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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

ARTHUR JUAREZ, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

CONSOLIDATED HOSPITALITY SUPPLIES,
LLC, a Delaware corporation, and DOES 1
through 10, inclusive,

Defendants.

Case No.: CIVSB2204353
[Consolidated with CIVBS2210350]

CLASS ACTION

[Assigned for all purposes to Hon. Jessica
Morgan, Dept. S-26]

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

[Filed concurrently with: Declarations of
Justin F. Marquez and Arthur Juarez; and
[Proposed] Order]

PRELIMINARY APPROVAL HEARING

Date: December 11, 2023

Time: 8:30 a.m.

Dept: S-26

Complaint filed: February 25, 2022

FAC: August 25, 2022

Trial date: Not set

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

2 **PLEASE TAKE NOTICE** that on December 11, 2023, at 8:30 a.m., in Department S-26
3 of the San Bernardino County Superior Court, 247 West Third Street, San Bernardino, CA 92415-
4 0210, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq.*,
5 Plaintiff Arthur Juarez will, and hereby does, move the Court for an Order granting preliminary
6 approval of the proposed class action and PAGA settlement between Plaintiff and Defendant
7 Consolidated Hospitality Supplies, LLC. Plaintiff further will and hereby does move the Court for
8 an Order:

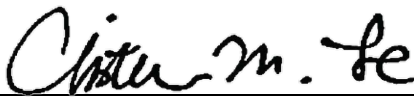
- 9 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement
10 and Class Notice;
11 2. Certifying a Class for settlement purposes;
12 3. Approving the Class Notice and the plan for distribution of the Notice;
13 4. Appointing Plaintiff Arthur Juarez as Class Representative for settlement purposes;
14 5. Appointing Plaintiff's Counsel, Justin F. Marquez, Christina M. Le, and Arsiné
15 Grigoryan of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes;
16 6. Appointing CPT Group, Inc., as the Settlement Administrator; and
17 7. Scheduling a final approval hearing.

18 The motion is based upon this notice, the attached memorandum of points and authorities,
19 the Declarations of Justin F. Marquez and Arthur Juarez filed concurrently herewith, the records
20 and files in this action, and any other further evidence or argument that the Court may properly
21 receive at or before the hearing.

22 Respectfully submitted,

23 Dated: November 15, 2023

WILSHIRE LAW FIRM

24 By: 
25 Justin F. Marquez
26 Christina M. Le
27 Arsiné Grigoryan

28 Attorneys for Plaintiff

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1 Motion for Preliminary Approval of Class Action and PAGA Settlement [“Marquez Decl.”], ¶
2 2.)

3 Plaintiff alleges that Defendants’ payroll, timekeeping, and wage and hour practices resulted
4 in Labor Code violations. Plaintiff alleges that Defendants failed to pay for all hours worked,
5 including but not limited to off-the-clock work. Plaintiff further alleges that Defendants failed to
6 provide employees with legally compliant meal and rest periods, and Defendants failed to reimburse
7 for necessary business-related expenses. Based on these allegations, Plaintiff asserts related claims
8 for failure to provide accurate wage statements, failure to pay all final wages at termination, unfair
9 business practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

10 1. On February 25, 2022, Plaintiff filed a putative wage-and-hour class action
11 complaint (“Class Action”) against Defendants for: (1) failure to pay minimum and straight time
12 wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize
13 and permit rest periods; (5) failure to provide accurate itemized wage statements; (6) failure to
14 reimburse business expenses; and (7) violation of California’s Unfair Competition Law, California
15 Business and Professions Code §§ 17200, et seq. On March 4, 2022, Plaintiff sent a notice to
16 Defendants and the California Labor & Workforce Development Agency (“LWDA”) alleging wage-
17 and-hour violations pursuant to PAGA, Cal. Lab. Code §§ 2699, et seq. On March 4, 2022, Plaintiff
18 sent a notice to Defendants and the California Labor & Workforce Development Agency (“LWDA”)
19 alleging wage-and-hour violations pursuant to PAGA, Cal. Lab. Code §§ 2699, et seq. On August
20 25, 2023, Plaintiff filed the First Amended Complaint, adding claims for civil penalties under
21 PAGA, and sick leave and regular rate of pay violations, pursuant to a stipulation submitted by the
22 Parties and granted by the Court. The operative complaint will be the Second Amended Complaint.
23 Pursuant to the Settlement Agreement, the Parties have filed a stipulation to amend the complaint,
24 thereby filing a Second Amended Complaint adding Defendants Axis Global Solutions, Inc., and
25 American Tex-Chem Corporation, and adding a claim under California Labor Code §203. The
26 Stipulation and proposed Second Amended Complaint was filed on November 14, 2023, and the
27 Parties anticipate the complaint will be filed by the time this Motion is heard.
28

