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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN

DONNIE MARQUEZ, MARIKA FLEEGER,
and SHALON JONES, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

PEET'S COFFEE, and DOES 1 through 10,
inclusive,

Defendant.

Case No. CIV2201507

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

Date:10/08/2024

Time:1:30 pm

Hon. Stephen P. Freccero

Dept. A

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Herr, *Manual for Complex Litigation, Fourth*, § 21.632 (2004) 14

1 Plaintiffs DONNIE MARQUEZ, MARIKA FLEEGER, and SHALON JONES
2 (“Plaintiffs”) seek preliminary approval of this \$1,450,000.00 non-reversionary class action and
3 representative action settlement between Plaintiffs and Defendant PEET’S COFFEE, INC.
4 (“PEET’S” or “Defendant”). The proposed settlement, if approved, will fully resolve all claims
5 between Plaintiffs and Defendant that are pending before this Court.

6 This proposed settlement covers certain wage and hour claims on behalf of Plaintiffs and
7 all other individuals employed by PEET’S as Managers (as that term is more specifically defined
8 below and in the Settlement Stipulation) within the State of California from May 19, 2018 to May
9 1, 2024 (“Class Members”).

11 Plaintiffs filed their class and California Private Attorneys General Act of 2004 (“PAGA”)
12 representative action alleging claims for unreimbursed work expenses, unpaid wages, and related
13 statutory claims under California Labor Code on behalf of themselves and a class of non-exempt,
14 hourly-paid, Store Managers, Assistant Managers and Shift Leaders (collectively referred to
15 herein as “Managers”) at any time after May 19, 2018.¹ Plaintiffs have alleged that Defendant:
16 (a) failed to reimburse Managers for expenses relating to the use of their mobile phones to perform
17 work-related tasks; (b) failed to compensate Managers with minimum wage and overtime
18 compensation for hours spent engaging in work-related communications while working off-the-
19 clock; (c) failed to provide Managers meal and rest breaks as a result of having to use their mobile
20 phones when on break; (d) failed to pay Managers at their regular rates when paying meal and rest
21 period premiums, overtime premiums, and sick pay premiums; (e) failed to provide Managers
22 accurate, itemized wage statements because their wage statements did not reflect all hours worked
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27 _____
28 ¹ After significant discovery, Plaintiffs decided not to pursue the claim on behalf of the Shift Leads.

1 as a result of off-the-clock work and premium pay; and (f) failed to timely pay Managers all wages
2 owed upon the termination of employment.

3 Plaintiffs submit that the proposed settlement is fair, reasonable, adequate, and in the best
4 interests of the class members and furthers the interests and purpose of PAGA. The proposed
5 settlement provides substantial, immediate recovery for the class members while avoiding the
6 delays and uncertainties associated with trial and subsequent appeals.

7 **I. STATEMENT OF FACTS**

8
9 In their Complaint, Plaintiffs alleged that *first*, as Managers, they engaged in work-related
10 tasks for which they were not compensated because they received text messages and phone calls
11 from their DMs regarding assigned tasks, product availability, staffing, and other operational
12 issues. Plaintiffs contended that DMs called and texted them multiple times per day, including
13 during their days off, before or after scheduled hours, and during a meal or rest breaks. In addition
14 to communicating with their DMs, Plaintiffs contend that Managers routinely communicated with
15 their locations and addressed issues that occur inside the PEET'S locations as they arise, even
16 when they were not scheduled to work, and were off- the-clock. These issues included product
17 availability, staff/store coverage, and customer service issues.

18
19 *Second*, Plaintiffs alleged that Defendant failed to reimburse Managers for expenses
20 relating to the use of their mobile phones to perform work-related tasks. Plaintiffs alleged that
21 Managers were required to use their own phones and pay for their own mobile phone and data
22 plans so that they would be able to field calls and text messages for Peets' business.

23
24 *Third*, Plaintiffs alleged that they were paid meal, rest period and sick pay premiums at
25 their base hourly rates rather than the regular rate of pay, which should have included all non-
26 discretionary compensation. This practice continued until December 31, 2021.

27 *Fourth*, Plaintiffs asserted derivative claims that Defendant failed to provide Managers
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1 accurate, itemized wage statements because their wage statements did not reflect all hours worked
2 as a result of off-the-clock work, did not accurately reflect their premium pay, and Defendant
3 failed to timely pay Managers all wages owed upon the termination of employment.

4 ***Finally***, Plaintiffs asserted a claim pursuant to PAGA for civil remedies relating to the
5 aforementioned violations by the Defendant.

