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8
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on behalf of himself and all others similarly situated
10

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF MONTEREY**

13 CESAR RODRIGUEZ VINALAY, on
14 behalf of himself and all others similarly
15 situated,

16 Plaintiff,

17 vs.

18 RESTAURANT PACIFIC GROUP, LLC,
19 a California Limited Liability company,
and DOES 1-50, inclusive,

20 Defendants.
21
22
23

Case No. 22CV000486

ASSIGNED FOR ALL PURPOSES TO:
JUDGE: Thomas W. Wills
DEPT: 15

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT.**

[Declaration of James R. Hawkins Concurrently
Filed Herewith]

Date: December 8, 2023
Time: 8:30 a.m.
Dept: 15
Judge: Thomas W. Wills

24 **PLEASE TAKE NOTICE THAT** on December 8, 2023 at 8:30 a.m. in Department 15
25 of the above-entitled court located at 1200 Aguajito Road, Monterey, CA 93940, Plaintiff Cesar
26 Rodriguez Vinalay ("Plaintiff") will and hereby does move the Court for an Order (1)
27 provisionally certifying the Class for Settlement purposes only; (2) provisionally approving James
28

1 Hawkins, Isandra Fernandez, and Lance Dacre, from the law firm of James Hawkins, APLC, as
2 counsel for Plaintiff and the Class Members in this matter, (3) provisionally approving Cesar
3 Rodriguez Vinalay as the Class Representative; (4) approving ILYM Group, Inc. as the
4 Settlement Administrator; (5) preliminarily approving the class action settlement; and (6)
5 approving and directing distribution of the Notice of Class Action and PAGA Settlement.

6 This motion is made pursuant to Rule 3.769 of the California Rules of Court, which
7 provides for court approval of the settlement of a purported class action and allows the Court to
8 preliminarily certify a class for settlement purposes. The basis for this motion is that the
9 proposed Settlement is fair, adequate, and reasonable and the procedures proposed by the Parties
10 are adequate to ensure the opportunity of Class Members to participate in, opt out of, or object to
11 the Settlement.

12 This motion will be based on the Memorandum of Points and Authorities included herein,
13 the declaration of James R. Hawkins, the Settlement Agreement attached to the Declaration of
14 James R. Hawkins as Exhibit 1, and upon the oral arguments of counsel (if any) and upon the
15 complete records and file herein.

16
17 Dated: November 14, 2023

JAMES HAWKINS, APLC

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20 James R. Hawkins
21 Isandra Y. Fernandez
22 Lance Dacre
23 Attorneys for Plaintiff
24 Cesar Rodriguez Vinalay
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On February 18, 2022, Plaintiff Cesar Rodriguez Vinalay filed this wage and hour class
4 action on behalf of himself and all employees employed by, or formerly employed by Restaurant
5 Pacific Group, LLC (“Defendant” or “RPG”) and Does 1 through 50, who occupied non-exempt
6 hourly positions in the state of California. The lawsuit seeks recovery of alleged unpaid wages,
7 premium wages and penalties pursuant to California Labor Code, applicable California Industrial
8 Welfare Commission (“IWC”) Wage Orders, Bus. & Prof. Code § 17200 and the Private Attorney
9 General Act of 2004 (“PAGA”) Labor Code section 2699 *et seq.* The action also seeks an award
10 of attorneys’ fees, interest, and costs.

11 After approximately a year and a half of litigation and subject to court approval, Plaintiff
12 and Defendant have reached a settlement of the claims asserted on behalf of the class in this
13 lawsuit for a total of Two Hundred Seventy-Five Thousand Dollars (\$275,000.00) (“Gross
14 Settlement Amount”). Defendant denies the claims alleged and disputes any liability for the
15 damages sought. The Gross Settlement Amount (“GSA”) includes the individual settlement
16 payments to the participating class members, class representative enhancement payment to
17 Plaintiff, the costs of the settlement administrator, payment to the California Labor Workforce
18 Development Agency (“LWDA”) under PAGA, and the class counsel award. This is a non-
19 reversionary, cash settlement, and no portion of the GSA shall revert to Defendant. Every Class
20 Member who does not opt out of the Settlement will automatically be mailed an individual
21 settlement payment. However, every Class Member who is also within the PAGA group will be
22 mailed their respective individual settlement payment associated with the PAGA penalty portion
23 of the settlement amount regardless of opt-out status. There is no claims filing process, and Class
24 Members do not have to file a claim to be mailed a payment.

25 As discussed more thoroughly below, the proposed Settlement satisfies all of the criteria
26 for preliminary settlement approval under California law and falls well within the range of proper
27 approval. As such, Plaintiff moves this court to: (i) provisionally certify the proposed Settlement
28 Class; (ii) provisionally approve James Hawkins, Isandra Fernandez, and Lance Dacre, from the

1 law firm of James Hawkins, APLC as class counsel for Plaintiff and the Class in this matter; (iii)
2 provisionally approve named Plaintiff Cesar Rodriguez Vinalay as the class representative; (iv)
3 appoint ILYM Group, Inc. as the settlement administrator; (v) grant preliminary approval of the
4 Settlement Agreement; (vi) direct distribution of the Notice of Class Action and PAGA
5 Settlement on the terms and conditions set forth in the Settlement Agreement; and (vii) schedule a
6 final approval hearing.

7 **II. FACTUAL BACKGROUND**

8 **A. Pleadings**

9 On February 18, 2022, Plaintiff Cesar Rodriguez Vinalay filed his initial Complaint in this
10 Action in Monterey County on behalf of himself and all others similarly situated. On the same
11 date Plaintiff provided notice to the Labor and Workforce Development Agency (“LWDA”) and
12 the Defendant of his intent to seek civil penalties against Defendant for alleged Labor Code
13 violations, pursuant to Labor Code Section 2699 *et seq.* On April 26, 2022, Plaintiff filed a First
14 Amended Complaint (“FAC”), the current operative pleading which alleges that Defendants: (1)
15 failed to pay all lawful wages; (2) failed to provide lawful meal and rest periods or compensation
16 in lieu thereof; (3) failed to reimburse employee expenses; (4) failed to timely pay all wages owed
17 during employment and at the termination of employment; (5) failed to comply with itemized
18 wage statement provisions; (6) violated the UCL; and (6) violated the Private Attorneys General
19 Act (“PAGA”) (referred to herein as the “Litigation”) (See Declaration of James R. Hawkins
20 (“Hawkins Decl.” ¶ 2, Exhibit 2).

21 Plaintiff, on behalf of himself and all Class Members, brings this action pursuant to Labor
22 Code sections 201, 202, 203, 204, 210, 226, 226.7, 227.3, 510, 512, 558, 1194, 1198, 1199, 2802,
23 Title 8, Section 11050, and any other applicable Industrial Welfare Commission (“IWC”) Wage
24 Orders, seeking unpaid lawful wages, unpaid rest and meal period compensation, penalties and
25 other equitable relief, and reasonable attorneys’ fees and costs. (Hawkins Decl. ¶ 3.)

26 Throughout this litigation, Defendants have denied Plaintiff’s allegations and raised
27 defenses to his claims, individually and on a class wide basis. Defendant maintains that its
28 policies and/or practices meet the requirements of the Labor Code and applicable Wage Orders.