1 **B. Discovery and Investigation**

2 Following the filing of the Complaint, the parties exchanged documents and information
3 before mediating this action. Defendants produced a sample of time and pay records for class
4 members. Defendants also provided documents of its wage and hour policies and practices
5 during the class period, and information regarding the total number of current and former
6 employees in its informal discovery responses. (*Id.* at ¶ 5.)

7 After reviewing documents regarding Defendants’ wage and hour policies and practices,
8 analyzing Defendants’ timekeeping and payroll records, Class Counsel was able to evaluate the
9 probability of class certification, success on the merits, and Defendants’ estimated maximum
10 monetary exposure for all claims. (*Id.* at ¶ 6.) Class Counsel also investigated the applicable
11 law regarding the claims and defenses asserted in the litigation. Class Counsel reviewed these
12 records and prepared a damage analysis prior to mediation. (*Id.* at ¶ 6.)

13 **C. Settlement Negotiations**

14 On April 11, 2023, the Parties participated in private mediation with experienced class
15 action mediator, Steven J. Serratore, Esq. The mediation was conducted via Zoom. The
16 settlement negotiations were at arm’s length and, although conducted in a professional manner,
17 were adversarial. The Parties went into the mediation willing to explore the potential for a
18 settlement of the dispute, but each side was also prepared to litigate their position through trial
19 and appeal if a settlement had not been reached. (*Id.* at ¶ 7.)

20 After extensive negotiations and discussions regarding the strengths and weaknesses of
21 Plaintiff’s claims and Defendants’ defenses, the Parties reached a settlement, the material terms
22 of which are encompassed within the Settlement Agreement. (*Id.* at ¶ 8, **Ex. 1** [Joint Stipulation
23 of Class Action and PAGA Settlement (“Settlement Agreement”) and **Ex. 2**. [Notice of Class
24 and PAGA Action Settlement (“Notice”)].)

25 Class Counsel has conducted a thorough investigation into the facts of this case. Based
26 on the foregoing discovery and their own independent investigation and evaluation, Class
27 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
28 interests of the Settlement Class Members in light of all known facts and circumstances, the risk

of significant delay, the defenses that could be asserted by Defendants both to certification and on the merits, trial risk, and appellate risk. (*Id.* at ¶ 14.)

Indeed, the \$410,000.00 Settlement represents **66% of the realistic maximum recovery of \$619,319.82.** (*Id.* at ¶ 24.) Although Class Counsel estimated that Defendants’ maximum potential liability for all claims was approximately \$2.8 million, when the risk of prevailing at certification and trial are factored into the equation, Class Counsel believes that Defendants’ realistic exposure was \$619,319.82 meaning the Settlement achieves a significant recovery. (*Id.* at ¶¶ 14-28.) Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 26.) Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

D. Key Terms of the Proposed Settlement

The Settlement’s key terms include:

1. Settlement Class Definition: “All persons who worked for Defendants as non-exempt, hourly paid employees in California at any time from August 31, 2017 to July 10, 2023.” (Settlement, Definitions, § 4.)
2. Participating Class Members: “all Class Members who do not submit timely and valid Requests for Exclusion.” (Settlement, Definitions, § 21.)
3. Gross Settlement Amount: The Gross Settlement Amount is \$410,000.00 and is “to be paid by Defendants in full satisfaction of all Released Class Claims and Released PAGA Claims, which includes the Individual Settlement Payments, Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, the PAGA Settlement Amount, and Settlement Administration Costs. In no event will Defendants be liable for more than the Gross Settlement Amount except as otherwise explicitly set forth herein. There will be no reversion of the Gross Settlement Amount to Defendants. Defendants will separately be responsible for any employer-side payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions, which shall not be paid from the Gross Settlement Amount.” (Settlement, Definitions, § 12.)
- Un-cashed Settlement Checks: “Funds represented by Individual Settlement Payment checks

1 returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for
2 more than one hundred and eighty (180) calendar days after issuance will be tendered to Legal
3 Aid at Work, 180 Montgomery St. #600, San Francisco, CA 94104, a Court approved nonprofit
4 organization consistent with Code of Civil Procedure Section 364, subd. (b). The Parties do not
5 have any interest or involvement in the governance or administration of Legal Aid at Work that
6 would in any way create a conflict of interest.” (Settlement, Terms of Agreement§ 59.)