6 Defendant denied the allegations asserted in the Complaint.

7 **II. STATEMENT OF THE CASE**

8
9 Plaintiffs initially filed a Notice of Claim with California Labor and Workforce
10 Development Agency on February 10, 2023. Thereafter, on May 19, 2023, Plaintiffs brought this
11 putative class action on behalf of all Managers employed by Defendant in California on or after
12 May 19, 2018. On June 22, 2022, Plaintiffs filed the operative First Amended complaint
13 substituting Jazmin Cruz with Marika Fleegeer as a Named Plaintiff.

14 In September 2022, Plaintiffs initially served Special Interrogatories and a Request for
15 Production on Defendant. In response to discovery, over the next nine (9) months, Defendant
16 provided: (a) the personnel files for Plaintiffs; (b) company policies including, timekeeping and
17 expense reimbursement policies; (b) wage statements for the Plaintiffs; (c) payroll summaries and
18 time records for all of the Managers in Microsoft Excel format containing over 1,600,000 lines of
19 data; (d) contact information for a 500-person sample of Managers; and (e) the identities of
20 individuals who complained to Defendant about off the clock work during the relevant period.
21 Defendant also provided summary class data outlining the number of potential Managers under
22 each of the three relevant job titles, their average hourly rates, and the number weeks and pay
23 periods they worked during the PAGA 1 year statute of limitations period, as well as the number
24 of weeks they worked within the statutes of limitations under the FLSA and California Labor
25 Code.
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1 Plaintiffs' Counsel prepared a survey to the Managers in the sample regarding their use of
2 their personal mobile phones for work-related purposes, the frequency of off-the-clock
3 communications, and compensation/reimbursement they received from PEET'S (if any). Fifty-
4 four (54) managers responded to the survey, who informed Plaintiffs' Counsel that:

- 5 • They all used their personal phones for work-related purposes.
- 6 • They all received calls, emails or texts on their personal phone on their days off.
- 7 • They all stated that their supervisors knew they were using their personal phones to
8 perform work for PEET'S during and outside of scheduled hours.
- 9 • 98% of them stated that they did not get paid for having to take calls, emails or texts
10 on their personal phone on their days off.
- 11 • 80% of them stated that they were interrupted during their meal or rest break with calls,
12 emails or texts on their personal phone related to PEET'S work.
- 13 • 94% of them stated they did not receive any reimbursement for the cost of using their
14 personal mobile phone.

15 Plaintiffs' Counsel also collected 41 declarations from the Class Members to support class
16 certification.

17 Discovery showed that Defendant did not pay Managers at their regular rate of pay (as
18 opposed to base hourly rate) for meal and rest break premium payments, and sick pay premiums
19 until January 2022.² Discovery also showed that although Defendant paid almost \$300,000 in
20 other expense reimbursements, there were zero reimbursements for personal mobile phone
21 expenses.

22 The Parties used this discovery and the summary class data to calculate the potential
23 exposure for the Managers, and engage in settlement discussions facilitated by experienced wage
24 and hour mediator, Mark Peters, Esq. on September 5, 2023. The parties were unsuccessful at
25 mediation. As a result, the parties continued with further discovery, which included the
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27 ² It appears that Peet's corrected the regular rate issues before this lawsuit was filed, and therefore,
28 Peet's would argue that any error was in good-faith and that penalties should not be imposed under
Naranjo v. Spectrum Security Services, Inc., 15 Cal. 5th 1056, 547 P. 3d 980 (2024).

1 depositions of two corporate representative witnesses of Defendant. The parties also fully briefed
2 and argued a Motion to Compel Defendant’s production of corporate representative(s) to testify
3 on one of the specific topics to which Defendant objected in Plaintiff’s Notice of Deposition which
4 the Court granted on April 12, 2024. Plaintiffs then filed their Motion for Class Certification on
5 April 16, 2024, on behalf of Store Managers and Assistant Managers, only.

6 The Parties have since reached a settlement, the terms of which are memorialized in the
7 parties Joint Stipulation of Class and Representative Action Settlement Agreement and Release
8 (“Joint Stipulation”), and summarized below.
9

10 **III. SETTLEMENT TERMS**

11 The details of the settlement are set forth in the Joint Stipulation marked and attached to
12 the Declaration of Edward J. Wynne as Exhibit 1. Attached as an exhibit to the Joint Stipulation
13 is the Class Notice. A summary of the settlement terms is set forth below:
14

15 **A. Class Definition**

16 Subject to Court approval, the parties have stipulated to certification for settlement
17 purposes only the following class definition: Managers employed by Defendant in California at
18 any time from May 19, 2018 to May 1, 2024, who do not opt out of the settlement. There are
19 approximately 564 Managers covered by this action. (Decl. of Wynne¶ 17.)

