually, and on behalf of all
others similarly situated,

Plaintiffs,

vs.

RUBICON BAKERS, LLC, et al.,

Defendants.

Case No.: MSC22-00279

[Assigned for all purposes to Hon. Charles S.
Treat, Dept 12]

CLASS ACTION

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

Date: TBD
Time: TBD
Courtroom: Dept. 12
Judge: Hon. Charles S. Treat

Action Filed: February 3, 2022
Trial Date: Not Set

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on (a date and time to be set by the Clerk) _____,
3 2023, at _____, or as soon thereafter as the matter may be heard, in Department 12 of the
4 above-captioned Court, located at 725 Court Street, Martinez, CA 94553, Plaintiffs TONY LUCAS and
5 THOMAS MILES (“Plaintiffs”) will and hereby do move this Court for an order:

6 1. Granting class certification of the Class, solely for settlement purposes pursuant to
7 Code of Civil Procedure § 382;

8 2. Preliminarily approving the CLASS ACTION AND PAGA SETTLEMENT
9 AGREEMENT AND CLASS NOTICE (“Settlement” or “Agreement”);

10 3. Appointing counsel for Plaintiff, Moon & Yang, APC, as Class Counsel;

11 4. Appointing Plaintiffs as the Class Representatives;

12 5. Approving the use of the proposed notice procedure and related notice form;

13 6. Approving Phoenix Settlement Administrators as the third-party administrator;

14 7. Directing that notice be mailed to the Class; and,

15 8. Scheduling a hearing date for motions for final approval of class action settlement
16 and awards of attorneys’ fees and costs.

17 Good cause exists to grant this Motion because:

18 1. The Class meets all of the requirements for class certification for settlement
19 purposes under Code of Civil Procedure § 382;

20 2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the
21 disputed wage and hour claims asserted by Plaintiff;

22 3. Plaintiffs and Class Counsel are adequate to represent the Class;

23 4. The proposed notice procedures and related forms comply with California Rules of
24 Court 3.766(d) and (e), adequately apprise Class Members of their rights, and fully comport
25 with due process; and

26 5. Based on the foregoing, notice should be directed to the Class Members and a final
27 fairness hearing should be scheduled (Plaintiffs suggest about 140 days after preliminary
28 approval is granted).

1 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court,
2 which require approval by the Court of a class action settlement and permit the Court to extend the page
3 limit for memoranda.

4 **TENTATIVE RULINGS:** Pursuant to Local Rule 3.30, the court has adopted the tentative
5 ruling procedure set out in California Rules of Court, rule 3.1308(a)(1). The tentative ruling or notice to
6 appear will generally be available by 4:00 p.m. two court days prior to the scheduled hearing and no later
7 than 3:00 p.m. the court day before the hearing. Unless the court directs otherwise, the court's tentative
8 ruling will be available online or by calling (866) 223-2244. The process for viewing a tentative ruling
9 online are subject to change. Instructions for access to tentative rulings online can be found at
10 <http://www.alameda.courts.ca.gov/Pages.aspx/Tentative-Rulings>. Whenever a tentative ruling has not
11 been issued, the parties are to appear at the hearing unless otherwise ordered.

12 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points
13 and Authorities, the Declarations of H. Scott Leviant, Plaintiffs, and the Settlement Administrator in
14 support thereof, all papers and pleadings on file with the Court in this action, all matters judicially
15 noticeable, and on such oral and documentary evidence as may be presented in connection with the
16 hearing on the Motion.

17 Respectfully submitted,

18 Dated: February 13, 2023

MOON & YANG, APC

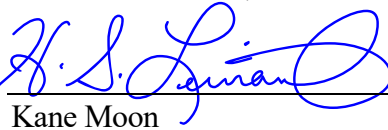
19 By: 
20 Kane Moon
21 H. Scott Leviant
22 Mariam Ghazaryan
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TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	iii
I. INTRODUCTION.....	1
II. THE MAJOR TERMS OF SETTLEMENT	1
III. FACTUAL AND PROCEDURAL BACKGROUND	4
A. Plaintiff’s Claims	4
B. Pre-Mediation Data Production and Analysis.....	5
C. Settlement.....	5
IV. CLASS DEFINITION.....	6
V. DISCUSSION.....	6
A. The Court Should Conditionally Certify the Class Because It Meets All the Requirements for Certification for Settlement Purposes Under CCP § 382.....	6
1. The Members of the Class Are Objectively Ascertainable and Numerous.	7
2. There Are Common Questions That Predominate Over Any Questions That May Be Unique to Individual Class Members.....	8
3. Plaintiffs’ Claims Are Typical of Those of the Class.	8
4. Plaintiffs and Plaintiffs’ Counsel Will Adequately Represent the Class.	9
5. Proceeding as a Class Action is Superior to Individual Actions.....	9
6. The Proposed Class Notice Is Constitutionally Sound and Complies with Rule 3.766(d) and (e).....	9
a) The Notice Procedure Satisfies Due Process	10
b) The Notice is Accurate and Informative	10
B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair, Adequate, and Reasonable	10
1. Class Action Settlements Are Subject to Review and Approval.	11