7 “Released Class Claims” means all claims, rights, demands, liabilities, and causes of action
8 that are alleged or reasonably could have been alleged, including without limitation violations of
9 any state or federal statutes, rules, or regulations (including the Fair Labor Standards Act), arising
10 from, or related to, the facts and theories set forth in the operative complaint during the Class Period,
11 including but not limited to: (i) all claims for unpaid overtime; (ii) all claims for meal and rest break
12 violations; (iii) all claims for unpaid wages; (iv) all claims for the failure to reimburse for necessary
13 business expenses; (v) all claims for failure to timely pay wages upon termination; (vi) all claims
14 for the failure to timely pay wages during employment; (vii) all claims for wage statement
15 violations; (viii) all claims for failure to maintain accurate payroll records; and (ix) all claims
16 asserted through California Business & Professions Code §§ 17200, *et seq.* (Settlement,
17 Definitions, § 24.)

18 “Released PAGA Claims” means all claims for PAGA civil penalties asserted through
19 California Labor Code §§ 2698, *et seq.*, that are alleged or reasonably could have been alleged,
20 arising from, or related to, the facts and theories set forth in the operative complaint and PAGA
21 Notice during the PAGA Period, including but not limited to: (i) all claims for unpaid overtime; (ii)
22 all claims for meal and rest break violations; (iii) all claims for unpaid wages; (iv) all claims for the
23 failure to reimburse for necessary business expenses; (v) all claims for the failure to timely pay
24 wages upon termination; (vi) all claims for the failure to timely pay wages during employment; (vii)
25 all claims for wage statement violations; and (viii) all claims for inaccurate payroll records.
26 (Settlement Definitions, § 25.)

27 4. PAGA Settlement Amount: The Parties have agreed that Twenty Five Thousand
28 Dollars (\$25,000.00) of the Gross Settlement Amount will be allocated to the PAGA Settlement.

Pursuant to PAGA, Seventy-Five Percent (75%) or Eighteen Thousand Seven Hundred and Fifty Dollars (\$18,750), of the PAGA Settlement Amount will be paid to the California Labor and Workforce Development Agency (“Labor and Workforce Development Agency Payment”), and Twenty-Five Percent (25%), or Six Thousand Two Hundred Fifty (\$6,250), of the PAGA Settlement will be disbursed to PAGA Members, regardless whether they request to be excluded from the Settlement Class.” (Settlement, Definitions, § 19.)

5. Net Settlement Amount: The “Net Settlement Amount” shall be calculated by deducting from the Gross Settlement Amount (\$410,000.00.00) the following sums, subject to approval by the Court: (1) Plaintiff’s attorney’s fees (not to exceed 35% of the Gross Settlement Amount, or \$143,500.00); (2) Plaintiff’s attorney’s reasonable litigation costs (not to exceed \$25,000.00); (3) the Service Payment (not to exceed \$5,000.00 to Plaintiff); (4) the PAGA Allocation (\$25,000.00); and (5) costs of settlement administration (estimated not to exceed \$20,000). (Settlement, Terms of Agreement, § 33-37.)

6. Distribution Formula: “Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned from the Net Settlement Fund and PAGA Fund based on the number of workweeks a Class Member worked during the Class Period and the number of pay periods a PAGA Member worked during the PAGA period. All Class Members will be credited with at least one workweek during the Class Period, and all PAGA Members will be credited with at least one pay period during the PAGA Period.” (Settlement, Terms of Agreement, §41.)

7. Payments from the Net Settlement Fund: Defendants will calculate the total number of approximate workweeks worked by each Class Member during the Class Period and the aggregate total number of workweeks worked by all Class Members during the Class Period. In addition, in order to account for settlement of former employees’ claims for failure to timely pay wages at termination, all former employees will have their workweek total multiplied by 1.5. To determine each Class Member’s estimated “Individual Settlement Payment” from the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by aggregate total number of workweeks, resulting in the “Workweek

Value.” Each Class Member’s “Individual Settlement Payment” will be calculated by multiplying each individual Class Member’s total number of workweeks by the Workweek Value. The Individual Settlement Payment will be reduced by any required deductions for each Participating Class Member as specifically set forth herein, including employee-side tax withholdings or deductions. The entire Net Settlement Fund will be disbursed to all Class Members who did not submit timely and valid Requests for Exclusion. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Participating Class Member according to the number of workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.” (Settlement, Terms of Agreement, §41(a).)