20 **B. Settlement Fund**

21 In return for a release of the claims, PEET’S shall create a non-reversionary \$1,450,000.00
22 settlement fund entitled, “Gross Settlement Amount” or “GSA.” Because this is not a claims-made
23 settlement, Class Members will not be required to make a submission to participate in the
24 settlement. (Decl. of Wynne, ¶ 18.) The GSA will be deposited into an interest-bearing account
25 maintained by the Settlement Administrator within ten (10) days of the Effective Date as defined
26 in the Joint Stipulation. In the event the Effective Date is delayed due to an appeal, PEET’s will
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1 be responsible for interest on the GS fund at the rate of 5% per annum inuring to the benefit of the
2 Class Members and Class Counsel. (*Id.*)

3 After certain deductions identified below, all Class Members will be paid on a pro rata
4 basis based on the number of weeks they worked for PEET'S as Managers in California between
5 May 19, 2018 to May 1, 2024. The deductions from the GSA include attorneys' fees and costs,
6 class representative enhancement awards, payment to the California Labor Workforce
7 Development Agency and the cost of settlement administration. (Decl. of Wynne, ¶ 19.)

8
9 **C. Release By Class Members**

10 In exchange for their respective payments, Class Members will release Defendant from all
11 causes of action and factual or legal theories/allegations that were alleged in the operative
12 complaint in the Action, or that could have been based on the factual or legal theories/allegations,
13 including but not limited to all of the following claims for relief: (a) failure to pay overtime wages;
14 (b) failure to pay minimum wages; (c) failure to provide proper meal periods, and to properly
15 provide premium pay in lieu thereof; (d) failure to authorize and permit rest breaks, and to properly
16 provide premium pay in lieu thereof; (e) improper and/or inaccurate wage statements; (f) failure
17 to maintain required records; (g) waiting time penalties for untimely final pay; (h) failure to timely
18 pay wages during employment; (i) failure to reimburse; (j) unfair business practices; (k) civil
19 penalties under PAGA; (l) any other claims or penalties under the wage and hour laws pleaded in
20 the Action; and (m) all damages, penalties, interest and other amounts recoverable under said
21 causes of action under California and federal law, to the extent permissible, including but not
22 limited to the California Labor Code, the applicable Wage Orders, the California Unfair
23 Competition Law, and the Fair Labor Standards Act (collectively, the "Released Claims"). The
24 Release Period shall be from May 19, 2018 to May 1, 2024.
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1 **D. Class Representatives and Class Counsel**

2 Subject to Court approval and for settlement purposes only, the parties have stipulated that
3 Plaintiffs, Donnie Marquez, Marika Fleegeer, and Shalon Jones, will be appointed class
4 representatives. Also subject to Court approval, the parties have stipulated that Edward J. Wynne
5 of Wynne Law Firm, and Camar R. Jones of Shavitz Law Group, P.A. be appointed class counsel.
6 (Decl. of Wynne, ¶ 20; Decl. of Jones, ¶ 20.)

7 **E. Notice Procedure**

8 Subject to Court approval, the parties have agreed on Phoenix Class Action Administration
9 Solutions (“Phoenix” or “Settlement Administrator”) as the Settlement Administrator. After
10 updating the database provided by PEET’S through the National Change of Address database, the
11 Settlement Administrator will mail the Class Notice to each class member. The Class Notice will
12 include the estimated settlement amount to each Class Member, and instructions on how to opt-
13 out of or object to the settlement. (Decl. of Wynne, ¶ 21.)

14 **F. Plan of Allocation**

15 **1. Net Settlement Value**

16 The Net Settlement Value is estimated to be at approximately \$864,166.67 after
17 deductions for attorneys’ fees and costs, enhancement awards, the cost of settlement
18 administration and payment to the LWDA. Payments to individual Class Members shall be
19 calculated and apportioned from the Net Settlement Value based on the number of weeks each
20 Class Member actually worked as a Manager in California between May 19, 2018 and May 1,
21 2024³. (Decl. of Wynne, ¶ 22.)

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³ Weeks during which a Class Member did not record any time in Defendant’s timekeeping system, including vacation and leave weeks will be excluded.

1 **2. Enhancement Award**

2 Pursuant to the parties' agreement, Plaintiffs will seek, and PEET'S will not oppose, a
3 payment of \$10,000.00 to each of the Plaintiffs as Enhancement Awards. (Decl. of Wynne, ¶ 23).