1	2.	The Parties Reached the Settlement Through Arms’ Length Negotiations	
2		Between Experienced Counsel with the Assistance of a Highly-Qualified	
3		Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.	11
4	3.	The Settlement Represents a Fair, Adequate, and Reasonable Compromise of	
5		Class Members’ Claims Based on Defendant’s Estimated Liability Exposure	
6		Given the Risks Continued Litigation Would Entail.	13
7	4.	The Proposed Method for Allocating Settlement Funds Is Fair.	16
8	5.	The Proposed Enhancement Payments to Plaintiffs Are Fair, Adequate, and	
9		Reasonable and Warrant Preliminary Approval.	16
10	6.	The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate,	
11		and Reasonable and Merits Preliminary Approval.	17
12	7.	The Proposed Payment to the Administrator Is Fair and Reasonable.....	17
13	8.	The PAGA Allocation is Reasonable.....	18
14	VI.	THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING	19
15	VII.	CONCLUSION.....	19

TABLE OF AUTHORITIES

CALIFORNIA DECISIONAL AUTHORITY

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	11
<i>Amaral v. Cintas Corp.</i> , 163 Cal. App. 4th 1157 (2008)	18
<i>Amaro v. Anaheim Arena Mgmt., LLC</i> , 69 Cal. App. 5th 521 (2021)	17
<i>Bell v. Farmers Ins. Exchange</i> , 115 Cal. App. 4th 715 (2004)	16
<i>Cartt v. Sup. Ct.</i> , 50 Cal. App. 3d 960 (1975)	10
<i>Clothesrigger, Inc. v. GTE Corp.</i> , 191 Cal. App. 3d 605 (1987)	7
<i>Dunk v. Ford Motor Co.</i> 48 Cal. App. 4th 1794 (1996)	7, 11, 16, 17
<i>Duran v. US Bank Nat'l Ass'n</i> , 59 Cal. 4th 1 (2014)	13
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008)	8
<i>Global Minerals & Metals Corp. v. Superior Court</i> , 113 Cal. App. 4th 836 (2003)	7
<i>Jaimez v. Daiohs USA, Inc.</i> 181 Cal. App. 4th 1286 (2010)	7, 8
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008)	11
<i>Laffitte v. Robert Half Intern. Inc.</i> , 1 Cal. 5th 480 (2016)	16, 17
<i>Linderv. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000)	6, 9
<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> , 103 Cal. App. 3d 573 (1980)	10
<i>Mallick v. Superior Court</i> , 89 Cal. App. 3d 434 (1979)	11, 17
<i>McGhee v. Bank of America</i> , 60 Cal. App. 3d 442 (1976)	9
<i>Miller v. Woods</i> , 148 Cal. App. 3d 862 (1983)	7
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal. App. 5th 56 (2021)	17, 18
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , 186 Cal. App. 4th 399 (2010)	11
<i>Noel v. Thrifty Payless, Inc.</i> , 7 Cal. 5th 955, 980 (2019)	7
<i>Sav-on Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004)	6, 8
<i>Seastrom v. Neways, Inc.</i> , 149 Cal. App. 4th 1496 (2007)	8
<i>Stambaugh v. Superior Court</i> , 62 Cal. App. 3d 231 (1976)	10
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	12

FEDERAL DECISIONAL AUTHORITY

<i>Dilts v. Penske Logistics, LLC</i> 2014 WL 205039 (S.D. Cal. 2014).....	13
<i>Ferrell v. Buckingham Property Mgmt.</i> (E.D. Cal. Jan. 21, 2020) Case No. 1:19-cv-00332-LJO-SAB, 2020 WL 291042	15
<i>Miller v. CEVA Logistics U.S.A., Inc.</i> , 2015 WL 729638 (E.D. Cal. Feb. 19, 2015).....	15
<i>O'Connor v. Uber Technologies, Inc.</i> , 201 F.Supp.3d 1110 (N.D. Cal. 2016).....	18
<i>Officers for Justice v. Civil Serv. Comm'n of San Francisco</i> , 688 F.2d 615 (9th Cir. 1982)	12
<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2000).....	15
<i>Thomas v. Cognizant Tech. Sols. U.S. Corp.</i> (C.D. Cal. June 24, 2013) No. SACV111123JSTANX, 2013 WL 12371622.....	15
<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F.Supp. 294 (N.D. Cal. 1995)	16
<i>Viceral v. Mistras Group</i> , 2016 WL 5907869 (N.D. Cal. 2016).....	18
<i>Willis v. Xerox Bus. Servs., LLC</i> , 2013 WL 6053831 (E.D. Cal. 2013)	19

STATUTES

Code of Civil Procedure § 382.....	6, 7, 19
------------------------------------	----------

RULES

Rules of Court, rule 3.766	9
Rules of Court, Rule 3.769.....	7, 10, 11

OTHER AUTHORITIES

<i>Findings of the Study of California Class Action Litigation</i> , 2000-2006	15
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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiffs TONY LUCAS and
3 THOMAS MILES (“Plaintiffs”) respectfully request that this Court preliminarily approve the proposed
4 class action settlement set forth in the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT
5 AND CLASS NOTICE (“Settlement” or “Agreement”) with Defendant RUBICON BAKERS, LLC
6 (hereinafter referred to as “Defendant”).

7 Plaintiffs and Defendant (collectively referred to herein as the “Parties”) reached a proposed class
8 action settlement with a gross settlement amount (“MSS”) of **\$435,000.00** in compromise of disputed
9 claims asserted on behalf of the below-defined Class consisting of approximately **651** members.
10 Plaintiffs respectfully request that the Court: (1) grant preliminary approval; (2) provisionally certify a
11 Class for settlement; (3) appoint Moon & Yang APC as Class Counsel; and (4) approve the proposed
12 Class Notice and direct its distribution. Plaintiffs now submit this Motion for Preliminary Approval,
13 along with the Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], at Exhibit 1
14 thereto). For the Court’s convenience, below is a summary of the key Settlement provisions.