8. Payments from the PAGA Fund: “Defendants will calculate the total number of pay periods worked by each PAGA Member during the PAGA Period and the aggregate total number of pay periods worked by all PAGA Members during the PAGA Period. To determine each PAGA Member’s estimated “Individual Settlement Payment,” the Settlement Administrator will use the following formula: The PAGA Fnd will be divided by the aggregate total number of pay periods, resulting in the “PAGA Pay Period Value.” Each PAGA Member’s “Individual Settlement Payment” will be calculated by multiplying each individual PAGA Member’s total number of pay periods by the PAGA Pay Period Value. The entire PAGA Fund will be disbursed to all PAGA Members.” (Settlement, Terms of Agreement, §41(b).)

9. Tax Allocation: “All Individual Settlement Payments will be allocated as follows: (i) ten Percent (10%) of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued; and (ii) Ninety (90%) will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.” (Settlement, Terms of Agreement, §61.)

10. Class Representative Enhancement Payment: “In exchange for a general release, and in recognition of his effort and work in prosecuting the Action on behalf of Class Members, Defendants agree not to oppose or impede any application or motion for a Class Representative Enhancement Payment of Five Thousand Dollars (\$5,000). The Class Representative Enhancement Payment will be paid from the Gross Settlement Amount and will be in addition to

1 Plaintiff's Individual Settlement Payment paid pursuant to the Settlement. Plaintiff will be solely
2 and legally responsible for paying any and all applicable taxes on the Class Representative
3 Enhancement Payment.” (Settlement, Terms of Agreement, §35).

4 11. Attorneys' Fees and Costs: “Defendants agree not to oppose or impede any
5 application or motion by Class Counsel for Attorneys' Fees and Costs of not more than One
6 Hundred and Forty Three Thousand Five Hundred Dollars (\$143,500), plus the reimbursement of
7 all out-of-pocket costs and expenses associated with Class Counsel's litigation and settlement of
8 the Action (including expert/consultant fees, investigations costs, etc.), not to exceed Twenty Five
9 Thousand Dollars (\$25,000), both of which will be paid from the Class Settlement Amount.”
10 (Settlement, Primary Terms of Settlement, § 34.)

11 12. Notice of Proposed Class Action Settlement: “Within ten (10) calendar days after
12 receiving the Class Lists from Defendants, the Settlement Administrator will mail a Notice Packet
13 to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing
14 addresses identified in the Class List. All Class Members will be mailed a Notice Packet. Each
15 Notice Packet will provide: (i) information regarding the nature of the Action; (ii) a summary of
16 the Settlement's principal terms; (iii) the Settlement Class and PAGA Member definitions; (iv)
17 the total number of workweeks and pay periods each respective Class Member and PAGA
18 Member worked for Defendants during the Class Period and PAGA Period; (v) each Class
19 Member's and PAGA Member's estimated Individual Settlement Payment and the formula for
20 calculating Individual Settlement Payments; (vi) the dates which comprise the Class Period and
21 PAGA Period; (vii) instructions on how to submit Requests for Exclusion or Notices of Objection;
22 (viii) the deadlines by which the Class Members must postmark or fax Request for Exclusions, or
23 postmark Notices of Objection to the Settlement; and (ix) the claims to be released. (Settlement,
24 Terms of Agreement, §§ 45, 47.)

25 **III. DISCUSSION**

26 To prevent fraud, collusion, or unfairness to the class, the settlement of a class action
27 requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This
28 Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super.*

Ct. (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include the strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require "an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims", but instead, only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."].)

As discussed below, Class Counsel has provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed settlement is fair, adequate, and reasonable.

A. The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation

1. The Settlement Is the Product of Discovery, Investigation, and Informed and Non-Collusive Arm's-Length Negotiations

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption here that the negotiations were conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.) Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super.*

1 Ct. (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact
2 that a plaintiff might have received more if the case had been fully litigated is no reason not to
3 approve the settlement.”].)

4 The Settlement was reached following extensive negotiations following one day of
5 mediation with experienced employment mediator, Steven J. Serratore, Esq. (Marquez Decl. ¶ 7.)
6 The settlement negotiations were at arm’s length and, although conducted in a professional manner,
7 were adversarial. (*Id.*) The parties went into the mediation willing to explore the potential for a
8 settlement of the dispute, but each side was also prepared to litigate their or its position through trial
9 and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions
10 regarding the strengths and weaknesses of Plaintiff’s claims and Defendants’ defenses, the Parties
11 reached an agreement. (*Id.* at ¶ 8.)