(Hawkins Decl. ¶ 4.) To date, no class has been certified and the court has not made any findings that Defendants engaged in any wrongdoing or are in violation of any state law, rule or regulation, with respect to the issues presented in the litigation. (Hawkins Decl. ¶ 5.)

B. Discovery and Mediation

Through both formal and informal discovery, Plaintiff and Defendant have exchanged extensive documents and information. (Hawkins Decl. ¶ 6.) Plaintiff propounded written discovery but, in an effort, to focus on resolution, the Parties agreed on exchanging informal discovery. Defendant responded to Plaintiff's informal requests for information and documentation related to the claims asserted. (*Id.*) The named Defendant produced timecard and payroll records, and reports related to putative class members. The timekeeping and payroll data was submitted to an expert, Berger Consulting Group, Inc, for extensive analysis (*Id.*).

Defendants provided to Plaintiff his complete personnel file, information regarding the number of non-exempt employees during the relevant time period and corporate documents reflecting Defendant's wage and hour policies and practices. (Hawkins Decl. ¶ 7.)

After conducting extensive formal and informal discovery, exchanging relevant information, and engaging in numerous discussions regarding the claims alleged, on September 27, 2022, the parties participated in a private, all-day mediation with the Honorable Leo Wagner (Ret.), an experienced wage and hour class action mediator (Hawkins Decl. ¶ 8). At the mediation, the parties exchanged further information and documentation concerning Plaintiff's claims and Defendants' defenses; the Parties were unable to reach a settlement (*Id.*). Over the next several months the Parties, with the assistance of the mediator, continued discussions to resolve the matter and culminating in a mediator's proposal. On February 13, 2023, the Parties accepted the mediator's proposal (*Id.*).

Thereafter, the parties continued negotiations regarding the specific terms of the settlement and in the process exchanged additional information regarding the same (Hawkins Decl. ¶ 9). The parties exchanged numerous drafts of the Settlement Agreement and the Notice of Class Action and PAGA Settlement and engaged in discussions regarding proposed revisions thereto (*Id.*). The final terms and provisions of the Joint Stipulation of Class Action Settlement

1 (“Settlement” or “Settlement Agreement”) were approved by all the parties on May 22, 2023. The
2 Parties now seek the Court’s preliminary approval of this Settlement Agreement (*Id.*, Exhibit 1).

3 Based on their own respective independent investigations and evaluations and after
4 considering the sharply disputed factual and legal issues involved in this matter, the risks
5 attending further prosecution in light of certification issues faced due to the *Brinker Rest. Corp. v.*
6 *Super. Ct.*, (2012) 53 Cal. 4th 1004 (“*Brinker*”) decision, the discovery and investigation
7 conducted to date and the benefits received under the settlement, Plaintiff and his counsel are of
8 the opinion that settlement for the consideration and on the terms set forth in the Settlement
9 Agreement is fair, reasonable, and adequate and is in the best interests of the named Plaintiff and
10 the Class Members (Hawkins Decl. ¶ 10).

11 **III. SUMMARY OF SETTLEMENT TERMS**

12 **A. Class Members**

13 Class Members means: all current and former non-exempt employees of Defendant who
14 worked for Defendant in the State of California at any time from February 18, 2018, through
15 August 13, 2021 (“Class Period”) (Settlement Agreement ¶ 4).

16 **B. Aggrieved Employees**

17 Aggrieved Employees means current and former non-exempt employees of Defendant
18 who worked for Defendant in the State of California at any time from February 18, 2021, through
19 August 13, 2021. Defendant represents approximately 123 Aggrieved Employees. Defendant represents
20 that the Aggrieved Employees worked approximately 1,010 pay periods during the Class Period.
21 (Settlement Agreement ¶ 3).

22 **C. Allocation of the Settlement Amount**

23 **1.** The total maximum amount of settlement is Two Hundred Seventy-Five Thousand
24 Dollars (\$275,000) to be paid by Defendant Restaurant Pacific Group pursuant to the Settlement
25 (“Gross Settlement Amount”) and available to pay (a) all Individual Settlement Payments to
26 Participating Class Members; (b) Class Representative Enhancement Payment to Plaintiff;
27 (c) Settlement Administration Costs to the Settlement Administrator; (d) PAGA Payment; and (e)
28 Class Counsel Award, including fees and costs (Settlement Agreement ¶¶ 6, 16, 41).

1 **2.** Subject to Court approval, the law firm of James Hawkins, APLC shall be paid up
2 to Ninety-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$91,666.66) in
3 attorneys' fees (i.e., 1/3 of the Gross Settlement Amount) and actual costs not to exceed Fifteen
4 Thousand Dollars (\$15,000.00). (Settlement Agreement ¶ 6, 41).

5 **3.** Subject to Court approval, the Class Representative shall be Plaintiff, Cesar
6 Rodriguez Vinalay and shall receive a Class Representative Enhancement Payment of up to
7 \$5,000 for his work and contribution in prosecuting the Action on behalf of the Class and in
8 consideration for his General Release of all claims against Defendant (Settlement Agreement ¶¶
9 9, 10, 42).

10 **4.** Subject to Court approval, up to \$8,850 will be set aside from the Gross Settlement
11 Amount to cover the Settlement Administration costs of administering this Settlement.
12 (Settlement Agreement ¶ 34, 43).

13 **5.** Subject to Court approval, \$10,000 will be set aside from the Gross Settlement
14 Fund for the PAGA payment, out of which 75% (\$7,500) will be paid to the LWDA and 25%
15 (\$2,500) will be distributed among the PAGA Aggrieved Employees. (Settlement Agreement ¶¶
16 21, 44).

17 **6.** Payment to each Class Member, who does not submit a valid request for exclusion
18 ("Settlement Class Member"), shall be based on a percentage of the Net Settlement Amount
19 ("NSA") which is the amount remaining after deducting amounts set forth in paragraphs 2-5
20 above from the total Gross Settlement Amount ("GSA"). (Settlement Agreement ¶¶ 18, 45).

21 **7.** This is a common fund settlement with no reversion to Defendants. Thus, each of
22 the Settlement Class Members will be paid his/her percentage share of the NSA. (Settlement
23 Agreement ¶ 45).

24 **8.** The amount to be paid to each Settlement Class Member will be allocated ninety
25 percent (90%) to penalties and interest, and ten (10%) to wages (Settlement Agreement ¶ 63).

26 **9.** The Employer's share of payroll taxes will be paid separately by Defendant
27 (Settlement Agreement ¶ 39).
28

1 Given that there are approximately 315 putative Class Members, the average net recovery
2 will be approximately \$458.68 (estimated NSA of \$144,483.34 / 315). This average net recovery
3 is notably more than other wage and hour class action settlements approved by California state
4 and federal courts. *See, e.g., Ressler v. Federated Department Stores, Inc.*, Case No. BC335018
5 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale*
6 *Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately
7 \$65); *Sorenson v. Defendants, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net
8 recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213
9 (Orange County Super. Ct.) (average net recovery of approximately \$35); *Gomez v. Amadeus*
10 *Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20);
11 and *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net
12 recovery of approximately \$50).