15 **II. THE MAJOR TERMS OF SETTLEMENT**

16 The provisions of the proposed Settlement include the following:

- 17 • Defendant agrees not to oppose certification for purposes of Settlement (Settlement, ¶ 12.1);
- 18 • Class: All individuals who are or previously were employed by Defendant or its
19 successors, affiliates, and subsidiaries in California who were classified as hourly non-
20 exempt employees during the Class Period (the “Class Period” is February 10, 2018 to the
21 earlier of the date of preliminary approval or May 5, 2023). (Settlement, ¶ 1.5, 1.12.)
22 “Participating Class Members” are those Class Members who do not submit timely
23 exclusion requests to the Settlement Administrator. (Settlement, ¶ 1.9, 1.34);
- 24 • Settlement Amount: Defendant will pay a maximum of **\$435,000.00**, referred to as the
25 Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross**
26 payment per Class Member of approximately **\$1,824.81** (Settlement, ¶ 1.22);
- 27 • Class Size: approximately **651** individuals who worked an approximately **30,000**
28 workweeks. (Settlement, ¶¶ 4.1, 8);

- 1 • PAGA Group Size: an estimated **321** individuals, who worked roughly **6,000** pay periods.
2 (Settlement, ¶¶ 4.1; Leviant Decl., ¶ 18.)
- 3 • PAGA Period: January 21, 2021 to the date of Court approval of the PAGA settlement
4 (Settlement, ¶ 1.30);
- 5 • Escalator Clause: In the event of an increase in workweeks of more than 20% from original
6 estimate of 30,000 workweeks worked by employees during the Class Period, the settlement
7 amount shall be increased by 1% for each percent that the actual number of workweeks
8 exceeds the 20% threshold (the “Escalator Clause”). (Settlement, ¶ 8);
- 9 • Kullar/Munoz Analysis: Plaintiffs address the claims analysis herein, at Part V.B.3, and in
10 more detail the Declaration of Leviant, at Paragraph 18;
- 11 • No Reversion: The Settlement is a **non-reversionary** settlement (Settlement, ¶ 3.1);
- 12 • Certification: Plaintiffs address certification requisites herein, at Part V.A., and in the
13 Declaration of Leviant, at Paragraphs 34-40;
- 14 • No Claim Form: No claim form is required (Settlement, ¶ 3.1);
- 15 • Class Release: The Settlement will release specified wage-and-hour claims for Class
16 Members (those Class Members who do not opt out of the Settlement) as defined by the
17 First Amended Complaint (Settlement, ¶¶ 2.1, 5.2);
- 18 • PAGA Release: Class Members will release the PAGA Claims set forth in this Action, that
19 were identified in the Operative Complaint and Plaintiff’s LWDA Notice Letter, regardless
20 of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 2.1, 5.3);
- 21 • Release Effective Date: The Release is not active until Defendant tenders all payments
22 required under the Settlement to the Settlement Administrator (Settlement, ¶ 5);
- 23 • Net Settlement Amount Available to the Class: After deducting Class Counsel’s attorneys’
24 fees and costs, service payment to Plaintiffs, administration costs, and the PAGA penalty,
25 the remainder will be available for distribution to Class Members who do not opt out, with
26 each Class Member receiving a share based on the number of workweeks each Class
27 Member worked for Defendant within the Class Period. The Net Settlement Amount is
28 estimated to be at least **\$207,500.00**, resulting in an average **net** payment per Class Member

of at least **\$318.74**, before any tax withholdings. (Settlement, ¶ 3);

- Tax Allocation: The amounts distributed to Class Members will be characterized as 25% alleged unpaid wages, 75% to penalties and interest, and PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶ 3.2.4.1, 3.2.5.2);
- Employer’s Portion of Payroll Taxes Paid Separately: Defendant’s portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 3.1);
- Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, ILYM Group, Inc., and the Parties ILYM Group, Inc.’s bid for settlement administration services in the amount of **\$14,500.00**. (Settlement, ¶ 3.2.3; Hartranft Decl., Exh. C.)
- Class Data for Administration: The Settlement Administrator will receive the Class List within 30 calendar days of Preliminary Approval, use the NCOA database to update the Class List, and then use skip tracing on returned Notices (Settlement, ¶ 4.2);
- Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 7.4.2). The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion (Settlement, ¶¶ 7.4 – 7.7);
- Notice Language: Notice will issue in English (Spanish not required) (Settlement, ¶ 1.11);
- Objections: Objections can be submitted in person, through an attorney, or in writing to the Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ 7.7);
- Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a written objection (Settlement, ¶¶ 7.5 and 7.7);
- PAGA Allocation: From the GSA, **\$40,000** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.* (“PAGA”), and seventy-five percent (75%), or **\$30,000**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶¶ 1.34, 3.2.5.);
- Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is

attached to the Leviant Declaration;

- Enhancement/Service Awards to Plaintiffs: Defendant will not oppose the application for Class Representative Service Payments of up to **\$5,000.00** for each Plaintiff, to be paid from the GSA (Settlement, ¶ 3.2.1);
- Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to exceed 33 1/3% of the GSA (**\$145,000.00**), and actual costs, in an amount not to exceed **\$18,000**, to be paid out of the GSA (Settlement, ¶ 3.2.2);
- Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 4.4.1);
- Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the California Controller's Unclaimed Property Fund (Settlement, ¶ 4.4.3);
- Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after entry (Settlement, ¶ 7.8.1);
- Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ 12.2).