12 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
13 the claims set forth in the Litigation, such as a sample of class member timekeeping and payroll
14 records, Defendants’ policies and procedures concerning the payment of wages, the provision of
15 meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well
16 as information regarding the number of putative class members and the mix of current versus former
17 employees, the wage rates in effect, and the amount of meal and rest period premium wages paid to
18 class members. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation, Class
19 Counsel investigated the applicable law regarding the claims and defenses asserted in the litigation.
20 (*Id.*) Thus, Plaintiff and his counsel were able to act intelligently and effectively in negotiating the
21 proposed Settlement. (*Id.*)

22 Class Counsel also has considerable experience and has demonstrated competence with
23 litigating wage and hour class actions. (*Id.* at ¶¶ 39-50.) Again, this supports the position that the
24 terms of the Settlement are premised on objective evidence that has been considered and weighed
25 in light of the risks, expenses, and time consumption to both sides of continued litigation of this
26 action.

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1 **2. The Settlement Is Fair and Reasonable in Light of the Parties’ Respective**
2 **Legal Positions**

3 Defendants have aggressively denied any liability as to any of the claims. Yet, a settlement
4 was reached through good faith negotiation and efforts to provide a fair and reasonable resolution
5 that avoids the risks and expense of further litigation. A settlement is not judged against what might
6 plaintiff recover had he prevailed at trial, nor does the settlement have to provide 100% of the
7 damages sought to be fair and reasonable. (*Wershba v. Apple Computers, Inc.* (2001) 91
8 Cal.App.4th 224, 246, 250 [“Compromise is inherent and necessary in the settlement process...even
9 if the relief afforded by the proposed settlement is substantially narrower than it would be if the
10 suits were to be successfully litigated, this is no bar to a class settlement because the public interest
11 may indeed be served by a voluntary settlement in which each side gives ground in the interest of
12 avoiding litigation.”].)

13 This settlement avoids the risks and the accompanying expense of further litigation.
14 (Marquez Decl., ¶ 26.) While Plaintiff is confident in the merits of his claims, a legitimate
15 controversy exists as to each cause of action. (*Id.* at ¶ 25.) Plaintiff also recognizes that proving
16 the amount of wages due to each class member would be an expensive, time-consuming, and
17 uncertain proposition. (*Id.*)

18 The proposed settlement of \$410,000.00 therefore represents a substantial recovery when
19 compared to Plaintiff’s reasonably forecasted recovery. (*Id.* at ¶¶ 14-28.) Because of the proposed
20 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
21 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
22 achieving class certification, the burdens of proof necessary to establish liability, the probability of
23 appeal of a favorable judgment, it is clear that the settlement amount of \$410,000.00 is within the
24 “ballpark” of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed,***
25 ***each Settlement Class Member is eligible to receive a gross average net benefit of approximately***
26 ***\$1,063.89.*** (*Id.* at ¶ 27.)

27 **3. Class Counsel Has Extensive Experience in Class Action Litigation**

28 The settlement negotiations were conducted by highly capable and experienced counsel.

1 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
2 experienced in handling complex wage and hour class action litigation. (Marquez Decl., ¶¶ 39-50.)
3 Although Plaintiff and his counsel were prepared to litigate the claims alleged in the litigation, they
4 support the proposed Settlement as being in the best interests of the class.

5 Defendants is represented by Greenberg Traurig, LLP, a respected defense firm, and the
6 attorneys defending the instant action are also seasoned class and PAGA attorneys.

7 **B. The Proposed Class Notice of Settlement Should Be Approved**

8 The proposed Notice should be approved for dissemination to the class and sub-class. The
9 Notice informs the class of the terms of the settlement and of their rights to be excluded from the
10 settlement. And if there are class members who wish to object to this proposed class action
11 settlement, they will have the opportunity to file their objections and be heard at the Final Approval
12 Hearing. Accordingly, the proposed Notice meet all the requirements of Rule 3.769(f) of the
13 California Rules of Court.

14 **C. The Proposed Attorneys' Fees and Costs Are Reasonable**

15 Under the Settlement, subject to the Court's approval, Defendants agrees to pay Class
16 Counsel reasonable attorneys' fees in amount of \$143,500.00, which is 35% of the gross Settlement
17 Amount, and up to \$25,000.00 in costs. These amounts are disclosed to all class members in the
18 proposed Notice and are reasonable.

19 **1. Class Counsel Request an Award of Fees Based on the "Common Fund"**
20 **Method**

21 California courts have long awarded attorneys' fees as a percentage of the benefit created
22 by counsel in creating a common fund. The California Supreme Court held that "when a number
23 of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs
24 for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
25 may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34, quoting
26 *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

27 Class Counsel seeks an award of attorneys' fees on the "percentage of recovery/ common
28 fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all

1 the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent*,
2 *supra*, 557 F.2d at p. 769.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California
3 Supreme Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund
4 from which others derive benefits may require those passive beneficiaries to bear a fair share of the
5 litigation costs.” (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12
6 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been
7 applied “consistently in California when an action brought by one party creates a fund in which
8 other persons are entitled to share.” (*Id.* at p. 110.)

9 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
10 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
11 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
12 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
13 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
14 method—including relative ease of calculation, alignment of incentives between counsel and the
15 class, a better approximation of market conditions in a contingency case, and the encouragement it
16 provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
17 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
18 (*Id.* [internal citations omitted].)

19 **2. The Requested Fee Award Is in Line with Typical Cases**

20 According to a leading treatise on class actions, “No general rule can be articulated on what
21 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
22 reasonable fee award from a common fund in order to assure that the fees do not consume a
23 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
24 are not unprecedented.” (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.)
25 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty
26 to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; see also
27 *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F.Supp. 294 [stating that most
28 cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million].)

1 Here, Plaintiff requests attorneys' fees equal to 35% of the Settlement Amount, which is in
2 line with the prevailing guidelines established in California case law and academic literature, and
3 is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66,
4 n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar
5 method is used, fee awards in class actions average around one-third of the recovery."].)
6 Accordingly, Plaintiff respectfully requests that the Court approve the attorneys' fees as negotiated
7 by the parties and requested herein.

8 **3. This Matter Involves A "Fee-Shifting" Provision of the Labor Code**

9 Labor Code § 1194(a) provides for the recovery of "minimum wage or overtime
10 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Under this
11 section, Plaintiff would be permitted to recover his actual attorneys' fees, even if those fees were
12 larger than the total class recovery at the conclusion of this case. This settlement is beneficial in
13 that it limits the risk of continued expenses and consumption of time, energy, and resources facing
14 Defendants while at the same time rewarding Class Counsel for their decision to assume risk by
15 taking on this matter. In fact, prosecution of this action involved significant financial risk for Class
16 Counsel. (Marquez Decl., ¶¶ 37-38.) Class Counsel undertook this matter solely on a contingent
17 basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the
18 Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class
19 ahead of all other concerns.

20 **4. The Experience, Reputation and Ability of Class Counsel Support the** 21 **Requested Fee Award**

22 As demonstrated by their past experience in pursuing class actions on behalf of consumers
23 and employees, Class Counsel possesses considerable expertise in litigating class actions. (Marquez
24 Decl., ¶¶ 39-50.) Class Counsel has been involved as lead counsel or co-counsel in several class
25 actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class
26 counsel commensurate with their skill, reputation and experience, Class Counsel's requested fee
27 award is supported here.

28 Class Counsel's experience in wage and hour class actions was integral in evaluating the

1 strengths and weaknesses of the case against Defendants and the reasonableness of the settlement.
2 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the
3 rapidly evolving substantive law (state and federal), as well as the procedural law of class action
4 litigation. Based on these and other factors, Class Counsel has frequently received fee awards of
5 this percentage from the gross recovery for the class. Therefore, the requested fee award is
6 reasonable and fair.

7 **D. The Service Award to Named Plaintiff Is Reasonable**

8 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
9 compensate them for the expense or risk they have incurred in conferring a benefit on other
10 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
11 of class action settlement agreements containing enhancements for the class representatives, which
12 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
13 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
14 2009) 563 F.3d 948, 958-59.)

15 Service awards are particularly important to plaintiffs in wage and hour cases because they
16 promote the important public policies underlying the wage and hour laws. This strong policy is
17 codified in California Labor Code section 90.5, which provides, “it is the policy of this state to
18 vigorously enforce minimum labor standards in order to ensure employees are not required or
19 permitted to work under substandard unlawful conditions....”). Nonetheless, the California
20 Supreme Court has noted that “retaliation against employees for asserting statutory rights under the
21 Labor Code is widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry*
22 *v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be
23 rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman*
24 *Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

25 Under the settlement agreement, subject to the Court’s approval, Defendants agreed to pay
26 a Service Award in the amount of \$5,000 to Plaintiff. This amount is also in exchange for Plaintiff’s
27 general release of all claims against Defendants. Class Counsel represent that Plaintiff devoted a
28 great deal of time and work assisting counsel in the case, communicated with counsel very

frequently for litigation and to prepare for mediation, and was frequently in contact with Class Counsel during the mediation. (Marquez Decl., ¶¶ 29-33.) This amount is reasonable particularly in light of the substantial benefits Plaintiff generated for all class members. (*Id.*) Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation, et al.*, No. 2:14-cv-02509-TLN-DB, Class Counsel Justin F. Marquez helped negotiate a \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000 class representative incentive award for each named plaintiff. (Marquez Decl., ¶ 33.)

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. Indeed, a 2006 study examining the average incentive award given to class action plaintiffs from 1993 to 2002 found that the “average award per class representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”, 53 UCLA L. Rev. 1303, 1308 (2006).) That same study found that named plaintiffs in employment discrimination class actions received an average award of \$69,850 and a median award of \$31,081, while named plaintiffs in other employment class actions received an average award of \$12,121 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in employment cases reflected the “courts’ wish to make representative plaintiffs whole by compensating them for the high costs of their service to the class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

A. Legal Standard

The proposed Settlement Class is well suited for class certification. All the claims derive from a core set of alleged violations of California’s wage and hour laws and regulations. For the reasons set forth more fully below, for purposes of settlement only, the Class satisfies the prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: “when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to section 382: “(1)

1 There must be an ascertainable class; and (2) there must be a well-defined community of interest in
2 the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow Cab*
3 *Co.* (1967) 67 Cal. 2d 695, 704 [citations omitted].) To clarify these requirements, the California
4 Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-
5 interest requirement itself embodies three factors: “(1) predominant questions of law or fact; (2)
6 class representatives with claims or defenses typical of the class; and (3) class representatives who
7 can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 470.)

8 California law and policy favor the fullest and most flexible use of the class action device.
9 (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a
10 means to prevent a failure of justice in our judicial system” particularly where the rights of
11 consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to
12 the appropriateness of class treatment should be resolved in favor of certification. (*Richmond*,
13 *supra*, 29 Cal.3d at pp. 473-75.)

14 **B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for**
15 **Settlement Purposes.**

16 **1. The Classes Are Ascertainable and Numerous**

17 The proposed class that Plaintiff seeks to represent is easily ascertainable and includes
18 approximately 160 employees of Defendants.

19 Plaintiff maintains that there is an easily ascertainable class, defined by objective and precise
20 criteria. Because class members are identified using specific criteria in the regular business records
21 of Defendants, i.e., job position, the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.* (2000)
22 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the subject
23 of the lawsuit is sufficient to make the class ascertainable].)

24 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
25 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
26 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action
27 may be maintained as a class action even where the parties are numerous and it is in fact practicable
28 to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a class

1 action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a
2 trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574;
3 see also, *Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) Therefore, Plaintiff
4 contends that numerosity is plainly satisfied.

5 **2. There are Many Common Issues of Law and Fact Which Predominate**

6 The Court should grant conditional class certification for settlement purposes here on the
7 grounds that questions of law and fact common to all class and subclass predominate over any
8 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
9 warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
10 Cal.App.3d 605.)

11 Here, the employment practices at issue are: whether Defendants had legally compliant
12 policies and practices to provide employees with meal periods; whether Defendants had legally
13 compliant policies and practices authorizing and permitting its employees to take rest periods;
14 whether Defendants had legally compliant policies and practices for all hours worked, including
15 overtime wages and off-the clock work; whether Defendants paid overtime and sick pay at the
16 appropriate regular rates of pay; where Defendants failed to reimburse employees for necessary
17 business related expenses; whether final payment of wages was untimely and excluded unpaid
18 wages, including meal period premium wages, and rest period premium wages; and whether the
19 wage statements were consequently non-compliant. Plaintiff contends that the factual and legal
20 issues are the same for all the identified class members, including Plaintiff. Further, all class
21 members suffered from, and seek redress for, the same alleged injuries.

22 **3. Plaintiff’s Claims Are Typical of the Claims of the Class**

23 The typicality requirement does not focus on the individual characteristics or circumstances
24 of the representative plaintiff compared to those of the remainder of the class, but rather upon the
25 typicality of the proposed representative’s claims as they relate to the Defendants’ conduct and
26 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 “[t]he only requirements are that
27 common questions of law and fact predominate and that the class representative be similarly
28 situated” vis-à-vis the class.]) A representative plaintiff’s claims are typical of the class if they

1 arise from the same event, practice or course of conduct, and if the claims rest on the same legal
2 theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendants; as
3 such, he alleges that he was subject to the same policies and practices as other similarly situated
4 employees.

5 **4. Plaintiff and His Counsel Meet the Adequacy Requirement**

6 The adequacy of representation requirements is met by fulfilling two conditions: first, a
7 named plaintiff must be represented by counsel qualified to conduct the pending litigation; second,
8 a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of*
9 *America* (1976) 60 Cal.App.3d 442, 451.)

10 All of these requirements are met here for settlement purposes. Plaintiff retained counsel
11 with extensive experience in prosecuting complex class actions, including similar class actions that
12 previously settled. (Marquez Decl., ¶¶ 39-50.) Class Counsel unquestionably is "qualified,
13 experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148
14 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel,
15 litigated this case and diligently reviewed the settlement terms, showing their dedication. Plaintiff's
16 willingness to serve as a representative demonstrates his serious commitment to bringing about the
17 best results possible for the class and subclass. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

18 **5. A Class Action is Superior to a Multiplicity of Litigation**

19 Finally, in making its class certification decision, the Court must determine that a class
20 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
21 By consolidating many potential individual actions into a single proceeding, this Court's use of the
22 class action device enables it to manage this litigation in a manner that serves the economics of
23 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-
24 situated employees with small but nevertheless meritorious claims for damages would, as a practical
25 matter, have no means of redress because of the time, effort and expense required to prosecute
26 individual actions. (*Gentry v. Super. Ct.* (2007) 42 Cal. 4th 443, 457-62; *Leyva v. Medline Ind.* (9th
27 Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are
28 essentially non-existent.

1 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

2 **A. The Proposed Notice Plan Satisfies Due Process**

3 Notice requirements are set forth in the California Rules of Court. Cal. Rules of Court, Rule
4 3.766 (e) and (f). California law vests the Court with broad discretion in fashioning an appropriate
5 notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no statutory or
6 due process requirement that all class members receive actual notice, but in this matter, the class
7 members will receive direct mailed notice. As the Court of Appeals has explained, “[t]he notice
8 given should have a reasonable chance of reaching a substantial percentage of the Class Members
9” (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided by direct
10 mailing, the best possible form of notice.

11 **B. The Notice is Accurate and Informative**

12 The proposed Notice should be approved. It will be disseminated through direct U.S. first
13 class mail to the last known address for each Class Member. It informs the Class Members of the
14 terms of the settlement and their right to be excluded from the Settlement. And if there are Class
15 Members who wish to object to this proposed class action settlement, they will have the opportunity
16 to file their objections and be heard at the Final Approval Hearing.

17 The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg,
18 Newberg on Class Actions (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the terms
19 and conditions of the settlement agreement, in an informative and coherent manner. It makes
20 clear that the settlement agreement does not constitute an admission of liability by the
21 Defendants, who denies all liability, and it recognizes that this Court has not ruled on the merits
22 of the action. It also states that the final settlement approval decision has yet to be made. The
23 Notice thus complies with the standards of fairness, completeness, and neutrality required of a
24 combined settlement-certification class notice.

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1 **VI. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
3 approval of the proposed settlement and set a Final Approval Hearing for in early to mid-March
4 2024.

5
6
7 Dated: November 15, 2023

Respectfully submitted,

WILSHIRE LAW FIRM

8
9 By:



Justin F. Marquez

Christina M. Le

Arsiné Grigoryan

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11 Attorneys for Plaintiff
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PROOF OF SERVICE

Arthur Juarez v. Consolidated Hospitality Supplies, LLC
CIVSB2204353

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Sandy S. Sespene, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is ssespene@wilshirelawfirm.com.

On November 15, 2023, I served the foregoing **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Ashley Farrell Pickett (SBN 271825)
farrellpicketta@gtlaw.com
Bryan W. Patton (SBN 294910)
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GREENBERG TRAURIG, LLP
1840 Century Park East, Suite 1900
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Attorneys for Defendant,
Consolidated Hospitality Supplies, LLC

- (X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.
- (X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **November 15, 2023**, at Los Angeles, California.



Sandy Sespene