4 **3. Class Counsel's Fees and Costs**

5 Pursuant to the parties' agreement, the Court may award Class Counsel for the services
6 they have rendered and will render to Plaintiffs and the Class Members in relation to prosecuting
7 the claims involved in this lawsuit. Class Counsel will seek a fee award not to exceed \$483,333.33
8 or one-third of the GSA. Class Counsel will also seek reimbursement of costs in an amount not to
9 exceed \$25,000. Because this is a non-reversionary, common fund settlement, any portion of the
10 requested fees and costs that are not approved by the Court would be distributed to the Class
11 Members. (Decl. of Wynne, ¶ 24.)

12 **4. LWDA Payment**

13 The parties have agreed to pay the LWDA \$37,500.00, or 75% of the \$50,000 attributed
14 to the PAGA claim, per Labor Code § 2699 (i) to settle this claim, and the parties have submitted
15 or will submit this settlement to the California Labor Workforces Development Agency
16 ("LWDA") per California Labor Code section 2699(1)(2). (Decl. of Wynne, ¶ 25). The remaining
17 25% (\$12,500.00) will be payable to the PAGA Members. *Id.*

18 **5. Settlement Administrator**

19 The proposed Settlement Administrator, Phoenix, has agreed to cap its fee at \$10,000 (Ex.
20 2 to Decl. of Jones.) Class Counsel solicited bids from three other well-known settlement
21 administrators and Phoenix was the most competitive. (Decl. of Jones, ¶ 16).

22 **IV. CLASS CERTIFICATION FOR PURPOSES OF SETTLEMENT**

23 Plaintiffs submit that the proposed settlement class meets the requirements for certification
24 in the context of settlement. California Code of Civil Procedure § 382 authorizes class suits when
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1 “the question is one of a common or general interest, of many persons, or when the parties are
2 numerous, and it is impracticable to bring them all before the court.” To obtain certification a
3 party must establish the existence of both an ascertainable class and a well-defined community of
4 interest among the class members. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435. The
5 community of interest requirement involves three factors: “(1) predominant common questions of
6 law or fact; (2) class representatives with claims or defenses typical of the class; and, (3) class
7 representatives who can adequately represent the class.” *Lockheed Martin Corp. v. Superior Court*
8 (2000) 29 Cal.4th 1096, 1104. Finally, the court must determine that the class action proceeding
9 is superior to alternate means for a fair and efficient adjudication of the litigation. *Richmond v.*
10 *Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. These prerequisites for class certification are met
11 here. While Defendant disputes that a litigation class could be certified, it does not object to
12 certification in the context of settlement.
13

14 **A. Numerosity and Ascertainability**

15 The proposed class includes approximately 564 individuals, making joinder of all
16 members impractical and meeting the numerosity requirement. *Rose v. City of Hayward* (1981)
17 126 Cal.App.3d 926, 934 (class of 42 is sufficiently numerous). “[T]he purpose of the
18 ascertainability requirement is to ensure notice to potential class members.” *Ghazaryan v. Diva*
19 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1533. Here, Defendant’s own records provide the
20 ability to identify each and every class member.
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22 **B. Commonality**

23 A single key common question that is capable of class-wide resolution satisfies the
24 commonality requirement. *Abdullah v. U.S. Sec. Assocs., Inc.* (9th Cir. 2013) 731 F.3d 952, 957;
25 *Wit v. United Behavioral Health* (N.D. Cal. 2016) 317 F.R.D. 106, 121. “District courts
26 throughout this circuit have found that commonality is met when, as here, the proposed class of
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1 plaintiffs asserts that an employer adopted a policy of not reimbursing its employees' necessary
2 business expenses in violation of Cal. [Labor] Code § 2802." *Hopkins v. Stryker Sales Corp.* (N.D.
3 Cal. May 14, 2012) 2012 WL 1715091, *5.

4 Plaintiffs allege the same is true here. Plaintiffs allege that Defendant did not pay
5 Managers at their regular rate of pay (as opposed to base hourly rate) for meal and rest break
6 premium payments, and sick pay premiums until January 2022. Plaintiffs further allege that prior
7 to January 2022, Defendant incorrectly paid meal break, rest break and sick pay premiums at the
8 base hourly rate. Further, Plaintiffs allege that Managers used their personal phones to perform
9 work-related tasks during and outside of scheduled work hours, but were not compensated for
10 those hours of work, nor were they reimbursed for the use of their personal phones. These are
11 class-wide policies and practices which Plaintiffs contend unite all the Class Members.
12 Accordingly, the commonality requirement is satisfied.
13

14 **C. Typicality**

15 A class representative's claims are typical if they are "reasonably coextensive with those
16 of absent class members; they need not be substantially identical." *Hanlon v. Chrysler Corp.* (9th
17 Cir. 1998) 150 F.3d 1011, 1020. The typicality requirement's purpose "is to assure that the interest
18 of the named representative aligns with the interests of the class. Typicality refers to the nature of
19 the claim or defense of the class representative, and not to the specific facts from which it arose
20 or the relief sought. The test of typicality is whether other members have the same or similar
21 injury, whether the action is based on conduct which is not unique to the named plaintiffs, and
22 whether other class members have been injured by the same course of conduct." *Martinez v. Joe's*
23 *Crab Shack Holdings* (2014) 231 Cal. App. 4th 362, 375.
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25 The Plaintiffs were employed by PEET'S as non-exempt Managers in California during
26 the class period, and allege that they were paid at their base hourly rates of pay as opposed to their
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1 regular hourly rates (inclusive of their bonuses) for meal break, rest break, and sick pay premiums
2 until January 2022. Further, Plaintiffs allege that Defendant maintained a policy of requiring
3 Managers to perform work off the clock using their personal mobile phones, but neither
4 compensating them for that time, nor reimbursing them for the use of their personal phones. (Decl.
5 of Wynne, ¶ 26). Class Members and the Plaintiffs have been affected by these same uniform
6 policies. Accordingly, typicality is therefore satisfied.

7 **D. Adequacy**

8 “[T]wo criteria for determining the adequacy of representation have been recognized.
9 First, the named representatives must appear able to prosecute the action vigorously through
10 qualified counsel, and second, the representatives must not have antagonistic or conflicting
11 interests with the unnamed members of the class.” *Lerwill v. Inflight Motion Pictures, Inc.* (9th
12 Cir. 1978) 582 F.2d 507, 512. Plaintiffs have no interest that is antagonistic to those of the other
13 Class Members because they have not brought any individual non-class claims in this case. Also,
14 Plaintiffs have retained counsel who are very experienced in employment class actions in the food
15 service industry. (Decl. of Wynne, ¶¶ 27); (Decl. of Jones, ¶¶ 18-19).

16 **E. Predominance**

17 In examining the predominance requirement, the “ultimate question” is whether “the
18 issues which may be jointly tried, when compared with those requiring separate adjudication, are
19 so numerous or substantial that the maintenance of a class action would be advantageous to the
20 judicial process and to the litigants.” *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 28. “The
21 answer hinges on ‘whether the theory of recovery advanced by the proponents of certification is,
22 as an analytical matter, likely to prove amenable to class treatment.’ ‘As a general rule if the
23 defendant's liability can be determined by facts common to all members of the class, a class will
24 be certified even if the members must individually prove their damages.’” *Id.*

1 An employee's "regular rate of pay" for purposes of Labor Code § 510 and the IWC Wage
2 Orders is not the same as the employee's straight time rate (i.e., his or her normal hourly wage
3 rate). Regular rate of pay, which can change from pay period to pay period, includes adjustments
4 to the straight time rate, reflecting, among other things, shift differentials and the per-hour value
5 of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container Corp. of*
6 *Cal.*, *supra*, 4 Cal. 5th at 554. In *Dart Container*, the Supreme Court examined the question of
7 how a flat sum bonus should be factored into an employee's regular rate of pay for purposes of
8 applying the state's overtime pay laws. 4 Cal. 5th at 561. The court expressly limited itself to flat
9 sum bonus reasoning that a bonus based on piecework or a commission (i.e., a percentage) "may
10 increase in size in rough proportion to the number of hours worked, including overtime hours, and
11 therefore a different analysis may be warranted." *Id.* at fn. 6. The court found that because an
12 employee's overtime pay rate is a multiple of his or her regular rate of pay, the flat sum bonus
13 must be expressed as a per-hour value and therefore treated as if it were earned on a per-hour basis
14 throughout the relevant pay period. The court found that the bonus must be treated as if it were
15 earned by only the non-overtime hours, holding that:

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18 We conclude that the flat sum bonus at issue here should be factored into an
19 employee's regular rate of pay by dividing the amount of the bonus by the total
20 number of non-overtime hours actually worked during the relevant pay period and
21 using 1.5, not 0.5, as the multiplier for determining the employee's overtime pay
22 rate.