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff’s Claims

On February 10, 2022, Plaintiff LUCAS commenced this Action by filing a Complaint alleging causes of action against Defendant for: (1) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 1194 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to Authorize and Permit Rest Breaks (Cal. Lab. Code §§ 226.7); (5) Failure to Indemnify Necessary Business Expenses (Cal. Lab. Code § 2802); (6) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203); (7) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); and (8) Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, *et seq.*). (The “Action.”) (Leviant Decl., ¶ 4.)

Plaintiff LUCAS satisfied the administrative exhaustion prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*]

1 (“PAGA”). On April 14, 2022, Plaintiff LUCAS filed a First Amended Complaint alleging an additional
2 cause of action against Defendant for violation of PAGA. (Leviant Decl., ¶ 5.) On January 9, 2023,
3 Plaintiffs filed a Second Amended Complaint, adding THOMAS MILES as a named Plaintiff. The
4 Second Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”) (*Id.*)

5 **B. Pre-Mediation Data Production and Analysis**

6 Prior to mediation, Plaintiffs obtained, through informal discovery, electronic time and pay
7 records, policy documents, and data about the class. (Leviant Decl., ¶ 6.) The Parties have analyzed
8 payroll and other data pertaining to Plaintiffs and the Class during the relevant Settlement Period,
9 including but not limited to the numbers of former and current members of each purported subclass
10 within the Class, average workweeks, and average rate of hourly pay. (*Id.*) In addition, Defendant also
11 provided documents reflecting their wage and hour policies and practices during the Settlement Period
12 and information regarding the total number of current and former employees in the Class. (*Id.*)

13 After reviewing documents regarding Defendant’s wage and hour policies and practices and
14 other information obtained during the informal exchange of discovery, Class Counsel were able to
15 evaluate the probability of class certification, success on the merits, and the reasonably obtainable
16 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
17 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the
18 claims and defenses asserted in the litigation. (Leviant Decl., at ¶ 7.)

19 **C. Settlement**

20 On August 30, 2022, the Parties participated in an all-day mediation presided over by
21 experienced mediator Michael Young, Esq. (Leviant Decl., ¶ 8.) At the mediation, the Parties discussed
22 at length the burdens and risks of continuing with the litigation as well as the merits of the claims and
23 defenses. (*Id.*) The settlement negotiations were at arm’s length and, although conducted in a
24 professional manner, were adversarial. (*Id.*) The parties went into the mediation willing to explore the
25 potential for a settlement of the dispute, but each side was also prepared to litigate their or its position
26 through trial and appeal if a settlement had not been reached. The Parties agreed to the terms of a
27 proposed settlement and signed a long form settlement agreement (the Agreement). (*Id.*)

28 Plaintiffs and Class Counsel are aware of the burdens of proof necessary to establish liability for

the claims asserted in the Action, both generally and in response to Defendant’s defenses thereto. (Leviant Decl., ¶ 9.) Plaintiffs and Class Counsel have also taken into account Defendant’s agreement to enter into a Settlement that confers substantial relief upon the Class.

Based on the foregoing, Plaintiffs and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class. (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the parties agree that the requirements for establishing class action certification with respect to this class are satisfied. (*Id.*) If this Settlement is not approved by the Court for any reason, Defendant reserves its rights to contest class certification. (*Id.*) This Settlement, if approved by the Court, will result in the termination with prejudice of the litigation through the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

IV. **CLASS DEFINITION**

The Class is defined as follows:

All individuals who are or previously were employed by Defendant or its successors, affiliates, and subsidiaries in California who were classified as hourly non-exempt employees during the Class Period (the “Class Period” is February 10, 2018 to the earlier of the date of preliminary approval or May 5, 2023). (Settlement, ¶ 1.5, 1.12.) “Participating Class Members” are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶ 1.9, 1.34)

(Leviant Decl., ¶ 34 and Exhibit 1.)

V. **DISCUSSION**

A. **The Court Should Conditionally Certify the Class Because It Meets All the Requirements for Certification for Settlement Purposes Under CCP § 382**

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest among its members and that a “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). Any doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to later modification. *Richmond v. Dart Indus. Inc.*, 29 Cal. 3d 462, 473-475 (1981). For purposes of this

1 Settlement *only*, Defendant stipulated to conditional certification. (Settlement ¶ 25.)

2 “The certification question is ‘essentially a procedural one that does not ask whether an action is
3 legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
4 (2000). Indeed, the certification question simply asks whether the theory of recovery advanced by the
5 plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal.
6 App. 4th 1286, 1298 (2010). “[I]t is also well established that trial courts should use different standards
7 to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically,
8 a lesser standard of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior*
9 *Court*, 113 Cal. App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n.
10 19 (1996). As the court noted in *Dunk*, although certification requirements are intended “to protect the
11 interests of the non-representative class members,” that concern is “protected by the trial court’s fairness
12 review of the settlement.” *Dunk*, 48 Cal. App. 4th at 1807 n.19.

13 In view of these standards, and as shown below, the Class should be certified for purposes of
14 settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

15 **1. The Members of the Class Are Objectively Ascertainable and Numerous.**

16 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
17 the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal. App. 3d
18 862, 873 (1983). In this case, Plaintiffs contend that all three considerations favor class certification.