13 **D. Released Claims**

14 **1. Release as to All Participating Class Members**

15 “Released Class Claims” means all claims that were alleged in the complaint of the Action
16 and any claims that could have been alleged based on the facts as alleged in the operative
17 complaint of the Action. Upon the Effective Date and funding of the Gross Settlement Amount,
18 all Participating Class Members, on behalf of themselves and their heirs, executors,
19 representatives, administrators, trustees, and/or permitted assigns, hereby do and shall be deemed
20 to have fully, finally and forever released, settled, compromised, relinquished and discharged any
21 and all of the Released Parties of and from any and all Released Class Claims that accrued during
22 the Released Claims Period. (Settlement Agreement ¶¶ 27, 68).

23 **2. Settlement and Release of Aggrieved Employees**

24 “Released PAGA Claims” means all claims under the Private Attorneys General Act that
25 were alleged in the operative complaint and any claims that could have been alleged based on the
26 facts as alleged in the operative complaint in the Action. Upon the Effective Date and funding of
27 the Gross Settlement Amount, all Aggrieved Employees, on behalf of themselves and the State of
28 California, hereby do and shall be deemed to have fully, finally and forever released, settled,

1 compromised, relinquished and discharged any and all of the Released Parties of and from any
2 and all Released PAGA Claims that accrued during the PAGA Period (Settlement Agreement ¶¶
3 29, 69).

4 **3. Class Representative**

5 Section 1542 of the Civil Code of the State of California states as follows: “A general
6 release does not extend to claims that the creditor or releasing party does not know or suspect to
7 exist in his or her favor at the time of executing the release and that, if known by him or her,
8 would have materially affected his or her settlement with the debtor or released party.” Plaintiff,
9 being aware of Section 1542, hereby expressly waives and relinquishes all rights and benefits
10 they may have under Section 1542 as well as any other statutes or common law principles of a
11 similar effect. Plaintiff understands that Plaintiff may hereafter discover facts in addition to or
12 different from those which Plaintiff now knows or believes to be true with respect to the subject
13 matter of all the claims referenced herein, but stipulates and agrees that, upon the Effective Date,
14 Plaintiff shall and hereby does fully, finally, and forever settle and release any and all claims
15 against the Released Parties, known or unknown, suspected or unsuspected, contingent or non-
16 contingent, that were asserted or could have been asserted upon any theory of law or equity
17 without regard to the subsequent discovery of existence of such different or Requests for
18 Exclusion or Notices of Objections to the Settlement, and with the Court’s permission, a Final
19 Approval/Settlement Fairness Hearing shall be conducted to determine the Final Approval of the
20 Settlement along with the amounts properly payable for (i) Individual Settlement Payments; (ii)
21 the payment to the Labor and Workforce Development Agency; (ii) the Class Counsel Award;
22 (iii) the Class Representative Enhancement Payment; and (iv) Settlement Administration Costs.
23 Class Counsel will be responsible for drafting all documents necessary to obtain final approval.
24 Class Counsel will also be responsible for drafting the attorneys’ fees and costs application to be
25 heard at the final approval hearing. (Settlement Agreement ¶ 70).

26 **E. Notice to Class Members**

27 Within fifteen (15) calendar days of Preliminary Approval, Defendant shall provide the
28 Class List and Data to the Settlement Administrator. (Settlement Agreement ¶ 48)

1 Within seven (7) calendar days after receiving the Class List and Data from Defendant,
2 the Settlement Administrator shall mail the Notice Packet to all Class Members via regular First-
3 Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.
4 (Settlement Agreement ¶ 49)

5 All Class Members will be mailed a Notice Packet. Each Notice Packet will include
6 without limitation: (1) information regarding the nature of the Action; (2) a summary of the
7 Settlement's principal terms; (3) each Class Member's estimated individual Settlement Payment
8 and the formula for calculating Individual Settlement Payments, if they do not request to be
9 excluded; (4) information about the PAGA Payment and that the Aggrieved Employees have no
10 right to opt out of the PAGA Payment; (5) instructions on how to submit valid opt outs or
11 objections; (6) the deadlines by which the Class Member must submit their exclusions or
12 objections to the Settlement; (7) the date for the final approval hearing; and (8) the claims to be
13 released. The Notice Packet will also inform Class Members that in order to receive the
14 Individual Settlement Payment, they do not need to do anything except keep the Settlement
15 Administrator apprised of their current mailing addresses. (Settlement Agreement ¶ 51).

16 **IV. CALIFORNIA RULES OF COURT 3.769 APPROVAL PROCESS**

17 A class action may not be dismissed, compromised or settled without approval of the
18 Court. (*Wershba v. Apple Computer, Inc.*, (2001) 91 Cal. App. 4th 224, 240; California Rule of
19 Court ("Rule"), Rule 3.769 requires litigants to obtain court approval of class action settlements.
20 Approval occurs in two steps: (1) an early "preliminary" review by the trial court; and (2) a
21 subsequent "final" review after notice of the settlement has been distributed to class members for
22 their comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180
23 Cal. App. 4th 1110, 1118 (2010) The purpose of the court's preliminary evaluation of the
24 proposed settlement is to determine whether it is within the "range of reasonableness" and thus,
25 whether the notice to the class is appropriate (NEWBERG, §11.25 at 11-36-37.) Accordingly,
26 Plaintiff request that this Court preliminarily approve the Settlement as fair, adequate and
27 reasonable as set forth below.

28 **V. PRELIMINARY APPROVAL OF SETTLEMENT IS APPROPRIATE**

1 The law favors settlement, particularly in class actions and other complex cases in which
2 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
3 (*City of Seattle* 955 F.2d at 1276; *Potter v. Pacific Coast Lumber Company*, (1951) 37 Cal. 2d.
4 592, 602-603.; 4 NEWBERG § 11.41.) To grant preliminary approval of this class action
5 settlement, the Court need find only that the settlement falls within the “range of reasonableness.”
6 (*North County Contractor’s Ass. Inc. v. Touchstone Ins. Svcs.*, (1994) 27 Cal. App. 4th 1085,
7 1089-1090.) In determining whether a class settlement is fair, adequate, and reasonable, courts
8 must consider the following relevant factors: the strength of the Plaintiff’s case, the risk, expense,
9 complexity and likely duration of further litigation, the risk of maintaining class action status
10 through trial, the amount of offered settlement, the extent of discovery completed and the range of
11 the proceedings, and the experience and views of counsel. (*Dunk v. Ford Motor Co.*, (1996) 48
12 Cal. App. 4th 1794, 1801; *Clark v. American Residential Services, LLC*, (2009) 175 Cal. App.
13 4th. 785,799.) The list of factors is not exclusive, and the court is free to engage in a balancing
14 and weighing of the factors depending on the circumstances of each case.” (*Clark*, 175 Cal. App.
15 4th at 799; *Wershba*, 91 Cal. App. 4th at 245.)

16 Furthermore, courts must give “proper deference to the private consensual decision of the
17 parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement
18 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a
19 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
20 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
21 adequate to all concerned.” (*Hanlon v. Chrysler Corp.*, (9th Cir. 1998), 150 F.3d 1011, 1027.)