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1 Plaintiffs allege that until January 2022, Defendant maintained a similar policy under
2 which it paid Managers at their base hourly rates for meal and rest break premium payments, and
3 sick pay premiums, instead of at their regular rates of pay, inclusive of non-discretionary bonuses.
4 Defendant's payroll practices remained consistent as to Managers during the class period.
5 Accordingly, the question of whether Defendant properly compensated Managers for meal, rest
6 break and sick pay premiums under California law is a question equally applicable to all Class
7 Members. Because Defendant's liability can be determined by this purely legal question – the
8 facts of which are not in dispute – predominance is satisfied.
9

10 **V. THE STANDARDS FOR PRELIMINARY APPROVAL ARE SATISFIED**

11 **A. The Standard for Preliminary Approval**

12 The “universal standard” for evaluating the fairness of a settlement is whether the
13 settlement is “fundamentally fair, adequate and reasonable.” *Officers for Justice v. Civil Service*
14 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 625. “[T]he court’s intrusion upon what is otherwise a
15 private consensual agreement negotiated between the parties to a lawsuit must be limited to the
16 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
17 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
18 whole, is fair, reasonable and adequate to all concerned.” *Id.*
19

20 “[T]he very essence of a settlement is compromise.” *Id.* at 624. “[I]t is the very uncertainty
21 of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual
22 settlements. The proposed settlement is not to be judged against a hypothetical or speculative
23 measure of what might have been achieved by the negotiators.” *Linney v. Cellular Alaska*
24 *Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242. Even if the amount of a proposed monetary
25 settlement is a fraction of the potential recovery, that does not necessarily mean the settlement is
26 inadequate. *Id.*
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1 Court approval of a class action settlement is a two-step process. First, counsel submits
2 the proposed terms of the settlement to the court, and the court makes a preliminary fairness
3 evaluation. If the preliminary evaluation of the settlement does not disclose a basis to doubt its
4 fairness or other obvious deficiencies, the court directs that notice be given to the class and sets a
5 final fairness hearing. Herr, *Manual for Complex Litigation, Fourth*, § 21.632 (2004).

6 Preliminary approval should be granted if the proposed settlement falls “within the range
7 of possible final approval.” *Gautreaux v. Pierce* (7th Cir. 1982) 690 F.2d at 616, 621, n.3.
8 Preliminary approval is “a determination that there is what might be termed ‘probable cause’ to
9 submit the proposal to class members and hold a full-scale hearing as to its fairness.” *In re Traffic*
10 *Executive Association-Eastern Railroads* (2d Cir. 1980) 627 F.2d 631, 634.

12 A proposed settlement is presumed to be fair when: it is reached through arm’s-length
13 negotiations; the putative class is represented by experienced counsel; and the parties have
14 conducted sufficient discovery. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.* (2nd Cir. 2005) 396 F.3d
15 96, 116. Here, all of the factors giving rise to a presumption of fairness exist. The proposed
16 settlement was the product of arm’s-length, non-collusive negotiations, overseen by an
17 experienced mediator; the class is represented by experienced counsel; and the parties have
18 conducted sufficient discovery. Thus, the settlement is presumed to be fair.

20 Courts consider the following factors in evaluating the fairness of a class action settlement:
21 the strength of the plaintiff’s case; the risk, expense, complexity, and likely duration of further
22 litigation; the risk of maintaining class action status throughout the trial; the amount offered in
23 settlement; the extent of discovery completed and the stage of the proceedings; the experience and
24 views of counsel; the presence of a governmental participant; and the reaction of the class
25 members to the proposed settlement. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011,
26 1026. The relative degree of importance to be attached to any particular factor depends upon the
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1 circumstances of each case. *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376.

2 Here, the pertinent factors weigh in favor of granting preliminary approval.

3 **B. Strength of Plaintiffs' Case**

4 Here, Plaintiffs allege that PEET'S paid Managers meal, rest period and sick pay
5 premiums at their base hourly rates rather than the regular rate of pay, which should have included
6 the non-discretionary bonuses the Managers received as part of their compensation.

7 Similarly, with respect to reimbursement for use of their personal mobile phones, Plaintiffs
8 allege that Defendant was also aware that Managers used their personal mobile phones for
9 business purposes. Plaintiffs assert that discovery so far has shown that it was necessary for
10 Managers to use their personal mobile phones both during scheduled hours and outside of
11 scheduled hours, including during meal and rest breaks, because they received work-related
12 communication on their personal mobile phones. Additionally, Plaintiffs allege that Managers
13 used their personal mobile phones in order to take work-related pictures and/or videos.

14 Plaintiffs assert that Defendant did not compensate Managers for the work-related
15 communications in which they engaged off the clock. Moreover, Discovery showed that although
16 Defendant paid almost \$300,000.00 in other expense reimbursements during that period, there
17 were zero reimbursements for personal mobile phone expenses. Therefore, Defendant is liable
18 for those expenses in addition to unpaid wages.

19 **C. The Risk, Expense, Complexity, and Likely Duration of Further Litigation**

20 To assess the fairness, adequacy and reasonableness of a class action settlement, the Court
21 must weigh the immediacy and certainty of substantial settlement proceeds against the risks
22 inherent in continued litigation. *In re General Motors Corp.* (3rd Cir.1995) 55 F.3d 768, 806 ("The
23 present value of the damages plaintiffs would likely recover if successful, appropriately
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1 discounted for the risk of not prevailing, should be compared with the amount of the proposed
2 settlement.”); *Boyd v. Bechtel Corp.* (N.D. Cal.1979) 485 F. Supp. 610, 616-17.