19 A class is ascertainable when “it is defined ‘in terms of objective characteristics and common
20 transactional facts’ that make ‘the ultimate identification of class members possible when that
21 identification becomes necessary.’” *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019). The class
22 definition is sufficiently specific to enable the Parties, Class Members, and the Court to readily determine
23 the parameters of the class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 617 (1987). In
24 this case, there are approximately **651** Class Members, all of whom may be identified by reference to
25 Defendant’s records. In addition, to facilitate the administration of the Settlement, Defendant has agreed
26 to share the information from its records and has already demonstrated that it can do so. Accordingly,
27 the Class is not only ascertainable, but also sufficiently numerous. (Leviant Decl., ¶ 35.)
28

1 **2. There Are Common Questions That Predominate Over Any Questions That**
2 **May Be Unique to Individual Class Members.**

3 The community of interest requirement embodies three factors: (1) predominant questions of law
4 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
5 representatives who can adequately represent the class. *Dunk*, 48 Cal. App. 4th at 1806. A question of
6 law or fact is common to the members of a class if it may be resolved through common proof. *See*,
7 *Jaimez*, 181 Cal.App.4th at 1305. As for predominance, it “is a comparative concept, and ‘the necessity
8 for class members to individually establish eligibility and damages does not mean individual fact
9 questions predominate.’” *Sav-on*, 34 Cal. 4th at 334.

10 In this case, Plaintiffs contend that common questions exist. (Leviant Decl., ¶¶ 37-38.) Plaintiffs
11 further contends that the claims present sufficient common issues of law and fact that predominate over
12 individual issues and warrant class certification. From their review of the documentation provided, Class
13 Counsel allege that for purposes of these claims, Defendant’s policies and practices are either identical,
14 or sufficiently similar, to raise the same questions of liability, and applied to all Class Members. Because
15 Class Members would have to prove the same issues of law and fact to prevail, and because their
16 potential legal remedies are identical, it would be preferable to resolve all Class Members’ claims by
17 means of the Settlement than to require each Class Member to litigate his or her individual claims.
18 Therefore, common questions predominate over any questions that may be unique to individual Class
19 Members, and class-wide settlement is superior to any other method of resolution.

20 **3. Plaintiffs’ Claims Are Typical of Those of the Class.**

21 Typicality “requires a showing that the class representative has claims or defenses typical of the
22 class.” *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1534 (2008). California
23 law does not require that plaintiffs have claims identical to the other class members. Rather, the test of
24 typicality is whether other members have the same or similar injury, whether the action is based on
25 conduct which is not unique to the named plaintiffs, and whether other class members have been injured
26 by the same course of conduct. *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007).

27 In light of these standards, Plaintiffs are typical of the other Class Members. Like other Class
28 Members, Defendant employed Plaintiffs in non-exempt positions during the Class Period, and Plaintiffs

claim that they were subject to the same policies alleged to have impacted the entire class. (Leviant Decl., ¶ 36.) Plaintiffs allege that they and other Class Members share the same claims stemming from Defendant's alleged violations of the Labor Code and relevant wage order. In addition, Defendant's main defenses, including that the wage and hour policies and practices fully comply with California law, apply equally to the claims of all Class Members. Thus, Plaintiffs are typical of the Class.

4. Plaintiffs and Plaintiffs' Counsel Will Adequately Represent the Class.

The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to class members' interests, which is the case here. *McGhee v. Bank of America*, 60 Cal.App.3d 442, 451 (1976). In other words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's ability to represent the class. *Id.*

In the Action, Plaintiffs have no conflicts of interest with other Class Members and have agreed to place Class interests above Plaintiffs' own. (Leviant Decl., ¶ 39; Lucas Decl., ¶¶ 5-14; Miles Decl., ¶¶ 5-14.) Moreover, Plaintiffs' counsel are experienced in wage and hour class litigation and have no conflicts of interest with absent Class Members. (Leviant Decl., ¶¶ 21-26, 39.) Thus, this Court should appoint Plaintiffs as Class Representatives and appoint Plaintiffs' Counsel as Class Counsel.

5. Proceeding as a Class Action is Superior to Individual Actions

Plaintiffs contend that proceeding as a class action is a superior means of resolving this dispute, as the Class Members and the Court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged Labor Code violations. *See Linder v. Thrifty Oil Co.* 23 Cal. 4th at 434. Furthermore, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results, which may be avoided by class certification.

6. The Proposed Class Notice Is Constitutionally Sound and Complies with Rule 3.766(d) and (e)

The proposed notice and settlement procedure are appropriate. Notice requirements are set forth in Rules of Court, Rule 3.766. In determining the manner of the notice, the court must consider the interests of the class, the type of relief requested, the stake of the individual class members, the cost of notifying class members, the resources of the parties, the possible prejudice to class members who do not

1 receive notice, and the *res judicata* effect on class members. Rules of Court, Rule 3.766(e). Notice is
2 sufficient when it provides class members sufficient information to make informed decisions. *See*
3 *Mullane v. Cent. Hanover Bank & Trust, Co.*, 339 U.S. 306, 314 (1950).

4 *a) The Notice Procedure Satisfies Due Process*

5 The proposed procedure for distributing the Proposed Notice is robust and more than meets the
6 minimal requirement that it have “a reasonable chance of reaching a substantial percentage of the class
7 members.” *Cartt v. Sup. Ct.*, 50 Cal.App.3d 960, 974 (1975). There is no statutory or due process
8 requirement that all class members receive actual notice, but in this matter, the Class Members will
9 receive direct mailed notice. Here, the proposed procedure includes safeguards, including mailing notice
10 to Class Members’ last known addresses; skip tracing; searches for address changes; and the re-mailing
11 of returned notices to any forwarding addresses. This manner of notice complies with Rule 3.766(c)
12 because it provides a reasonable chance that Class Notice will reach most if not all Class Members.