22 **A. The Terms of the Proposed Settlement are Fair**

23 A preliminary review of the terms of the Settlement Agreement provides no reason to
24 doubt its fairness. A presumption of fairness exists where: 1) the settlement is reached through
25 arms-length negotiations; 2) investigation and discovery are sufficient to allow counsel and the
26 court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of
27 objectors is small (*Dunk v. Ford Motor Co.*, *supra*, at 1802.) The first three of these factors apply
28

1 at the preliminary approval stage; the percentage of objectors is determinable only at the final
2 approval stage.

3 **1. The Settlement Was Reached Through Extensive Arm's Length Bargaining**
4 **and Negotiation**

5 As already discussed herein, the Parties have conducted themselves in informed, good
6 faith arm's-length negotiations after exchanging extensive information about the claims and
7 defenses of this lawsuit and engaging in pre-mediation and post mediation discussions aimed at
8 settling their dispute. In attempts to settle this lawsuit, the Parties participated in a full day
9 mediation with Leo Wagner (Hawkins Decl., ¶¶ 6-9). In sum, armed with all of the relevant
10 information and with the help of an experienced mediator, counsel for the parties participated in
11 lengthy, serious and informed negotiations which have resulted in the proposed Settlement
12 Agreement that is now placed before this Court for preliminary approval.

13 **2. Investigation and Discovery were Sufficient for the Parties to Evaluate the**
14 **Risks Intelligently**

15 Plaintiff conducted significant investigation of the facts and law both before and after the
16 Action was filed. Plaintiff's counsel reviewed voluminous supporting documents provided by
17 Defendant through formal discovery and in exchanges of information in preparation for mediation
18 (Hawkins Decl., ¶¶ 6-9). Plaintiff also undertook an extensive expert analysis of timekeeping and
19 payroll data for the class. (*Hawkins Decl.*, ¶ 6).

20 **3. Plaintiff's Counsel is Experienced in Similar Litigation**

21 Counsel for Plaintiff has represented, mediated, and settled hundreds of other employee
22 class actions in wage and hour litigation and have knowledge of the strengths and weaknesses of
23 the claims against Defendant and the benefits of the proposed Settlement under the circumstances
24 of the case (Hawkins Decl., ¶ 11, 17, 18) The Settlement Provides for Reasonable Compensation
25 to Class Members.

26 **4. The Settlement Provides for Reasonable Compensation to Class Members**

27 In seeking approval, a settling party must provide sufficient information to "enable the
28 court to make an independent assessment of the adequacy of the settlement terms." *Kullar v.*

1 *Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, “[i]t is well-settled law
2 that a cash settlement amounting to only a fraction of the potential recovery will not per se render
3 the settlement inadequate or unfair.” See *Officers for Justice v. Civil Serv. Comm’n of City & Cty.*
4 *of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). “The proposed settlement is not to be judged
5 against a hypothetical or speculative measure of what might have been achieved by the
6 negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are tempered by factors such as the
7 risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often
8 measured in years).” *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act*
9 *(FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the claims
10 within a realistic range of outcomes, the settling Plaintiff should discount the value of the settled
11 claims for risks such as changes in the law, the probability of success, and other factors.

12 Settling parties are not, however, required to partake in a hypothetical accounting
13 exercise: “Kullar does not ... require any such explicit statement of [maximum] value; it requires
14 a record which allows ‘an understanding of the amount that is in controversy and the realistic
15 range of outcomes of the litigation.” *Munoz v. BCI Coca-Cola Bottling Co.*, (2010), 186 Cal.
16 App. 4th 399, 409-10 (citing *Kullar*, 168 Cal. App. 4th at 120 (emphasis added). Overall, “the
17 most important factor” in determining “whether a settlement is fair and reasonable” is the
18 “strength of the case for Plaintiff on the merits, balanced against the amount offered in the
19 settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As discussed further
20 below, the recovery of \$275,000 for the Class Members and Aggrieved Employees is well within
21 the range of reasonableness and undeniably fair, adequate and reasonable considering the risks
22 and hurdles of continued litigation.

23 Plaintiff’s counsel analyzed the potential liability in this matter based on documents and
24 information produced by Defendant in formal discovery and in preparation for mediation, expert
25 analysis of timekeeping records and payroll data, and took into account the nature of the claims
26 and Defendant’s defenses thereto (Hawkins Decl., ¶ 6, 10-12).

27 The damage model used in calculating potential liability was largely based on the number
28 of class members, the number of pay periods, the average rate of pay and a random sample of

1 time records, wage statements and documents produced by Defendant in preparation for
2 mediation. Based on the information provided by Defendant, the estimated number of work
3 weeks is 12,756 during the Class Period and over 1,010 pay periods during the PAGA Period.
4 The average hourly rate of pay is approximately \$14.54. Plaintiff's counsel estimated the
5 maximum potential liability as follows: (Hawkins Decl., ¶ 13.)

6 **a) Failure to Pay Lawful Wages**

7 Plaintiff's claim for failure to pay wages owed is based on allegations that he and Class
8 Members worked "off the clock" to complete certain tasks for which they did not receive
9 compensation. For example, during the liability period, Plaintiff contends that he and Class
10 Members were required to park and walk several minutes to the work site. They also were
11 required to don appropriate uniforms and clothing for their work shift after arriving and before
12 clocking in as those uniforms were kept at the Scales restaurant. To complete these pre-work
13 requirements, Plaintiff and Class Members arrived at work 15-20 minutes before their scheduled
14 start time. The same activity was required post shift as well; taking off the uniforms and clothing
15 and walking back to their required parking area. Plaintiff and Class Members were not allowed to
16 clock in before they were ready to begin work, nor was the walk from the required parking area
17 accounted for. Upon being hired, Plaintiff states he was informed by the human resources
18 director, he needed to be at work at least 10 minutes before the start of his shift. Plaintiff contends
19 that he and Class Members were not compensated for this "off the clock" work (whether it be
20 regular wages, overtime, or meal break premiums) and thus not paid all lawful wages owed
21 including overtime and/or minimum wage (Hawkins Decl., ¶ 13(a)).

22 Due to Defendants' policies and practices and "off the clock" work, Plaintiff and Class
23 Members would work more than eight (8) hours in a day or more than forty (40) hours in a
24 workweek, and they were not paid the proper 1 ½ times the regular rate of pay. Defendants' clock
25 in and clock out policies do not account for the time it takes to comply with the actual practices,
26 even if Plaintiff and Class Members were allowed to clock in 5 minutes before their shift as stated
27 in the Defendants' Employee Handbook (*Id.*).
28

1 As a result of Defendants' unlawful practices, Plaintiff and Class Members were not paid
2 all lawful wages earned during the liability period. Thus, Plaintiff and Class Members were
3 required to work more than eight (8) hours in a day or more than forty (40) hours in a workweek
4 without proper overtime compensation. Defendant also failed to pay minimum wages for work
5 performed "off the clock" (*Id.*).

6 Defendant adamantly disputes the allegations that employees were required to perform
7 any work "off the clock" during meal breaks and/or at the end of their shifts and claimed that
8 Plaintiff lacked evidence of any "off the clock" work, or that it maintained unlawful policies.
9 Defendant also asserts that its policies not only prohibit employees from working "off the clock"
10 but also require employees to accurately record their time and report inaccuracies. Further,
11 Defendant asserts that this claim would be difficult to certify given the predominance of the
12 individualized inquiry as to whether, and to what extent, each Class Member performed work "off
13 the clock." (*Id.*)

14 From the records provided, and based on Defendant's representation, Plaintiff understood
15 the average hourly rate of pay for non-exempt employees to be approximately \$14.54. During the
16 Class Period, the Class Members worked a collective total of approximately 12,756 workweeks.
17 Plaintiff calculated the estimated, potential maximum value for this claim at approximately
18 \$200,000 based on 60 minutes of "off the clock" work per week, with 15% calculated at the
19 overtime rate, for 12,756 work weeks. Taking into consideration the nature of the claim and
20 Defendant's defenses thereto including the inability to establish the violation with respect to all of
21 the Class Members, this claim was valued \$20,000 (10%) and \$10,000 (5%) for purposes of
22 settlement (*Id.*)

23 **b) Meal Break Claim**

24 The meal break violation claim is based primarily on Defendant's alleged failure to
25 provide Plaintiff and class members with compliant, timely duty-free 30-minute meal periods in
26 violation of California Labor Code §§ 226.7, 512 IWC Wage Order 5-2001 and *Donohue v. AMN*
27 *Services* (2021) 11 Cal.5th 58. If an employer fails to provide an employee the required 30-
28 minute meal periods in accordance with the applicable provisions of the Wage Order, it must pay

1 the employee one additional hour of pay at the employee's regular rate of compensation for each
2 workday that the meal period is not provided. (IWC Wage Order 5-2001(11)(D); Cal. Lab. Code
3 § 226.7) (Hawkins Decl., ¶13(b)).

4 Due to Defendant's policies and practices and the work schedule, Plaintiff and Class
5 Members were only allowed to take meal breaks when authorized by a supervisor. Typically,
6 Plaintiff and Class Members had to work 6 to 7 hours before a meal break was allowed. Usually,
7 they would have to eat then get right back to work, without getting a full 30-minute meal break.
8 When Plaintiff and Class Members worked more than ten (10) hours in a day, they were not
9 provided a second meal period. Defendants' meal break practices do not adhere to the policies set
10 forth in the Defendants' Employee Handbook. In sum, Defendant is liable for failing to provide
11 compliant meal periods for Plaintiff and Class Members and for failing to pay one (1) hour of the
12 employee's regular rate of compensation in lieu thereof (*Id.*).

13 Defendant denies Plaintiff's allegations and maintains that he and Class Members were
14 provided with the opportunity to take full, 30-minute meal periods to which they were entitled as
15 per compliant company policies. Further, Defendant adamantly disputes the propriety of
16 certification in this case. Defendant's position is that, under the holding in Brinker and other state
17 and federal decisions, Defendant fulfilled its legal obligations to non-exempt employees by
18 providing them with timely and proper meal periods (*Id.*).

19 Based upon Plaintiff's review of the documents and information provided in anticipation
20 of mediation, including the random sample of time records, the estimated maximum potential of
21 the meal break claim was \$508,900. This was determined by taking the estimated unique number
22 of meal break violations, 35,000, and multiplying by the average hourly rate of \$14.54 (35,000 x
23 \$14.54 = \$508,900). Taking into consideration the nature of the claim, Defendant's defenses and
24 issues faced due to Brinker, for purposes of settlement, the meal break claim was valued between
25 an estimated maximum of \$50,890 (10%) and \$25,445 (5%) (*Id.*).

26 **c) Rest Period Claim**

27 The rest period violation claim is primarily based on allegations that, as with the meal
28 breaks, due to the workload, policies, and practices of Defendant, Plaintiff and Class Members

1 during the liability period, were required to work without being permitted or authorized to take
2 compliant rest breaks (Hawkins Decl., ¶ 13(c.)). Defendant disputes Plaintiff's rest break claim
3 and contends that Class Members were allowed to take ten-minute rest periods and regularly took
4 such breaks. Defendant also argues that this claim would be difficult to certify given the
5 predominance of individualized inquiries as to whether, and to what extent, each Class Member
6 was unable to take compliant rest break during their shifts. (*Id.*)

7 Based on documents provided by Defendant, Plaintiff estimated the maximum potential
8 liability at \$744,680. The maximum estimated liability for this claim was based on a 100%
9 violation rate. The maximum potential liability was determined by taking all shifts over 3.5 hours,
10 51,216 and multiplying by the average hourly rate of \$14.54 (51,216 shifts x \$14.54 = \$744,680).
11 Taking into consideration the nature of the claim, Defendant's defenses and certification issues
12 faced due to Brinker, for purposes of settlement, the rest break claim was valued between an
13 estimated maximum of \$37,234 (5%) and nominal value (*Id.*)

14 **d) Failure to Reimburse Employee Expenses**

15 Plaintiff's claim under Labor Code §2802 is premised on the fact that RPG did not
16 provide Plaintiff and Class Members with tools which were required in the performance of their
17 job duties. Plaintiff and Class Members had to purchase and provide their own tools such as
18 knives, peelers, tongs, pens, pencils, paper, notepads, etc. Plaintiff had to provide his own knives
19 and tools as a line cook at an approximate cost of \$127. Plaintiff and Class Members were not
20 reimbursed for their expense incurred in purchasing these tools which were essential to the
21 performance of their job duties in violation of Labor Code §2802 and IWC Wage Order 5-2001
22 (Hawkins Decl. ¶ 13(d)).

23 Defendant disputes this allegation and alleges all tools were provided. For purposes of
24 settlement, this claim had minimal value, due to the individualized nature of each and every claim
25 and the difficulty of obtaining class wide evidence for damage calculations (*Id.*).

26 **e) Failure to Timely Pay Wages During Employment**

27 This claim is based on allegations that Plaintiffs and Class Members did not receive
28 payment of all wages owed, including overtime and minimum wages and meal and rest period

1 premiums, within the requisite time under Labor Code section 204. That statute requires that all
2 wages are due and payable twice in each calendar month. For any initial violation under this
3 statute, one hundred dollars (\$100) is due for each failure to pay each employee. For each
4 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) is due for
5 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. As
6 discussed herein, Defendant adamantly disputes that it failed to pay any lawful wages owed and is
7 therefore not liable for any penalties under this statute. Defendant also contends that liability only
8 applies when employers fail to pay wages on a timely basis; not whether the correct amount of
9 wages were paid. (*See's Candy Shops, Inc. v. Superior Ct.* (2012) 210 Cal. App. 4th 889, 904-
10 905. Here, employees can recover penalties either Labor Code section 210 or PAGA but not both.
11 For purposes of settlement, Plaintiff is pursuing this claim under PAGA, which is discussed
12 below (Hawkins Decl. ¶ 13(e)).

13 **f) Failure to Timely Pay Wages at Termination**

14 This claim is derivative of the other claims asserted. Pursuant to Labor Code sections 201,
15 202 and 203, each employee in the relevant statutory period (i.e., three years before the filing of
16 the initial Complaint) is entitled to 30 days' worth of wages as a waiting time penalty for not
17 being paid all wages upon the separation of employment. Plaintiff alleges that penalties are owed
18 under Labor Code section 203 due to, at a minimum, Defendant's failure to pay wages for all
19 hours worked and failure to pay premium wages. With respect to Lab. Code §203 claim, there
20 were an estimated total of 315 former employees/Class Members to whom this claim applied.
21 The estimated maximum potential liability was determined to be \$851,898 using the formula ((#
22 of terminated/former employees) x (30 x average hourly rate x average number of hours worked
23 per day)). (315) x (30 x \$14.54 x 6.2) (Hawkins Decl., ¶ 13(f)).

24 Defendant once again defends that no unpaid wages are owed as Defendant did not fail to
25 pay the correct wages. Defendant further contends that its actions were not willful as required for
26 penalties to issue and that, thus, waiting time penalties cannot be awarded. For purposes of
27 settlement negotiations, said claim was valued between \$85,190 (10%) and \$42,595 (5%) (*Id.*).
28

1 **g) Lab. Cod § 226 Claim (Failure to Provide Accurate Itemized Wage**
2 **Statements)**

3 Under Lab. Code § 226(e), an employee suffering “injury as a result of a knowing and
4 intentional failure by an employer” to provide accurate wage statements is entitled to \$50 for the
5 initial violation and \$100 for each subsequent violation up to \$4,000. This claim is derivative of
6 the other alleged Labor Code violations. Defendant denies that it provided inaccurate wage
7 statements. Further, Defendant argues that, if any wage statements were in fact inaccurate, they
8 did not “knowingly and intentionally” fail to provide accurate statements and that Plaintiff and
9 the class did not suffer any “injury” from such inaccurate wage statements (Hawkins Decl. ¶ 13
10 (g)).

11 Per information provided by Defendant, Plaintiff believes there were approximately
12 315 Class Members working during the relevant time period for this claim. Thus, if a
13 calculation is performed using the maximum exposure permitted per Class Member under
14 Labor Code section 226, this amounts to a maximum exposure for Defendant of \$1,260,000
15 based on 315 Class Members x \$4,000. However, some of the Class Members working during
16 the relevant time period may have worked for only one pay period during the relevant time
17 period and some may have worked for tens of pay periods. For purposes of settlement
18 negotiations, said claim was valued between an estimated maximum of \$126,000 (10%) and
19 \$63,000 (5%) (*Id.*)

20 **h) Bus. & Prof. Code § 17200 et seq. (“UCL”) Claim**

21 The only remedies available under the unfair competition law (“UCL”) Business and
22 Professions Code Section 17200 et seq. are restitution and injunction, as opposed to damages
23 *Clark v. Superior Court*, (2010) 50 Cal. 4th 605, 610. The UCL provides that “[t]he court may
24 make such orders or judgments ... as may be necessary to restore to any person in interest any
25 money or property, real or personal, which may have been acquired by means of such unfair
26 competition.” (Bus. & Prof. Code, § 17203.) Restitution under the UCL includes “earned wages.”
27 *Cortez v. Purolator Air Filtration Prods. Co.*, (2000) 23 Cal. 4th 163, 177-78 (Hawkins Decl., ¶
28 13(h)).

1 Restitution under the UCL is not available for all violations of the Labor Code. See
2 *Pineda v. Bank of Am., N.A.*, (2010) 50 Cal. 4th 1389, 1401-02. In *Pineda*, the California
3 Supreme Court held Labor Code § 203 is “not designed to compensate employees for work
4 performed [but] it is intended to encourage employers to pay final wages on time, and to punish
5 employers who fail to do so.” *Id.* Like Labor Code section 203, section 226 for wage statement
6 violations is also intended to “punish” the employer and is not an action brought to recover
7 wages. See *Gomez v. Jacobo Farm Labor Contractor, Inc.*, (2019) 334 FRD. 234, 267-268 (*Id.*)

8 Here, Plaintiff’s UCL claim is solely premised on the failure to pay lawful wages and
9 premium wages claims discussed above. Class Counsel assigned a zero-dollar value to the UCL
10 claim because it does not provide any additional value in this Action other than to increase the
11 statute of limitations to four years for the underlying claims. Those claims are valued and
12 analyzed above based on the four-year statute of limitations provided by the UCL. However, the
13 UCL claim in and of itself does not provide any additional damages. Therefore, there is no
14 additional or separate monetary value that this statute provides based on the facts of this Action
15 (*Id.*).

16 **i) Lab. Code §2699 (PAGA Claim)**

17 Plaintiff’s claims under PAGA are primarily predicated on or derivative of the rest and
18 meal break claims. The estimated maximum PAGA penalty was calculated as \$101,000. This
19 figure attributes a \$100 penalty to each of the estimated 1,010 pay periods in scope during the
20 PAGA period. The figure also assumes that there is a 100% violation rate during the PAGA
21 period, such that every single pay period in question involved at least one Labor Code violation,
22 despite disputes regarding Defendant’s liability (Hawkins Decl., ¶ 13(i)). However, PAGA claims
23 under the facts and circumstance of this case may result in no award or at best a very minimal
24 award by the trial court. See specifically §2699(e)(2) which states in its pertinent part:

25 “... a court may award a lesser amount than the maximum civil penalty amount specified
26 by this part if, based on the facts and circumstances of the particular case, to do otherwise would
27 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (Hawkins Decl., ¶
28 13(i)).

1 For instance, in *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a
2 federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%,
3 because the court found maximum penalties "unjust" because the employees had suffered no
4 injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code
5 violations are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5 7 (2nd Dist.
6 Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County
7 Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist.
8 LEXIS 48557, *40 43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

9 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each
10 of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.
11 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a Plaintiff
12 cannot recover on behalf of individuals whom the Plaintiff has not proven suffered a violation of
13 the Labor Code by the defendant.") Here, Plaintiff would need to prove that each PAGA Eligible
14 Employee suffered all violations for each pay period the employee worked. As discussed herein,
15 the nature of the PAGA based claims (i.e. rest break, meal period, wage statement, failure to pay
16 all wages owed, and to timely pay wages) and Defendant's asserted defenses thereto present a
17 risk that some or all of the PAGA penalties sought may not be awarded. Given the nature of these
18 claims, as analyzed above, Class Counsel believes it to be likely that if there would be any award
19 it would be a minimal amount. Therefore, the amount of \$10,000 (which has been reserved for the
20 PAGA claim) is both fair and reasonable (Hawkins Decl., ¶ 13(i)).

21 Through his counsel, Plaintiff took into consideration the significant risks that class
22 certification could be denied on the central claim, or that a merits decision on the central claim
23 would not favor the Class. Plaintiff has considered the expense and length of continued
24 proceedings necessary to continue the Action against Defendant through trial and any possible
25 appeals. Plaintiff is also aware of the burdens of proof necessary to establish liability for the
26 claims asserted in the Action, Defendant's defenses thereto, and the difficulties in establishing
27 Plaintiff's damages (Hawkins Decl., ¶ 14).

1 The proposed Settlement requires Defendant to pay each Class Member who does not opt
2 out a portion of the Net Settlement Amount as specifically set forth in the Settlement Agreement
3 (Hawkins Decl., ¶ 15). The amount to be paid to the Class is undoubtedly fair, adequate and
4 reasonable especially in light of the significant risk to Plaintiff and Class Members in continuing
5 with the litigation and not prevailing on class certification or at trial (*Id.*).

6 For all the foregoing reasons, the proposed Settlement Agreement is fair, adequate and
7 reasonable, and is in the best interests of the Class Members.

8 **B. The Class Representative Enhancement Payment and Class Counsel Fees Are**
9 **Reasonable and Should be Awarded**

10 The Settlement Agreement provides for an award to be paid to the Class Representative
11 The primary purpose is to provide Plaintiff an enhancement payment, taking into consideration
12 the risks, time, effort and expenses incurred by their coming forward to provide invaluable
13 information and negotiate and litigate this matter on behalf of all Class Members (Hawkins Decl.,
14 ¶ 16). Plaintiff actively participated in this litigation by providing significant supporting
15 documents and information and assisting counsel in developing information necessary to litigate
16 and settle this case which has resulted in a favorable settlement for the putative Class Members.
17 Thus, the payment to the Class Representative of \$5,000 represents a small portion of the
18 aggregate settlement amount and should be awarded (*Id.*).

19 Further, as will be discussed in more detail in Plaintiff's Motion for Final Approval of the
20 Settlement, class counsel fees in the amount of \$91,666.66 is reasonable within California's
21 standard benchmark and well within the range customarily approved by the California courts in
22 comparable class actions

23 **VI. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE**

24 In addition to such terms as class definition, settlement amounts and payment procedures,
25 the Settlement Agreement reached between the Parties contains a provision by which the Parties
26 stipulate to the Court's provisional certification of the Class, but do so for the purposes of this
27 settlement only. Plaintiff now requests that this Court to provisionally certify the Class.
28

1 It is well established that trial courts should use a lower standard for determining the
2 propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor*
3 *Co.*, (1996) 48 Cal.App.4th at 1794, 1807, fn. 19.) Under California law, a class action is
4 appropriate when the Class is ascertainable and there is a “well defined community of interest in
5 the questions of law and fact affecting the parties to be represented.” (Code Civ. Proc., §382;
6 *Dunk*, 48 Cal. App. 4th at 1806.) State law requirements under *California Code of Civil*
7 *Procedure* section 382 for class certification largely mirrors *Federal Rules of Civil Procedure*
8 Rule 23 – namely, numerosity and typicality of the class representative’s claims, adequacy of
9 representation, predominance of common issues and superiority. As discussed below, although
10 Defendant adamantly disputed and continues to dispute Plaintiff’s ability to certify a litigation
11 class, all of the requirements of certification for settlement purposes are met for the proposed
12 settlement Class.

13 **A. The Proposed Class is Ascertainable**

14 Here, the proposed class is ascertainable because all of the Class Members are/were
15 employed directly by Defendant and received their compensation directly from Defendant. The
16 Class Members have been identified through Defendant’s employee and personnel files. (See
17 *Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 [“Class Members are ‘ascertainable’
18 where they may be readily identified without unreasonable expense or time by reference to
19 official records”]).

20 **B. Numerosity of the Class is Sufficient**

21 If the class is sufficiently large that joinder of all members is impractical or that individual
22 joinder is impractical, the numerosity requirement is met. (*Hebberd v. Colgrove* (1972) 28
23 Cal.App.3d 1017, 1030.) Here, the proposed class consists of 315 members, consisting of current
24 and former employees of Defendant. Therefore, joinder of individual claims would be impractical
25 and the numerosity requirement is met.

26 **C. There are Common Questions of Law and Fact to the Class**

27 Commonality is met if there are common questions of fact and law to the class. (*Hanlon v.*
28 *Chrysler Corp.* 150 F.3d at 1019 [“The existence of shared legal issues with divergent legal

1 factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal
2 remedies within the class”].) Here, Plaintiff alleges that the proposed Class Members’ claims all
3 stem from the same alleged conduct. Specifically, Plaintiff alleges that Defendant violated
4 California wage and hour law by (1) failure to pay lawful wages including overtime wages; (2)
5 failure to provide lawful meal periods or compensation in lieu thereof; (3) failure to provide rest
6 periods or compensation in lieu thereof; (4) failure to reimburse employee expenses; (5) failure to
7 Timely Pay Wages During Employment; (6) failure to timely pay wages due at termination; and
8 (7) knowing and intentional failure to comply with itemized employee wage statement provisions.
9 Plaintiff also seeks recovery of all alleged wages, premium wages, penalties, and interest pursuant
10 to the California Labor Code, the California Industrial Welfare Commission (“IWC”) Wage
11 Orders, Bus. & Prof. Code § 17200 *et seq.*, the FLSA, and PAGA. Although Defendant disagrees
12 with these contentions for purposes of certifying a litigation class, for purposes of a settlement
13 class, these circumstances create questions of law and fact common to all proposed Class
14 Members.

15 **D. The Typicality Requirement is Met**

16 The typicality requirement is met if the claims of the named Class Representative is
17 typical of those of the class, though “they need not be substantially identical.” (*Hanlon* 150 F.3d
18 at 1020.) Factual differences may exist between the Class and the Class Representative so long as
19 the claims arise from the same events or course of conduct and are based on the same legal
20 theories (*Id.*) Here, the claims of the Class Representative are typical of the other Class Members
21 because they arise from the same factual basis and are based on the same legal theories as those
22 applicable to all Class Members. (*Wherner v. Syntex* (N.D. Cal. 1987) 117 F.R.D. 641, 644.)
23 Thus, for purposes of a settlement class, the typicality requirement is met.

24 **E. The Adequacy Requirement is Met**

25 If the named representatives and their counsel have no interests adverse to the interest of
26 the proposed Class Members and are committed to vigorously prosecuting the case on behalf of
27 the class, then the adequacy requirement is met. (*McGhee v. Bank of America*, (1976) 60 Cal.
28 App. 3d 442,450.) Here, under the proposed settlement, the Class Representative will receive a

1 reasonable award for his time and efforts assisting counsel with factual issues surrounding the
2 case and risk incurred in bringing this action on behalf of the Class Members. Other than this
3 specific payment, all Class Members will receive a percentage of the Net Settlement Amount
4 based on his or her respective number of covered work weeks. Therefore, no “settlement
5 allocation” questions are raised. (*Hanlon* 150 F.3d at 1020.)

6 Any Class Members who wishes to opt-out of the settlement must complete and mail a
7 Request for Exclusion (discussed above) to the Settlement Administrator within forty-five (45)
8 calendar days of the date of the initial mailing of the Notice Packet (Settlement Agreement, p. 6,
9 ¶ 32) As a result, there is no conflict of interest between the Class Representative and the Class
10 Members. Additionally, the Class Representative and his counsel have been committed to
11 prosecuting this action on behalf of the Class.

12 **F. Common Issues Predominate and Class-wide Settlement is Superior to Other**
13 **Available Methods of Resolution**

14 Class certification is authorized where common questions of law and fact predominate
15 over individual questions and where class-wide treatment of a dispute is superior to individual
16 litigation. (*Richmond v. Dart Industries, Inc.*, (1981) 29 Cal.3d 462, 469.) The test is whether the
17 proposed class is sufficiently cohesive to warrant adjudication by representation. (*Hanlon, supra*,
18 at p. 1022.) Plaintiff contends that the proposed Class in this case is sufficiently cohesive, since
19 all Class Members share a “common nucleus of facts and potential legal remedies.” Specifically,
20 the Class Members and the Class Representative seek compensation for alleged unpaid wages,
21 premium wages for failure to provide compliant meal and rest breaks, as well as penalties and
22 interest for the allegations described herein; common questions about compensation or lack
23 thereof for worked performed by Class Members predominate over individual questions, and the
24 Class Members’ potential legal remedies are identical (*Id.*) Although Defendant disagrees with
25 Plaintiff’s contentions, it has agreed the Class may be certified for settlement purposes only.

26 Additionally, particularly in the settlement context, class resolution is superior to other
27 methods for the fair and efficient adjudication of the controversy. (*Hanlon*, 150 F. 3d at p. 1023;
28 *Dunk, supra*, 45 Cal. App. 4th at p. 1087.) The superiority requirement involves a “comparative

1 evaluation of alternative mechanisms of dispute resolution.” (*Hanlon, supra*, at p. 1023.) Here,
2 the alternative methods of resolution are a plethora of individual claims from potentially 315
3 Plaintiffs. The class action device can thus conserve judicial resources by avoiding the waste and
4 delay of repetitive proceedings and prevent inconsistent adjudication of similar issues and claims.
5 (*Sav-On Drug Stores, Inc. v Superior Court* (2004) 34 Cal. 4th 319, 340; *Bell v Farmers Ins.*
6 *Exchange* (2004) 115 Cal.App.4th 715, 741.) Therefore, settlement on a class-wide basis is
7 superior.

8 **VII. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

9 The Notice Packet is attached as Exhibit A to the Settlement Agreement. The Notice
10 Packet provides the requisite, pertinent information to Class Members and the options available to
11 them. Should any Class Members wish to exclude themselves from the Settlement, they can send
12 a Request for Exclusion to the settlement administrator. Should a Class Member wish to object to
13 the Settlement, they can object as described in the Notice. If a Class Member does nothing in
14 response to the Notice Packet, the Class Member will be mailed an individual settlement
15 payment.

16 **A. The Class Notice Satisfies Due Process**

17 California statutory and case law vests the Court with broad authority to fashion an
18 appropriate notice process. (Cal. Rules of Court 3.760 *et seq.*) A proposed method of notice of a
19 proposed settlement is fair, adequate and reasonable if it has “a reasonable chance of reaching a
20 substantial percentage of the Class Members. (*Cartt v. Superior Court*, (1975) 50 Cal. App. 3d
21 960, 974.) The Notice Packet plan described herein entails mailing the Notice Packet to all known
22 and reasonably ascertainable Class Members based on Defendant’s payroll records and provides
23 for a reasonable chance of reaching a significant percentage of Class Members. (See Settlement
24 Agreement, p.12 ¶51.) Further, such individual notice by first class mail is routinely approved as
25 consistent with due process. (See, *e.g.*, MANUAL at §§21.311, 21.312; Wright & Miller, Fed.
26 Practice & Procedure §1797.6 [“Of course, notice by mail to all of the identified Class Members .
27 . . will suffice.”] (citing cases).) The Notice is consistent with the class certification notices
28

1 approved by numerous state and federal courts and is the best notice practicable under
2 circumstances of this case

3 **B. The Proposed Class Notice is Accurate and Informative**

4 Not only is the manner of the proposed notice proper, so too is the content of the said
5 notice. The proposed notice provides information on the meaning and the nature of the proposed
6 settlement, the terms and provisions of the settlement, the relief the settlement will provide the
7 Class Members, the application of Plaintiff's counsel for reimbursement of costs and attorneys'
8 fees from the settlement amount, the date, the time and place of the Final Fairness and Approval
9 Hearing, and the procedure and deadlines for opting out of the Settlement or for submitting
10 comments and objections. (Cal. Rule of Court 3.769(f).)

11 The Notice Packet also fulfills the requirement of neutrality in class notices. (2
12 NEWBERG §8.39.) It summarizes the proceedings to date and the terms and conditions of the
13 settlement in an informative and coherent manner, in compliance with the MANUAL'S
14 statement, "the notice should be accurate, objective, and understandable to class members....."
15 (MANUAL at §30.21.) The Notice Packet clearly states the settlement does not constitute an
16 admission of liability by Defendant and recognizes the Court has not ruled on the merits. It also
17 states the final settlement approval decision has yet to be made. Accordingly, the Notice Packet
18 complies with the standards of fairness, completeness and neutrality required of a settlement class
19 notice disseminated under the authority of the Court. (F.R.C.P. 23(c)(2).)

20 Moreover, the Notice Packet comports with CA Rules of Court, Rule 3.766(d). As per
21 Rule 3.766, the contents of the Notice Packet providing for an opt out procedure for the Class
22 Members must include the following:

- 23 (1) A brief explanation of the case, including the basic contentions or denials of
24 the parties;
- 25 (2) A statement that the Court will exclude the member from the class if the
26 member so requests by a specified date;
- 27 (3) A procedure for the member to follow in requesting exclusion from the class;
- 28

1 (4) A statement that the judgment, whether favorable or not, will bind all members
2 who do not request exclusion; and

3 (5) A statement that any member who does not request exclusion may, if the
4 member so desires, enter an appearance through counsel.

5 The Notice Packet contains the information required under Rule 3.766(d). (See Ex. A
6 attached to the Settlement Agreement.)

7 **VIII. CONCLUSION**

8 Based on the foregoing, Plaintiff respectfully request that the Court enter the [Proposed]
9 Order Granting Preliminary Approval submitted concurrently herewith, and thus:

10 1. Grant preliminary approval of the Settlement Agreement, and certify the
11 Settlement Class for the purposes of settlement only;

12 2. Confirm named Plaintiff Caesar Vinalay as the Class Representative;

13 3. Confirm attorneys James R. Hawkins, Isandra Fernandez, and Lance Dacre of
14 James Hawkins APLC; as Class Counsel;

15 4. Approve and appoint ILYM Group as the Settlement Administrator;

16 5. Enter an Order granting preliminary approval of the proposed settlement and the
17 Notice, and;
18

19 6. Schedule the Final Approval Hearing Date on April 24, 2024 (or as determined by
20 the Court at the hearing for preliminary approval of settlement).

21 Respectfully submitted,

22 Dated: November 14, 2023

23 **JAMES HAWKINS, APLC**

24 
25 James R. Hawkins, Esq.
26 Isandra Y. Fernandez, Esq.
27 Lance Dacre, Esq.
28 Attorneys for Plaintiff

PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On November 14, 2023, I served on the interested parties in this action the following document(s) entitled:

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

DECLARATION OF JAMES R. HAWKINS IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address irma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

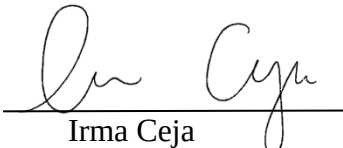
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Attorneys for Defendant
RESTAURANT PACIFIC GROUP, LLC

[X] STATE: I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on November 14, 2023, at Irvine, California.


Irma Ceja