3 This was complex litigation involving claims for unpaid wages and expenses under
4 California Labor Code. This case has already involved significant discovery, substantial
5 document production, motion practice, mediation, and complicated settlement discussions. This
6 is all before the Court rules on class certification. This case is risky for Plaintiffs in that it could
7 have resulted in no recovery for Plaintiff and the Class Members. The parties fiercely disputed
8 the merits of the claims, and whether class certification was appropriate. It is very likely that,
9 absent this settlement, Defendant would have taken the depositions of Plaintiffs and additional
10 witnesses, and challenged class certification. Even if Plaintiffs were able to defeat a summary
11 judgment motion by Defendant, Plaintiffs still faced the uncertainty of a jury trial and then the
12 appeals to follow.
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14 If this already two (2) year old case did not settle, the parties would undoubtedly face years
15 of litigation, a likely trial, and appeals. Despite these challenges, Plaintiffs’ Counsel took this
16 matter on a contingency basis with no guarantee of repayment and was able to obtain this strong
17 settlement for the Class Members.
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19 Counsel’s experience in *Duran v. U.S. Bank N.A.*, 59 Cal.4th 1 (2014) perhaps best
20 exemplifies the risk, expense, complexity and duration of further litigation. Counsel herein was
21 successful in obtaining certification for that case and subsequently prevailed at trial after eight
22 years of litigation only to have the entire judgment and certification ultimately reversed by the
23 California Supreme Court after an additional five years of litigation. (Decl. of Wynne, ¶ 28.) The
24 case was remanded back to the Superior Court where class certification was denied, and Plaintiff’s
25 subsequent appeal was denied. (*Id.*) Even prevailing at the trial court is no guarantee of recovery
26 especially against a large corporate defendant like PEET’S. In essence, the risk in continued
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litigation is extremely high. Thus, it is Counsel's informed opinion that benefits of this settlement outweigh the risk and that settlement at this juncture is in the best interests of the class.

D. The Amount Offered in Settlement

Prior to mediation, Defendant provided summary data for the class. (Decl. of Wynne, ¶ 13). The data indicated that there were 564 Managers who were employed during the Class Period. The Managers worked 58,070 work weeks or 29,035 pay periods during the Class Period. Assuming the Managers worked 1 uncompensated hour in 90% of the work weeks, and used their personal mobile phones for business purposes 20% of the time, their damages would be:

Cause of Action	Store Managers	Assistant Managers	Totals
Unpaid Wage Damages	\$1,346,236.25	\$257,061.39	\$1,603,297.64
Unreimbursed Expenses	\$158,415.77	\$ 41,422.58	\$199,838.35
Wage Statement Penalties	\$1,524,000.00	\$732,000.00	\$2,256,000.00
Waiting Time Penalties	\$1,193,544.00	\$522,957.60	\$1,716,501.60
Meal Break Premiums	\$1,346,236.25	\$257,061.39	\$1,603,297.64
Rest Break Premiums	\$1,346,236.25	\$257,006.13	\$1,603,297.64
Meal Break Premium Underpayment	\$16,696.15	\$1,643.03	\$18,339.18
Sick Pay Premium Underpayment	\$139,595.03	\$18,548.69	\$158,143.72
PAGA Penalties	\$ 4,050,000.00	\$799,669.57	\$4,849,669.57
Total	\$11,120,959.71	\$2,887,425.65	\$14,008,385.34

The settlement ultimately takes into account the risks associated with the Plaintiffs being able to prove liability, and to obtain class certification. Liability is far from guaranteed. First, PEET'S would argue that off-the-clock time was not actually worked, but if it was worked, that work was done in contravention of company policy. Second, PEET'S would argue that compensation was paid for all hours recorded. Third, PEET'S would argue that many penalties – which make up approximately 50% of Plaintiffs' damages model – were duplicative, not warranted, and/or should be reduced in the Court's discretion. See Labor Code 2699(e) (court had discretion to reduce any award under PAGA). That would include PEET'S arguing that it changed its payroll practices and began paying meal premiums and paid sick leave at the regular rate prior to the filing of this lawsuit. Fourth, PEET'S would argue that the Court should award the initial

1 violation amount for each PAGA violation, as opposed to the higher continuing violation amount.
2 Further, on the merits, Plaintiff may not have surmounted summary judgment, trial, and appellate
3 challenges to any trial victory.

4 Further, Plaintiffs may face obstacles in winning class certification because of the multiple
5 locations across California and different DMs responsible for each location. While wage and hour
6 class actions are often certifiable, the details of each person's circumstances may require
7 individualized inquires, including as to damages. *See, e.g., Berndt v. California Dep't of Corr.*,
8 No. 03 Civ. 3174-PJH, 2012 U.S. Dist. LEXIS 37755, at *40 (N.D. Cal. Mar. 20, 2012) (noting
9 that "the potential for multiple mini-trials, even solely as to damages, further weakens the case for
10 a finding of superiority in this instance."). PEET'S may be able to point to differences among the
11 Managers across each location, and would also attempt to show that Plaintiffs' experiences were
12 individualized and localized rather than part of a statewide pattern or practice.

13 The average net recovery here of **\$1,532.00 per Class Member** compares favorably to
14 other cases and is a strong result supporting approval. *Adelman, et. al. v. Starbucks Corp.*, Case
15 No. 3:20-cv-01178-JD, ECF No. 130 (N.D. Cal. Sept. 19, 2023) (\$157.50 per Class Member);
16 *Schmidt v. Vision Service Plan*, Case No. 2:20-cv-02400-KJN, ECF No. 57 (E.D. Cal. July 5,
17 2022) (\$1,202 per class member); *Amaraut v. Sprint/United Management Company*, Case No.
18 3:19-cv-00411, ECF No. 189-1 (S.D. Cal. January 8, 2021) (\$507.00 per class member). While
19 it is always true that a larger settlement amount was theoretically possible, "the very essence of a
20 settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." *Linney*
21 *v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (citations and internal quotation
22 marks omitted). Given the estimated total exposure and the risks that Plaintiffs would face in
23 attempting to win on all arguments, the \$1,450,000.00 settlement amount is a strong recovery.

24 **E. Extent of Discovery Completed**

25 Plaintiff conducted sufficient formal and informal discovery. Plaintiffs propounded
26 written discovery in the form of interrogatories and document requests resulting in the production
27 of over 1,200 pages of documents, and excel charts with over 1,600,000 lines of time, payroll and
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1 expense data to be analyzed. Plaintiffs also conducted the depositions of two corporate witnesses
2 of Defendant. This information allowed Plaintiffs to make an informed decision about the
3 potential exposure, and the litigation risks going forward. (Decl. of Wynne, ¶ 30.)

4 Courts do not substitute their judgment for that of the proponents, particularly when
5 settlement has been reached by experienced counsel familiar with the litigation. *Hammon v. Barry*
6 (DDC 1990) 752 F.Supp. 1087; *Steinberg v. Carey* (NY 1979) 470 F.Supp. 471; *In re Armored*
7 *Car Anti - Trust Litigation* (ND GA 1979) 472 F. Supp. 1357; *Sommers v. Abraham Lincoln*
8 *Federal Savings & Loan Association* (ED PA 1978) 79 F.R.D. 571.

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10 While the recommendations of counsel proposing the settlement are not conclusive, the
11 court can properly take them into account, particularly if they have been involved in litigation for
12 some period of time, appear to be competent, have experience with this type of litigation, and
13 significant discovery has been completed. In this case, Plaintiffs and the Class Members are
14 represented by competent and experienced counsel. Plaintiff's counsel recommends the proposed
15 settlement as fair, adequate and reasonable to the class members and in their best interests. (Decl.
16 of Wynne, ¶ 31.)

17 **VII. THE PROPOSED CLASS NOTICE IS THE BEST NOTICE PRACTICABLE**

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19 Class Notice will contain an estimated individual settlement payment for each Class
20 Member, the number weeks during which they were employed as Managers in California between
21 May 19, 2018 through May 1, 2024, and information as to how to opt-out of, or object to, the
22 settlement. The parties have agreed, subject to Court approval, to have the Settlement
23 Administrator mail notice via first class mail, postage prepaid, to the last-known addresses of the
24 class members as updated through the U.S. Postal Service's NCOA database. This method meets
25 the requirements of due process. *Overton v. Hat World, Inc.*, 2012 U.S. Dist. LEXIS 144116 at
26 *5 (E.D. Cal. 2012) (noting that individual notice to class members' last known address meets
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1 the requirements of due process). Returned mail with forwarding addresses will be re-mailed
2 while returned mail without forwarding addresses will be skip traced to get an updated address
3 and then re-mailed. Accordingly, the proposed notice plan satisfies due process.

4 **VIII. CONCLUSION**

5 In light of the foregoing, Plaintiff respectfully requests that the Court grant the motion for
6 preliminary approval of the class action settlement and certify the proposed class.

7 DATED: July 9, 2024

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By: Edward J. Wynne