13 *b) The Notice is Accurate and Informative*

14 The proposed Notice of Class Action Settlement should be approved for dissemination to the
15 Class Members because its content complies with Rule of Court 3.766(d) in that it contains a brief
16 explanation of the case, including the basic contentions or denials of the Parties, detailed information
17 about Class Members’ rights to be excluded from the Settlement and object to the Settlement; a
18 statement that the Settlement will bind all members who do not timely opt-out. Thus, the Notice also
19 satisfies Rule of Court 3.769(f) regarding the contents of settlement notices.

20 The Notice also fulfills the requirement of neutrality in class notices. 3 NEWBERG § 8.39. It
21 summarizes the proceedings and the terms and conditions of the proposed Settlement, in an informative
22 and coherent manner, in compliance with the Manual for Complex Litigation (“MANUAL”), (2d Ed.
23 1993), which states that “the notice should be accurate, objective, and understandable to Class Members .
24 . . .” MANUAL, § 30.211. It makes clear that the Settlement does not constitute an admission of liability
25 by Defendant and recognizes that this Court has not ruled on the merits. It also states that the final
26 settlement approval decision has yet to be made. Accordingly, the Notice complies with the standards of
27 fairness, completeness, and neutrality required of a combined settlement-certification class notice.

28 **B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair,**

1 **Adequate, and Reasonable**

2 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
3 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
4 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
5 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary
6 settlement approval, notice being given to class members, and a final fairness and approval hearing being
7 held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed
8 below, this Court should preliminarily approve the Settlement, allow the Parties to give notice to the
9 Class as proposed, and schedule a final fairness and final approval hearing.

10 **1. Class Action Settlements Are Subject to Review and Approval.**

11 Any settlement of class litigation must be reviewed and approved by the presiding court. Rules
12 of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial
13 court and (2) a subsequent (final) review after notice has been distributed to the class members. The
14 Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present
15 motion seeks *preliminary approval* and the setting of a Final Approval Hearing.

16 To evaluate a settlement, a court must receive “basic information about the nature and magnitude
17 of the claims in question and the basis for concluding that the consideration being paid for the release of
18 those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
19 116, 133 (2008). But the record need *not* contain an explicit statement of the maximum theoretical
20 recovery. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

21 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
22 **Between Experienced Counsel with the Assistance of a Highly-Qualified**
23 **Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

24 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
25 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
26
27
28

1 experienced in similar litigation, and the percentage of objectors is small.¹ *Dunk*, 48 Cal.App.4th at 1802;
2 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
3 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a
4 trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g.,*
5 *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding
6 concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801,
7 quoting *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

8 Relevant factors in making this determination, include, but are not limited to:

9 [T]he complexity and likely duration of further litigation, the risk of maintaining class
10 action status through trial, the amount offered in settlement, the extent of discovery
11 completed and the state 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.

12 *Id.* These factors require balancing, are non-exhaustive, and, trial courts should tailor the factors to each
13 case and give due regard to “what is otherwise a private consensual agreement between the parties.” *Id.*

14 Here, the Settlement resulted through arms’ length negotiations between experienced counsel
15 with the assistance of a highly-regarded mediator. (Leviant Decl., ¶¶ 8-10.) With respect to the claims at
16 issue in this case, Plaintiffs obtained data from Defendant (through informal discovery) and then
17 carefully reviewed that information. Counsel for Plaintiffs also examined relevant policies and
18 interviewed witnesses in detail about their work experiences and Defendant’s practices. Based on the
19 totality of that review, Plaintiffs estimated the potential exposure and then estimated risk factors to adjust
20 the reasonable expected outcome. The investigation that Plaintiffs’ counsel conducted was sufficient to
21 provide enough information to intelligently evaluate the estimated exposure in this action for purposes of
22 negotiating the Settlement in view of the risks discussed below and are also sufficient to allow this Court
23 to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

27 ¹ Because the fourth prerequisite for the presumption to arise cannot be addressed until the final
28 approval hearing, only the first three prerequisites are relevant at this preliminary approval stage.

1 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**
2 **of Class Members' Claims Based on Defendant's Estimated Liability**
3 **Exposure Given the Risks Continued Litigation Would Entail.**

4 The proposed Settlement of \$435,000.00 offers substantial, timely, and guaranteed payments to
5 Class Members. A settlement is not judged against what might be recovered at trial and does not have to
6 provide 100% of damages to be reasonable. "In the context of a settlement agreement, the test is not the
7 maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the
8 settlement is reasonable under all of the circumstances." *Wershba*, 91 Cal.App.4th at 250.

9 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that
10 support the reduced compromise amount. These risks include, but are not limited to risks that: (i)
11 Plaintiffs would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v.*
12 *US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC*
13 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial); (ii)
14 Defendant's meal and rest period policies might not ultimately support class certification or a class-wide
15 liability finding; (iii) uncertainties pertaining to the ultimate legality of Defendant's policies and practices
16 could preclude class-wide awards of statutory penalties; (iv) individual differences between Class
17 Members could be construed as pertaining to liability and not just damages; (v) any civil penalties award
18 under the PAGA could be reduced by the Court in its discretion; (vi) class treatment could be deemed
19 improper as to one or more claims, except for settlement purposes; (vii) a Court could have limited the
20 Class in terms of scope or job title; (viii) lengthy appellate litigation could ensue; and, (ix) violation rate
21 estimates could prove lower than expected. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

22 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
23 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of
24 course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to
25 liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be
26 given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are
27 greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the
28 approximately 651 members of the Class, the average **gross** recovery is approximately **\$668.20** per class

1 member, and the estimated average *net* recovery for each Class Member is approximately **\$318.74**. (*Id.*)
2 Given that Defendant could challenge certification and liability, this is a significant sum to have achieved
3 in settlement. Moreover, a Class Member who worked a greater number of weeks for Defendant will
4 receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time
5 during the class period. (*Id.*)

6 After analyzing the claims in this matter, Plaintiffs concluded that the value of this Settlement is
7 fair, adequate, and reasonable. (Leviant Decl., ¶ 18.) The Class Settlement Amount of **\$435,000** is 97%
8 of the **\$463,793.82** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation.
9 On that basis, it would be unwise to pass up this settlement opportunity. This assessment is based on a
10 carefully constructed model of the current fair value of the case, using estimated risks (*including the fact*
11 *of a recent settlement that effectively vitiates a portion of the claims*), average wage rates, numbers of
12 employees, the amount of time covered by the class period. (*Id.*)

13 Plaintiff's counsel estimates that the calculated plausible exposure is **\$2,658,838.50**, *including*
14 *PAGA penalties and **no discount applied to any class claim***. (*Id.*)

- 15 • The reasonably estimated exposure for unpaid wages due to pre-shift work was
16 projected to be **\$102,993.00**, but with chances of certification and proof of liability
(40% and 30% respectively) for a risk-adjusted exposure of **\$12,359.16**.
- 17 • The reasonably estimated exposure for alleged rest break violations over the class
18 period was calculated at **\$223,411.60** (*generously* assuming 100% of the class
19 experienced a rest break issue in 20% of all breaks) but with low chances of
certification and proof of liability (30% and 20% respectively) for a risk-adjusted
exposure of **\$13,404.70**.
- 20 • The reasonably estimated exposure for alleged meal break violations over the class
21 period was calculated at **\$326,245.50** (assuming all facial violations could be shown
22 to be a meal break violation), with chances of certification and liability risks (50%
and 40% respectively) resulting in a risk-adjusted exposure of **\$65,249.10**.
- 23 • Risk-adjusted penalty recoveries for wage statement and Labor Code § 203
24 penalties were estimated to be approximately **\$65,694.00** and **\$125,824.32**,
25 respectively, on maximum exposures of **\$547,450.00** and **\$1,048,536.00**,
26 respectively. The certification and liability risk factors are contingent upon the
27 underlying unpaid wage claims and are assumed to be the same as those (40% and
28 30%) for that reason.
- The reasonably estimated exposure for unreimbursed expenses was over-estimated
to be **\$53,375.00**, but with chances of certification and proof of liability (40% and
25% respectively) for a risk-adjusted exposure of **\$5,337.50** (and even that figure
overstates the reasonable exposure, as few employees used tools).

- PAGA penalties were calculated as having a maximum realistic exposure of **\$843,800.00**, but a risk adjusted value of **\$168,760.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

(See, Leviant Decl., ¶ 18.)

The \$435,000 settlement here is fully supportable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶ 19.) Second, rest break and meal period claims have been challenging to certify, even after *Brinker*. (Leviant Decl., ¶ 19.) Third, the certification rates in California are lower than conventional wisdom holds. See, H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at <http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html>; see also, *Findings of the Study of California Class Action Litigation, 2000-2006*, available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement *or* as part of a contested certification motion).

Here, the estimated certification probabilities are *above* the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. (Leviant Decl., ¶ 19.) In sum, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. (*Id.*) The recovery is **14%** of the maximum plausible recovery (estimated to be approximately **\$3,145,811.10**, including over \$843,000.00 in PAGA penalties), which falls within the expected outcome under the likelihood of success metric and which compares favorably to other cases in which courts have granted approval of class wage and hour settlements representing a smaller fraction of the maximum theoretical damages.² (*Id.*) It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately \$652,650.10, with

² See, e.g., *Ferrell v. Buckingham Property Mgmt.* (E.D. Cal. Jan. 21, 2020) Case No. 1:19-cv-00332-LJO-SAB, 2020 WL 291042, *17-20 (granting preliminary approval of settlement that represented 5.2% of the original valuation of the claims); *Thomas v. Cognizant Tech. Sols. U.S. Corp.* (C.D. Cal. June 24, 2013) No. SACV111123JSTANX, 2013 WL 12371622, at *6 (granting final approval of settlement that encompassed between 4.4% and 5% of the maximum estimated liability).

no risk reduction), excluding penalties and interest; the settlement is about 67% of the premium wages (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure values.³ Because the total Settlement amount and the proportion of the Settlement allocated to PAGA penalties fall within a reasonable range, the Settlement should be approved.

4. The Proposed Method for Allocating Settlement Funds Is Fair.

The proposed method of allocating the Settlement to Class Members also is fair. As noted, the Parties agreed to allocate the Settlement based on time worked by the Class Member during the Class Period, in relation to the total amount of time worked by all participating Class Members collectively. This proposed method is fair and reasonable because each Class Member's actual potential damages vary based on the number of workweeks he or she actually worked. A Class Member who worked a greater number of weeks for Defendant will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 11, 17.)

5. The Proposed Enhancement Payments to Plaintiffs Are Fair, Adequate, and Reasonable and Warrant Preliminary Approval.

The proposed enhancement payment of \$5,000 to each Plaintiff is intended to recognize the value of the substantial initiative and significant efforts by Plaintiffs on behalf of the Class. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving a \$50,000 enhancement award). Plaintiffs contributed to the prosecution of this matter, including assistance prior to the mediations and substantial time conferring with counsel over the course of this litigation and before filing. (Leviant Decl., ¶ 32; Lucas Decl., ¶¶ 5-14; Miles Decl., ¶¶

³ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser amount than the maximum civil penalty amount specified by this part...")), and, second, courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics U.S.A., Inc.*, 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015).

5-14.) The enhancement also recognizes the risks Plaintiffs took on behalf of the Class to be personally liable for all costs incurred regardless of the success of the litigation or class certification, as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiffs sued a former employer. The accompanying Declarations of Plaintiffs confirms their involvement and support appointment as Class Representatives.

6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Preliminary Approval.

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorney's fees in California Courts. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁴ Thus, this Court may and, pursuant to *Laffitte*, should award fees to Plaintiff's counsel based upon the percentage of the fund methodology.

Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund method or the lodestar method is used, the outcome is roughly the same: "[F]ee awards in class actions average around one-third of the recovery' regardless of 'whether the percentage method or the lodestar method is used.'" *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521 (2021). This is also consistent with counsels' experience in class cases. Here, Plaintiffs' attorneys intend to request attorneys' fees of up to \$145,000.00 (one-third of the GSA), and costs capped at \$18,000 (which includes payment for mediation, filing fees, legal research fees, and other expenses). (Leviant Decl., ¶ 31.) Given the efforts and risks involved, as well as the results achieved, these amounts are within the range of reasonableness.

7. The Proposed Payment to the Administrator Is Fair and Reasonable

In deciding whether to approve a proposed settlement, a trial court must determine if the proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In exercising this power, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). ILYN Group, Inc., which

⁴ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases." *Laffitte*, 1 Cal. 5th at 501.

was selected due to its competitive bid, estimates that administration can be performed for **\$14,500.00**. (ILYM Decl.) In Class Counsel’s experience, an estimated cost of **\$14,500.00** is a fair and reasonable amount for administration fees and should be preliminarily approved. (Leviant Decl., ¶ 33.)

8. The PAGA Allocation is Reasonable

The ultimate decision as to the amount of penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions addressing that question. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA.”); *see also Visceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D. Cal. 2016) (“Applying O’Connor’s sliding scale approach, settlement of the PAGA claim may be substantially reduced below its standalone settlement value without sacrificing its statutory purposes because the non PAGA settlement is relatively substantial.”) *Moniz* then provided explicit confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with the federal courts that have considered how to evaluate a PAGA settlement, concluded that the class action factors are appropriately considered, along with a consideration of whether the settlement furthers “PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.”

As to the first set of elements (the class-type analysis), it is embodied in Plaintiff’s discussion of the adequacy of the settlement generally. Here, the expense, complexity and duration of future litigation

1 was to some extent unknown. However, what is certain is that to establish the foundational violations
2 that would support a substantial penalty award, tremendous time and expense would be invested.

3 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
4 PAGA's purposes include (1) remediation of present labor law violations, (2) deterrence of future
5 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
6 portion of settlement funds to class members still advances the goal of labor law violation remediation.
7 The allocation of a major portion of settlement funds to class members also deters future violations. This
8 is a \$435,000 settlement, not a trivial sum. Deterrence is fulfilled. Finally, allocation of a major portion
9 of settlement funds to class members still advances the goal of enforcement of state labor law. This
10 settlement is, by definition, a response to alleged violations of state labor laws, balanced against risks.

11 In addition, there is no evidence that a court or a commissioner had informed Defendant that its
12 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
13 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013). And in *Cotter*, the court found a
14 significant reduction of the PAGA claim would be appropriate because "[t]his does not appear to be a
15 case where a company has deliberately sought to evade the law." *Cotter*, 176 F. Supp. 3d at 941.

16 Finally, the PAGA allocation is fair. The LWDA is receiving \$30,000.00. The Class is
17 receiving, net, an estimated \$207,500 for the releases of seven other theories of recovery. While the
18 proportion is tipped in favor of the Class Members, an allocation to the LWDA equal to about 15% of the
19 Net Settlement Amount is not unfair and satisfies policies underlying California's wage and hour laws.

20 **VI. THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING**

21 The last step in the settlement approval process is the fairness hearing, where the Court makes a
22 final determination about the propriety of settlement. Under the Settlement, Defendant will have 30 days
23 to provide the mailing data to the Settlement Administrator, which will then have 14 days to mail out
24 class notice. Class Members have 45 days after mailing of the notice to submit exclusions or objections
25 (extended by 14 days for re-mailed Notice Packets). Plaintiffs propose that the final approval hearing be
26 scheduled for the first available date that is **140** days or later after preliminary approval is granted.

27 **VII. CONCLUSION**

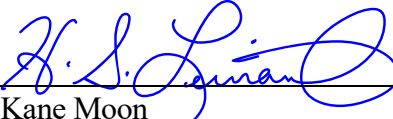
28 For all the foregoing reasons, because the Class meets the requirements for certification, because

1 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the
2 proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant
3 this Motion for Preliminary Approval, adopt the [Proposed] Order Granting Preliminary Approval of
4 Class Action Settlement submitted herewith, and schedule a Final Fairness Hearing.

5 Respectfully submitted,

6 Dated: February 10, 2023

MOON & YANG, APC

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8 By: 
Kane Moon
H. Scott Leviant
Mariam Ghazaryan

10 Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending ☐ the original ☒ a true copy thereof ☒ to interested parties as follows ☐ as stated on the attached service list:

Sarah E. Christenson
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Counsel for Defendant RUBICON BAKERS, LLC

☒ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **February 13, 2023** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature