

Eric K. Yaeckel [CSB No. 274608]
yaeckel@sullivanlawgroupapc.com

Ryan T. Kuhn [CSB No. 339223]
ryan@sullivanlawgroupapc.com

SULLIVAN & YAECKEL LAW GROUP, APC
2330 Third Avenue
San Diego, California 92101
(619) 702-6760 * (619) 702-6761 FAX

Attorneys for Plaintiff DOUGLAS HILL, Individually, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

DOUGLAS HILL, Individually, and on
behalf of other members of the general public
similarly situated

Plaintiff

v.

GRAND RESTAURANT GROUP, a Nevada
Corporation, GRAND RESTAURANT
GROUP, INC., a Suspended California
Corporation, and DOES 1-10, inclusive

Defendants

CASE NO. 37-2022-00022886-CU-OE-CTL
(Proposed CLASS ACTION)

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S *UNOPPOSED* MOTION
FOR PRELIMINARY APPROVAL OF
SETTLEMENT, AND CERTIFICATION
OF PROVISIONAL SETTLEMENT
CLASS**

Date: June 23, 2023
Time: 10:30 a.m.
Dept: C-64
Judge: Hon. John S. Meyer

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I. SUMMARY OF MOTION

This matter is a “Wage and Hour” representative (*i.e.* “PAGA”) and *proposed* class action. Plaintiff DOUGLAS HILL, Individually, and on behalf of other members of the general public similarly situated, (“Plaintiff”) brings Labor Code claims against Defendant GRAND RESTAURANT GROUP (hereinafter, “GRG” or “Defendant”).

Following a full day Mediation, the parties have agreed to the terms of a proposed class and PAGA action settlement. The parties have drafted and executed a Joint “Stipulation of Settlement and Release” (the “Agreement”), lodged as **Exhibit A**¹ to the declaration of Eric K. Yaeckel. Briefly, the parties’ settlement figures are estimated as follows:

Approximate size of class:	858 individuals
Gross Settlement Amount (“GSA”):	\$425,000.00
Net Settlement Amount (“NSA”):	\$220,027.08
Settlement Administration:	\$13,306.25
Costs/expenses of litigation:	\$15,000.00 (or less)
Class Representative Enhancement	\$5,000.00
Response Period:	30 days from Mailing of Notice
LWDA payment:	\$30,000.00 (75% Share of \$40,000 allocation)
Attorney's fees:	1/3 of GSA (\$141,666.67)

The estimated average payment (before taxes) to each Class Member based on the above figures will be **\$256.44**. These estimates are an “average” only, and do not account for the fact that Class Members will receive more or less than an “average” share, as the amounts owed are calculated based on the number of workweeks each individual worked for Defendants during the class period.

Please Note: This is a **non reversionary** settlement, in that the entire Net Settlement Amount, after the awarded costs, taxes and fees are deducted, will be automatically disbursed to all Class Members who do not file a request to “opt-out” of participation in the lawsuit. (**Exhibit A** at ¶ 49).

¹ This Memorandum incorporates by reference the definitions in the Agreement and the terms used herein are intended to have the same meaning as set forth in the Agreement.

1 Plaintiff now moves the Court for an order: **(1)** preliminarily approving the proposed class
2 action settlement; **(2)** provisionally certifying the proposed class; **(3)** directing that Notice (defined
3 below) of the proposed settlement be provided to Class Members; and **(4)** scheduling a hearing for
4 final approval of the proposed settlement and entry of the parties' proposed Final Approval Order and
5 Judgment. Defendants do not oppose Plaintiff's motion.

6 **II. FACTUAL AND PROCEDURAL HISTORY**

7
8 The putative class is comprised of all current and former nonexempt employees of Defendant
9 and the California locations under Defendant's umbrella who were employed between June 14, 2018,
10 through the date of Preliminary Approval of the Settlement or April 9, 2023, (whichever is sooner).

11 **1. The Operative Claims, Investigation and Informal Discovery Conducted**

12 On **June 14, 2022**, Plaintiff Hill filed the Complaint in this matter. The original Complaint
13 alleged putative class action claims and PAGA representative action claims, under the California Labor
14 code involving, *inter alia*, (1) failure to pay minimum wages; (2) failure to pay proper overtime
15 compensation; (3) failure to provide meal breaks; (4) failure to provide rest breaks; (5) failure to
16 provide all gratuities owed; (6) failure to reimburse employees for necessary business expenses; (7)
17 failure to provide accurate itemized wage statements; and (8) failure to pay all wages to upon
18 termination. (Yaeckel Decl. ¶ 3; ROA # 1).

19 On **July 8, 2022**, Plaintiff propounded discovery requests on Defendant. (Yaeckel decl. ¶ 4).
20 Through these requests, Plaintiff sought, among other information and documents, the identities of
21 putative class members, Defendants' compensation policies, meal and rest period policies, employee
22 handbooks, wage statements, payroll records, time records, job descriptions, and reimbursement
23 policies. (*Id.*).

24 GRG provided discovery responses, documents, and objections to Plaintiff's requests. After
25 a lengthy meet and confer processes, GRG produced, *inter alia*, Plaintiff's time and wage records,
26 copies of the relevant employee handbooks, copies of all other relevant employee policies, the contents
27 of Plaintiff's employee file, Plaintiff's time records, and itemized wage statements. (Yaeckel decl. ¶
28 5).

1 Following substantive exchanges, the parties agreed to explore resolution of this matter. As part
2 of the settlement discussions, GRG agreed to voluntarily produce and verify hundreds of pages of
3 documents. The production included all relevant policies and procedures. It also included large
4 electronic sampling of other class members' time and wage data. (Yaeckel decl. ¶ 6).

5 Plaintiff also requested GRG provide additional informal discovery so that the parties could
6 experience a meaningful mediation. (Yaeckel decl. ¶ 7). GRG provided informal discovery which
7 consisted of, *inter alia*, the number of current and former employees who worked under the GRG
8 umbrella during the limitations period, meal and rest period premiums paid, pay periods at issue, a
9 redacted sampling of employee time records and wage statements, as well as confirmation that various
10 policies and agreements were standard as to the class. (*Id.*).

11 **2. Settlement Discussions**

12 On **November 2, 2022**, the Parties attended a full day mediation before the experienced "Wage
13 and Hour" mediator, Michael J. Roberts. (Yaeckel decl. ¶ 8). Prior to the mediation, counsel for both
14 parties agreed to the informal exchange of information, and case theories and defenses, pertinent to
15 a class-wide settlement. Prior to mediation, plaintiff prepared and provided a detailed mediation brief.
16 (*Id.*) The case did not resolve at mediation.

17 However, the parties continued to share information and continued settlement talks with the
18 assistance of the mediator. (Yaeckel decl. ¶ 9). By February 27 of 2023, the parties were able to come
19 to an agreement in an executed memorandum of understanding on some of the key terms of the
20 settlement. (*Id.*)

21 The parties continued negotiation over final settlement terms. As of **March 29, 2023**, the
22 parties agreed on all final terms of the settlement which was memorialized in the Agreement, which
23 is attached to the declaration of Eric K. Yaeckel as **Exhibit A**. Plaintiff now seeks the Court's
24 preliminary approval of the Agreement.

25 **III. SETTLEMENT TERMS**

26 The Agreement includes the following key terms:
27

28 **1. Contingent Nature of the Settlement**

1 This Agreement is contingent upon preliminary and final approval by the Court, and
2 certification of the Settlement Class is only for purposes of Settlement. If, for any reason, the
3 Settlement does not become final, any certification of any Settlement Class will be vacated, and the
4 Parties will be returned to their positions with respect to the Action as if the Agreement had not been
5 entered into. Should the Settlement not become final, for whatever reason, the fact that the Parties
6 were willing to stipulate provisionally to class certification as part of the Settlement shall have no
7 bearing on, and shall not be admissible in connection with, the issue of whether a class should be
8 certified in a non-settlement context. Defendant expressly reserves the right to oppose class
9 certification and/or proactively move to deny certification should this Settlement be reversed on
10 appeal or otherwise not become final. Defendant does not consent to certification of the Settlement
11 Class or any class for any purpose other than to effectuate the Settlement of this Action. (Ex. A at
12 ¶ 39).

13 **2. Description of the Settlement Classes**

14 Solely for the purposes of the Agreement, the parties have agreed that the term “Class
15 Member” is defined as:

16 All current and former nonexempt employees of Defendant and the California
17 locations under Defendant’s umbrella – specifically, Nick & G’s Restaurant
18 Corp., Bellamy’s Fine Dining Corp., DiCicco’s Old Town Clovis LLC,
19 DiCicco’s Italian Restaurant & Pizzeria, BCR Steakhouse, Alejandra’s
20 Cocina, and Giaola LLC- who were employed between June 14, 2018
through the date of Preliminary Approval of the Settlement or April 9, 2023
(whichever is sooner). (Exhibit A at ¶ 12).

21 The parties estimate that as of January 15, 2023, the Settlement Class consisted of
22 approximately eight hundred and fifty-eight (858) individuals, as determined by Defendant’s
23 employment records. (Ex. A at ¶ 6).

24 **3. Appointment of Settlement Administrator**

25 The parties agreed to use CAC Services, LLC, as the “Settlement Administrator” for purposes
26 of providing the Notice of Class Action Settlement, issuing payments pursuant to the Agreement, and
27 carrying out all duties pursuant to the Agreement. (Ex. A at ¶33). CAC’s sole business is the
28 administration of class action settlements and class action notices. (Yaeckel decl. ¶ 9)

1 **4. Scope of the Release**

2 For purposes of the Agreements, Class Members release all claims that are either or both: (1)
3 alleged in the First Amended Complaint (“FAC”); or (2) which relate to or arise out of the allegations
4 and claims asserted in the FAC and could have been alleged in the FAC relating in any way to
5 violations of the wage and hour provisions of the California Labor Code or the California Wage
6 Orders, or any wage and hour provisions of California law. The precise release language is reflected
7 in **Exhibit A** at ¶ 44(a).

8 **5. Cash Payment and Allocation**

9 The Agreement provides for an automatic Individual Settlement Payment to the members of
10 the Class. No claims need be submitted. Class Members will be entitled to an average share of
11 approximately **\$256.44** (Yaeckel Decl. ¶10). The actual share will depend on the amount of
12 workweeks they were employed during the limitations period. (**Exhibit A** at ¶ 50(c)). The Individual
13 Settlement will be allocated as follows: twenty-five percent (25%) constitutes wages (subject to
14 withholdings and deductions and reported as wage income on a Form W-2) and seventy-five percent
15 (75%) constitutes non-wage penalties, and interest. (**Exhibit A** at ¶ 66).

16 **6. Proposed Settlement and Notice Program**

17 Subject to Court approval, the Parties agree that, within twenty (20) days after the Court enters
18 any Order granting preliminary approval of the Settlement, Defendant GRG will provide to the
19 Settlement Administrator the following information for each Settlement Class Member in a readable
20 Microsoft Office Excel spreadsheet: class member names and last known addresses, social security
21 numbers, and dates of employment. (See **Exhibit A** at ¶ 11 and 53). The Settlement Administrator will
22 perform address updates and verifications, including running all names through the National Change
23 of Address Database, prior to the first mailing. (See **Exhibit A** at ¶ 54). Within 10 days of receipt of
24 the Class List, the Settlement Administrator will mail the Class Notice (“Notice”) to each Class
25 Member, by first class mail. (See **Exhibit A**, at ¶ 54). The parties’ agreed upon Class Notice is attached
26 to the Declaration of Eric Yaeckel, as **Exhibit B**.

27 The Notice is designed to provide Class Members with detailed information about the lawsuit,
28

1 the Agreement, their rights and the settlement benefits, and how to participate, exclude themselves,
2 or object. (See **Exhibit B**). The Class Members will have thirty (30) calendar days (from the date of
3 notice) to request to be excluded, or file objections. (See **Exhibit A**, at ¶ 55; **Exhibit B** at § V(B)).

4 The Class Members will be given notice of the release, and information about the expected
5 settlement amount based on the workweeks employed with Defendants during the Class Period. If they
6 wish to receive a share of the Settlement, Class Members need not take any additional action. Class
7 Members are also given instructions on how to exclude themselves, object to the Settlement, or appear
8 at the final approval hearing to state objections. (See **Exhibit A** at ¶ 59 and ¶ 62; **Exhibit B** at § V).

9 The Notice process also has additional safeguards. For instance, for Notices returned as non-
10 deliverable, the Settlement Administrator will perform a skip-trace and mail or re-mail Notice to an
11 updated address (if any), upon receipt of the returned mail. (See **Exhibit A** at ¶ 56.) It is the intent of
12 the parties that all reasonable means be used to locate Class Members.

13 The Notice will inform Class Members of the number of weeks worked during the Class Period
14 (according to Defendant's records) and their estimated settlement amounts. Class Members will have
15 the opportunity to dispute the workweek calculation by submitting written documentation to the
16 Settlement Administrator. (See **Exhibit A** at ¶ 57 and **Exhibit B** at IV(D)).

17 PAGA Members do **not** require notice prior to a settlement, nor may they opt out of the PAGA
18 penalty portion of the settlement. *Robinson v. S. Ctys. Oil*, (2020) 53 Cal. App. 5th 476, 482–83, (Nov.
19 24, 2020). PAGA members are nonetheless informed of the Settlement and estimated payments.
20 PAGA members who are Class Members can opt-out of the Class Settlement to retain all claims in
21 their individual capacities. These rights are explained in the Class Notice. (**Exhibit B** at § V(B)).

22 **7. Contingent Costs**

23 The Agreement provides for One Hundred and Forty-One Thousand, Six Hundred and Sixty-
24 Six Dollars and Sixty Seven cents (\$141, 666.67) in Attorneys' Fees, which is one-third (1/3%) of the
25 total Settlement, and up to Fifteen Thousand Dollars (\$15,000.00) in litigation costs. (See **Exhibit A**
26 at ¶ 43). For costs incurred in administrating the Settlement, the Agreement provides for an estimated
27 Ten Thousand Nine Hundred and Eighty Dollars and Sixty Cents (\$10,980.60). (See **Exhibit A** at ¶
28

34 and ¶ 45).

The Agreement also provides for Forty Thousand Dollars to be allocated for Plaintiff's PAGA claims with 75% of the amount, or Thirty Thousand Dollars (\$30,000.00) being paid to the LWDA, and 25%, or \$10,000.00, being distributed amongst the PAGA Penalty Class. (See **Exhibit A** at ¶ 46).

The Agreement also provides payment to Plaintiff Hill of Five Thousand Dollars (\$5,000.00), which represents a Class Representative Enhancement Payment in consideration for his services as Class Representative. (See **Exhibit A** at ¶ 44). The class is being notified of this payment to Hill. (See Ex. B at § IV(A)).

The Class Representative Enhancement Payment was part of good faith negotiations and is intended to recognize that it was the Class Representative (Mr. Hill) who initiated the lawsuit, initiated the PAGA claims, provided critical documents and witnesses to his attorneys, and worked with his attorney to propound and prepare written discovery, all in an effort to obtain moneys allegedly owed not only to himself, but to hundreds of other employees. (Yaeckel Decl. ¶12).

IV. SUMMARY OF CLAIMS AND ESTIMATES OF POTENTIAL DAMAGES

Counsel hereby submits estimates and calculations for the total potential value of all claims so this Court may evaluate if the amount to be paid to the class ultimately could be determined to be fair and reasonable when balanced against the probable outcome of the future litigation. *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal. App. 4th 116, 133.

Concerning the strength of the plaintiff's case, the California Court of Appeal has said that the "merits of the underlying class claims are not a basis for upsetting the settlement of a class action; the operative word is 'settlement.'" *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1150 [citing, *inter alia*, *City of Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448,455 ("The fact that a proposed settlement may only amount to a fraction the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); see also *Linney v. Cellular Alaska P'ship.* (9th Cir. 1998) 151 F.3d 1234, 1242 ("This court has aptly held that 'it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements'"); *Officers for Justice v. Civil Servo Com.*

(9th Cir. 1982) 688 F.2d 615, 625 (“The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.”)

Each of the primary claims also had risks to obtaining both class certification and a finding of liability. If Defendants’ defenses were successful, the class would not receive anything. As is set forth below, Plaintiff submits that the most realistic “best case” scenario would be an average recovery per class member of approximately \$576.36. and a worst case scenario would be a recovery of \$0, by way of denial of class certification or defense verdict. (Yaeckel decl. ¶ 14). Given all the risks on each claim the estimated \$256.44 average recovery secured via this settlement, is a reasonable compromise and is in the best interests of the class given all the risks of continued litigation. (Yaeckel decl. ¶ 23).

A. FAILURE TO PAY ALL COMPENSATION CLAIMS

Plaintiff’s unpaid wages (and unpaid overtime) claims were based on the allegation that employees were performing unpaid work due to the GRG’s timekeeping system which took “minutes worked” and transferred that amount to a decimal and caused other losses due to certain alleged “transitional math errors” caused by the payroll system. Plaintiff alleged this resulted in regular time and overtime pay being owed where Defendants were on notice of work being performed without pay.

Defendants also denied that any unpaid work occurred, and even if some did occur, Defendants claimed it was not on notice of these alleged Labor Code violations and had a strict written prohibition against off-the-clock work and a mandate that all time worked must be accurately recorded. Defendants asserted proof of these alleged violations would require individualized inquiries, which could preclude class certification and make any PAGA claims unmanageable. (Yaeckel decl. ¶ 25).

Based on Class Counsels’ analysis, this claim was worth as little as \$0 (a defense verdict or denial of class certification) or as much as \$17,280.00. (Yaeckel decl. ¶ 16).

B. MEAL AND REST PERIOD CLAIMS

Plaintiff was able to identify hundreds of examples of missing or late meal periods without the provision of a meal period penalty payment. However, Defendants argued that these records do not conclusively show whether (1) Defendants actually failed to provide the meal period, (2) there was a voluntary waiver, (3) employees forgot to clock out, or (4) employees voluntarily chose to skip or take

1 them late even though they were provided. Additionally, in light of GRG’s written meal and rest period
2 policy, Defendants contended there was no uniform policy or practice of denying meal and rest
3 periods, requiring individualized inquiries that would preclude class certification and make any PAGA
4 claims unmanageable. (Yaeckel decl. ¶ 26).

5 Plaintiff alleges that the rest period policy lacks the required statutory language. Plaintiff also
6 alleged the Defendants written policies improperly restricted class members from leaving the premises
7 during their rest breaks among other deficiencies. Defendants pointed out that they provided for
8 adequate breaks and argued that witness testimony would demonstrate that in practice, no restriction
9 on rest breaks were ever enforced. Defendants also contended individualized inquiries will abound as
10 to why individual employees may have failed to take appropriate meal periods or rest breaks. (Yaeckel
11 decl. ¶ 29).

12 While there are time records to support the existence of alleged meal period violations, there
13 are no corresponding rest period records, making this aspect of the claim much harder to prove. Some
14 Courts have been disinclined to accept survey evidence that may have been needed to help establish
15 rest period violations. See e.g. *Duran v. U.S. Bank National Assn.* (2018) 19 Cal.App.5th 630.

16 Based on counsels’ analysis, these claims were worth as little as \$0 (a defense verdict or denial
17 of class certification) or as much as \$216,000.00. (Yaeckel decl. ¶ 16).

18 **C. PLAINTIFF’S WAGE STATEMENT CLAIMS**

19 Plaintiff acknowledges that these claims are largely derivative, in that both the gross and net
20 wages could be found to be inaccurate, due to the above-referenced claims.

21 GRG argued that the failure to list gross and net wages are derivative of other claims that may
22 ultimately fail and as a result there is no “knowing and intentional failure” to list information, which
23 triggers liability under Labor Code §226(e). (Yaeckel decl. ¶ 28).

24 The California Supreme Court has recently held that the failure to pay meal and rest period
25 premiums *may* give rise to a claim for inaccurate wage statements (or waiting time penalties).
26 However, such derivative liability is not automatic and the Plaintiff still must show a “knowing and
27 intentional” or “wilful” failure to comply with the Labor Code. See *Naranjo v. Spectrum Security*
28

1 *Services* (2022) 2022 Cal. LEXIS 2878. Defendants (as with the underlying meal and rest period
2 claims) maintained individualized inquires would abound as to why breaks were missed and whether
3 meal and rest period premiums should have been paid, requiring individualized inquiries that would
4 preclude class certification and make any PAGA claims unmanageable. (Yaeckel decl. ¶ 28.)

5 Based on counsels' analysis, this claim was worth as little as \$0 (a defense verdict or denial
6 of class certification) or as much as \$54,600.00. (Yaeckel decl. ¶ 16 and 18).

7 **D. PLAINTIFF'S REIMBURSEMENT CLAIMS**

8 Plaintiff contended that GRG violated Labor Code section 2802 by failing to reimburse its
9 employees for certain costs. GRG contended that Mr. HILL's (and others') position did not require the
10 use of a personal cell phone. (Yaeckel decl. ¶ 29).

11 Based on counsels' analysis, this claim was worth as little as \$0 (a defense verdict or denial
12 of class certification) or as much as \$4,700.00. (Yaeckel decl. ¶ 16).

13 **E. OTHER "DERIVATIVE" CLAIMS**

14 The remaining claims are derivative in that PAGA and Labor Code § 203 penalties would only
15 be permissible if the above claims are proven.

16 The parties agreed to allocate \$40,000.00 to the PAGA claims, which is 9.4% of the total
17 settlement. This PAGA allocation is in the range routinely approved by California Courts. *See Garcia*
18 *v. Gordon Trucking, Inc.* (E.D. Cal., Oct. 31, 2012, No. 1:10-CV-0324 AWISKO) 2012 WL 5364575,
19 at *7 (approving \$10,000 PAGA penalty for a California class with a \$3.7 million gross settlement
20 payment); *Syed v. M-I, L.L.C.* (E.D. Cal., Feb. 22, 2017, No. 112CV01718DADMJS) 2017 WL
21 714367, at *13 (approving 2.53% of the estimated \$3.95 million Net Settlement Amount allocated to
22 the California class); *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No.
23 15-CV-02198-EMC) 2016 WL 5907869 (approving allocation of \$20,000 to the PAGA claim (**0.15%**
24 of its total value of \$12,952,000) as reasonable in the context of the settlement as a whole); *In re Uber*
25 *FCRA Litigation* (N.D. Cal., June 29, 2017, No. 14-CV-05200-EMC) 2017 WL 2806698 (approving
26 a settlement agreement of \$7.5 million, where the amount allocated to the PAGA claims was only
27 \$7,500.00 – .01% of the total settlement amount).
28

1 Based on Class Counsel's analysis, the PAGA and Labor Code § 203 claims were worth as little
2 as \$0 (a PAGA defense verdict or denial of certification of the § 203 claim) or as much as \$672,000.00
3 and \$1,692,000.00 respectively. (Yaeckel decl. ¶ 16).

4 **F. CASE LAW SUPPORTS A FURTHER REDUCTION ON ANY RECOVERY**

5 Plaintiff concedes he would be highly unlikely to ever be awarded an amount approaching the
6 maximum damages set forth above. To wit, the majority of the recovery would be "derivative"
7 penalties under PAGA, Labor Code § 203 and Labor Code § 226. The Court would have great
8 discretion to mitigate any penalties awarded. *Thurman v. Bayshore Transit Management, Inc.* (2012)
9 203 Cal.App.4th 1112, 1135 (disapproved on other grounds).

10 In a recent trial involving Class Counsel in this case, the Court found liability, but then reduced
11 the PAGA penalties by 90%, from \$50 per violation down to \$5 a violation. See *Carrington v.*
12 *Starbucks Corp.* (2018) 30 Cal.App.5th 504; See accord *Fleming v. Covidien, Inc.*, No.
13 ED-CV-10-1487-RGK(OPx), 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA
14 penalties by over 82%, in part because employer was "not aware" of violations). And in *Carrington*,
15 the Trial Court declined to award penalties under Labor Code §§ 203 and 226, noting that other trial
16 courts have declined to "stack" (impose multiple) penalties based on the same underlying Labor Code
17 violation. See *Ruelas v. Costco Wholesale Corporation* (N.D. Cal. 2014) 67 F.Supp.3d 1137.

18 Class Counsel believes a mitigation of the damages and potential PAGA penalties would be
19 warranted here. As in the *Carrington* case, there was evidence that GRG attempted to provide meal
20 and rest periods in practice, and the written policies contained no facially non-compliant terms. Given
21 this, it is likely that some of the violations by GRG were not "willful." Finally, given the defenses
22 raised by Defendants, there was a significant risk that many of the claims would not have been certified
23 or, if they were, certification could not have been maintained through trial and appeal.

24 The Parties agree the failure to pay "former employees" under § 203 is derivative of the other
25 claims. As GRG asserts a "good faith dispute" for withholding any unpaid wages, it would be difficult
26 to establish any liability for a "willful" failure to pay wages owed.

27 Based on the above, it is possible that PAGA penalties could be reduced to approximately \$5
28

1 per violation and the Court would find no basis for imposing Labor Code §§ 203 or 226 penalties.
2 Given those risks, the penalties were discounted by 75 %. If this occurred, the average class member's
3 pre-tax share of a realistic best case recovery would be \$576.36. (Yaeckel decl. ¶ 23).

4 Accordingly, Class Counsel submits the **\$256.44** average recovery secured via this Settlement,
5 is a reasonable compromise and is in the best interests of the Class given all the risks of continued
6 litigation. (Yaeckel decl. ¶¶ 23-30).

7 **V. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

8 Under California law, a class action is appropriate when the class is ascertainable and there is
9 “a well defined community of interest in the questions of law and fact involved affecting the parties
10 to be represented.” Cal. Code Civ. Proc. § 382; *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34
11 Cal. 4th 319, 341. State law requirements under California Code of Civil Procedure § 382 for class
12 certification mirror those of federal law under Rule 23 of the Federal Rules of Civil Procedure:
13 numerosity, typicality of the class representatives’ claims, adequacy of representation, predominance
14 of common issues, and superiority. See Fed. R. Civ. P. 23(a); see also *Hanlon v. Chrysler Corp.* (9th
15 Cir. 1998) 150 F.3d 1011, 1019. Thus, for settlement purposes, each of these elements must be
16 present. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 237-38.

17 **A. THE PROPOSED SETTLEMENT CLASS IS ASCERTAINABLE**

18 The proposed class is ascertainable because all Class Members currently or formerly worked
19 for Defendants as nonexempt employees and will be identified through Defendant’s employment
20 records. See *Rose v. City of Hayward*, 126 Cal.App.3d 926 (1981) (finding that “Class Members are
21 ‘ascertainable’ where they may be readily identified without unreasonable expense or time by reference
22 to official records”). Thus, the ascertainability requirement is met.

23 **B. THE PROPOSED SETTLEMENT CLASS IS SUFFICIENTLY NUMEROUS**

24 The numerosity requirement is met if the class is so large that joinder of all members would
25 be impracticable. *In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 318. Here, Defendants’ records
26 show that approximately **858 class members** worked for the company during the limitations period
27 as of October 26, 2022. (Yaeckel decl. ¶ 31). Joinder of all Class members would be impracticable.
28

1 **C. THE COMMONALITY REQUIREMENT WAS MET**

2 The commonality requirement is met if there are questions of law and fact common to the class.
3 *See Hanlon, supra*, 150 F.3d at 1019.

4 For purposes of the Settlement only, the parties agree the claims of Class Members all involve
5 the same questions of law and fact. (Yaeckel decl. at ¶ 32). Namely, all class members were subject
6 to the same employment policies and practices of Defendants. (*Id.*) The common question exists as
7 to whether the policies and practices Class Members were subjected to are illegal. Under these
8 circumstances, the commonality requirement is satisfied. *See Hanlon, supra*, 150 F.3d at 1019-20.

9 **D. THE TYPICALITY REQUIREMENT IS MET**

10 The typicality requirement is met if the class representatives and class counsel have no interests
11 adverse to the interests of the proposed Class Members and are committed to vigorously prosecuting
12 the case on behalf of the class. *See Wehner v. Syntex Corp.*, 117 F.R.D. 641, 644 (N.D. Cal. 1987).

13 Here, there are no such adverse interests. Plaintiff has the same claims that are substantially
14 the same as the other Class Members. (Yaeckel decl. ¶ 33). Factual differences may exist between the
15 class representatives and the Class, so long as the claims arise from the same events or course of
16 conduct and are based on the same legal theories. *See Hanlon*, 150 F.3d at 1020; see also 1 *Newberg*
17 § 53.13 at 3-76-77 (“When it is alleged that the same unlawful conduct was directed at or affected both
18 the named plaintiff and the class sought to be represented, the typicality requirement is usually met
19 irrespective of varying fact patterns which under lie individual claims.”) Thus, the typicality
20 requirement is also satisfied.

21 **E. THE ADEQUACY REQUIREMENT IS MET**

22 The adequacy of representation component of the community of interest requirement for class
23 certification “comes into play when the party opposing certification brings forth evidence indicating
24 widespread antagonism to the class suit.” *Capitol People First v. Dep’t of Develop. Servs.* (2007) 155
25 Cal. App. 4th 676, 696-97. The adequacy inquiry “serves to uncover conflicts of interest between
26 named parties and the class they seek to represent.” *Id.* To assure “adequate” representation, the “class
27 representative’s [...] claim must not be inconsistent with the claims of other members of the class.” *Id.*
28

1 Here, no such “inconsistencies” exist. The Plaintiff will be compensated based on the same
2 weeks worked formula as all other members of the Class. (Yaeckel decl. ¶ 33).

3 Additionally, any Class Member who wishes to “opt out” of the Settlement may do so and
4 retain all of their individual rights. (Yaeckel decl. ¶ 34). There is therefore no conflict of interest
5 between the Class Representatives and the Class Members. (*Id.*) Thus, at least for settlement purposes,
6 the adequacy prong is met. (*Id.*)

7 **F. COMMON ISSUES PREDOMINATE AND CLASS-WIDE SETTLEMENT IS**
8 **SUPERIOR TO OTHER AVAILABLE METHODS OF RESOLUTION**

9 Class certification is authorized where common questions of law and fact predominate over
10 individual questions, and where class-wide treatment of a dispute is superior to individual litigation.
11 See *Richmond v. Dart Indus., Inc.*, 29 Cal.3d 462, 469 (1981).

12 The proposed class in this case is sufficiently cohesive because, for purposes of the Settlement
13 only, the parties have stipulated that all class certification elements are met. (**Exhibit A** at ¶ 38).
14 Plaintiff contends all members of the Class worked under the same conditions and experienced the
15 same policies and practices of Defendant. Thus, the Class is sufficiently cohesive.

16 Further, it would be preferable to resolve all of the Class Members’ claims by means of a class-
17 wide settlement than to require each Class Member to litigate individual claims. (Yaeckel decl. ¶ 35).

18 **VI. PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT IS PROPER**

19 The trial court has broad discretion to determine whether a class action settlement is fair and
20 reasonable. *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. Fairness is presumed where
21 (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
22 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
23 litigation; and (4) the percentage of objectors is small. *Chaves v. Netflix, Inc.* (2008) 162 Cal.App.4th
24 43, 52; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. But, even where it appears the
25 settlement is fair, the court must still determine on the record before it whether the settlement should
26 be approved after considering “the strengths and weaknesses of the claims and risks of the particular
27 litigation.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129. The courts will
28 consider: (i) the strength of the plaintiff’s case; (ii) the risks, expense, complexity and likely duration

1 of further litigation; (iii) the risk of maintaining class action status throughout the trial; (iv) the amount
2 offered in settlement; (v) the extent of discovery completed; (vi) the stage of the proceedings; (vii) the
3 experience and views of counsel; (viii) the presence of a governmental participant; and (ix) any
4 reaction of putative class members to the proposed settlement. *Dunk*, 48 Cal.App.4th, at 1800-1801;
5 *In re Microsoft I-V Cases*, 135 Cal.App.4th, at 723.

6 When evaluating these factors, the court “must stop short of the detailed and thorough
7 investigation that it would undertake if it were actually trying the case,” but nonetheless it “must
8 eschew any rubber stamp approval in favor of an independent evaluation.” *Kullar*, 168 Cal.App.4th,
9 at 130. Ultimately, the court approves the proposed class action settlement when the settlement is fair
10 and falls “within the range of reasonableness.” *Hernandez v. Vitamin Shoppe Indus., Inc.* (2009) 174
11 Cal.App.4th 1441, 1446.

12 **A. FAIRNESS OF THE SETTLEMENT**

13 For preliminary approval purposes, a proposed class action settlement is *presumed* to be fair
14 where, as here, (1) the settlement is reached through arm’s-length bargaining; (2) investigation and
15 discovery are sufficient to allow counsel and the court to act intelligently; and (3) counsel is
16 experienced in similar litigation. *Chaves, supra*, 162 Cal.App.4th at 52.

17 The proposed settlement in this action meets these criteria, and merits preliminary approval.
18 As discussed above, the parties only entered into the Agreement after engaging in a full day of
19 mediation with an experienced mediator who routinely handles “wage and hour” class action litigation.
20 (Yaeckel Decl. ¶ 8). The mediation was preceded by discovery, investigation of claims at issue,
21 interviews of Class Members, disclosure and review of documents detailing company-wide policies
22 and practices, informal information exchanges for mediation purposes, and ongoing discussions about
23 the merits between the parties’ counsel during the span of the litigation. (Yaeckel Decl. ¶¶ 3-8).
24 Thereafter, the parties memorialized the details of this Settlement via the Agreement. (**Ex. A**).

25 When negotiating the Settlement, both sides took into account the strengths and weaknesses
26 of their opponent’s positions as pointed out by mediator Michael Roberts, the data available to evaluate
27 liability and damages, the lack of data or evidence on certain issues, and the substantial and evolving
28

1 law applicable to the merits of the claims. The Agreement was only agreed to after extensive arms-
2 length negotiations resulting in a unique compromise that permits all parties to move forward and bring
3 this action to close. Despite a mutual desire to resolve this action, the negotiations remained at all times
4 adversarial. (Yaeckel Decl. ¶ 36).

5 As set forth below in section H, *infra.*, counsel for both parties have extensive experience in
6 litigating wage and hour class action lawsuits. Based on this experience, Class Counsel has determined
7 that the settlement is fair, adequate, and reasonable. (Yaeckel decl. ¶ 30).

8 **B. STRENGTH OF PLAINTIFFS' CASE**

9 The most important factor courts consider when evaluating the fairness of the class action
10 settlement is the strength of the plaintiffs' case balanced against the amount offered in settlement.
11 *Kullar*, 168 Cal.App.4th, at 130.

12 All of Plaintiff's claims – individual, PAGA, and class claims – presented hurdles including
13 obtaining class certification, in addition to a substantial risk of a defense verdict by way of summary
14 judgment motion or at trial. (Yaeckel Decl. ¶¶ 24-29).

15 The exchange of mediation briefs, the assistance of an experienced “wage and hour” mediator,
16 and the parties' ongoing negotiations all helped the parties realize the strengths and weaknesses of
17 their case, as well as the risks and expenses of continuing litigation.

18 Additionally, as trial approaches, each party's monetary risk increases significantly as
19 substantial additional attorney hours and expert witness hours would have to be devoted to this case
20 by each party. Each party bears a real risk at trial, and considering the balance of the strengths of
21 Plaintiff's claims versus the risks inherent in trial and the consideration given to settle now, the
22 settlement reflects a fair and adequate resolution to this action.

23 **C. THE RISK, EXPENSE, COMPLEXITY, AND LIKELY DURATION OF FURTHER** 24 **LITIGATION**

25 Plaintiff's Counsel's effectiveness in prosecuting this case has translated into tangible monetary
26 and non-monetary benefits for the Settlement Class Members in the following respects: (1) a
27 guaranteed favorable result; (2) guaranteed monetary recovery over a reasonably short period of time,
28 as opposed to possibly waiting additional years for a potentially worse result; and (3) significant

1 savings in attorneys' fees and costs, which would have increased had the case progressed through trial
2 and possible appeals. (Yaeckel decl. ¶ 37).

3 Without entering into the Agreement, there existed a significant chance that Defendants would
4 prevail on the merits of some or all claims and that Class Members would receive nothing. Through
5 the Agreement, participating Class Members receive guaranteed cash, and this action has also been
6 the catalyst for programmatic relief. (Yaeckel decl. ¶ 38).

7 If the litigation were to proceed in lieu of settlement, additional and substantial attorneys fees
8 and costs, expert witnesses fees would quickly accumulate. Given the numerous claims being litigated,
9 the parties may be required to hire multiple experts each (as many as 6 total). This would result in not
10 only the production of eight expert reports, but eight depositions as well. And, based on previous
11 discussions between counsel regarding the remaining claims (including the PAGA claims), Plaintiff
12 anticipated at least one motion to compel, a motion for class certification and two dueling motions for
13 summary judgment / adjudication (one from each side). (Yaeckel decl. ¶ 39).

14 Importantly, even after engaging in all of the potential continued and protracted litigation set
15 forth above, the putative class would continue to have no guarantee of success on any of the claims
16 advanced in this case. Thus, the parties and their counsel believe in good faith that the proposed
17 resolution is a fair, reasonable, and adequate compromise. (Yaeckel decl. ¶ 40).

18 **D. THE RISK OF MAINTAINING CLASS ACTION STATUS THROUGH THE TRIAL**

19 Plaintiff had not filed a Motion for Class Certification at the time settlement was reached.
20 (Yaeckel decl. ¶ 41). Defendants presented multiple different defenses to certification during mediation
21 and throughout litigation. Even assuming Plaintiff did obtain class certification of the claims, each
22 claim is subject to substantial risk of a Defense verdict at trial. (*Id.*)

23 Regarding the representative (PAGA) claims, there is also a substantial risk that, at trial,
24 Plaintiffs will either fail to obtain a favorable judgment on one or more of these claims, or that a
25 favorable award on one or more PAGA claims may be reduced. *See Thurman v. Bayshore Transit*
26 *Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reversed on other grounds).

27 **E. THE AMOUNT OFFERED IN THE SETTLEMENT**

28 After deduction from the total "Settlement Amount" of the projected costs of administration,

1 proposed class representative service awards, potential attorney fees and costs, the “Net Settlement
2 Amount (“NSA”) will be distributed to all Class Members who do not file a request for exclusion.
3 Participating Class Members will receive their share of the NSA based on the total amount of time they
4 worked during the Class and PAGA Period. (**Exhibit A**, ¶ 50).

5 Based on the current proposed figures, each Class Member will receive an average of **\$256.44**
6 although the actual amount will vary based on the amount of pay periods s employed. The Class Notice
7 will list each individual class member’s actual share. (See **Ex. B.**) Plaintiffs’ counsel maintains this
8 recovery was significant in light of the circumstances of the case. (Yaeckel Decl. ¶30).

9 **F. THE EXTENT OF DISCOVERY COMPLETED**

10 Plaintiff propounded written discovery devices on Defendants, including requests for
11 admission, special interrogatories, requests for production of documents, and general and employment
12 form interrogatories. (Yaeckel Decl. ¶ 4). Through these requests, Plaintiffs sought, among other
13 information and documents, the identities of putative class members, Defendants’ compensation
14 policies, meal and rest period policies, employee handbooks, wage statements, time records, job
15 descriptions, and reimbursement policies. *Id.*

16 Defendants provided detailed substantive responses detailing all relevant employment policies,
17 in addition to producing thousands of pages of documents. The document production also included a
18 large sampling of other putative class members time and wage records. (Yaeckel Decl. ¶¶4-6). In total
19 it appears there were at least 1 set of written discovery exchanged between the parties. (Yaeckel Decl.
20 ¶ 5). Plaintiff’s counsel has also interviewed several Class Members in the course of investigating and
21 litigating this matter. (Yaeckel decl. ¶42). Counsel has also reviewed hundreds of pages of documents
22 produced by Defendants, Plaintiffs, and Class Members. (*Id.*)

23 This information, along with documents and information obtained through formal discovery
24 and from Class Members, allowed Plaintiffs’ counsel to prepare a detailed Mediation Brief. (*Id.*) The
25 Brief was provided to opposing counsel and contained a breakdown of potential damages based on all
26 of the information obtained from all Parties. (*Id.*) GRG also provided a detailed mediation brief,
27 outlining its defenses to both class certification and liability. (*Id.*)
28

1 Thus, sufficient discovery, both formal and informal, has been conducted to allow the parties
2 to participate in an informed, arms-length negotiation process.

3 **G. THE STAGE OF THE PROCEEDINGS**

4 Plaintiff already had possession of all written discovery needed for a class certification motion.
5 Additional depositions would have followed and then a motion for class certification would have been
6 filed. Depending on that motion, Plaintiff may have lost his ability to negotiate a class-wide or
7 representative settlement agreement on certain issues. Alternatively, Defendants stood to lose a key
8 negotiating tool in the event the Motions were decided in Plaintiff's favor. Therefore, the parties
9 achieved a settlement agreement at a point when neither side had a stated advantage in the litigation.

10 **H. THE EXPERIENCE AND VIEWS OF COUNSEL**

11 Class Counsel has considerable experience in wage and hour and class action litigation.
12 William Sullivan has over 28 years of experience, 27 years of which has been devoted to both
13 prosecuting and defending class action litigation. Mr. Yaeckel has over 11 years of experience in class
14 action litigation. (Yaeckel Decl. ¶ 43).

15 Plaintiff's counsel considers the Agreement to represent a fair, adequate and reasonable
16 settlement that is well within the accepted range of recoveries for similar cases. Counsel further
17 believes the Agreement is in the best interests of the Settlement Class Members. (Yaeckel Decl. ¶ 44).

18 **I. PRESENCE OF A GOVERNMENTAL ACTOR**

19 Although the State is not directly involved in this action, Plaintiff "stands in the shoes" of the
20 Labor and Workforce Development Agency ("LWDA") by bringing his PAGA action. Consideration
21 has been made to compensate to Labor Workforce Development Agency ("LWDA") in the amount
22 of \$30,000.00, even though the LWDA declined to prosecute the claims itself. (See Exhibit "A," at ¶
23 46). To confirm, 75% of the total allocation of \$40,000 amount, or **\$30,000.00**, is being paid to the
24 LWDA, and 25%, or **\$10,000.00**, being distributed amongst the class members. (*Id.*). Counsel for the
25 parties believe this is a fair, reasonable, and adequate allocation. (Yaeckel Decl. ¶ 45).

26 **J. REACTION OF THE CLASS MEMBERS TO THE PROPOSED SETTLEMENT**

27 Prior to preliminary approval, what can be said of the reaction the class members is limited.
28 However, Plaintiff's counsel has spoken to some Class Members since the parties reached a proposed

1 settlement agreement, and all were in favor of the Settlement. (Yaeckel Decl. ¶ 48).

2 As explained in the Agreement, the Settlement Claims Administrator will send a Notice to the
3 Settlement Class Members. (See Exhibit A at ¶ 56). The negotiated Class Notice form is attached to
4 the declaration of Eric K. Yaeckel as **Exhibit B**.

5 The proposed Notice advises the Settlement Class Members of their anticipated recovery under
6 the Agreement, how to object, how to exclude themselves, the amount of fees and costs sought by
7 Class Counsel, the amount of enhancement payment sought on behalf of the Class Representative, and
8 the date of the final approval hearing. (See Exhibit “B.”) Thus, the proposed Notice complies with the
9 notice requirements set forth in CRC Rule 3.766(d) and Rule 3.769(f).

10 **VII. PROPOSED TIMELINE OF EVENTS AND FINAL APPROVAL**

11 Assuming the Settlement merits Preliminary Approval from the Court, Plaintiffs request
12 that the Court set a Final Approval Hearing in accordance with the chronology of events set forth
13 in the Agreement:

- 14 1. Within twenty (20) calendar days of Preliminary Approval, Defendant will provide to the
15 Settlement Administrator the Class List including Class Members’ names, last known
16 addresses, social security numbers, and the dates of employment;
- 17 2. Within ten (10) calendar days of receiving the Class List, the Settlement Administrator will
18 perform an NCOA check for information to update and correct for any known or
19 identifiable address changes. And then shall mail a Notice Packet to all Class Members via
20 regular First-Class U.S. Mail, using the most current, known mailing addresses identified in
21 the Class List;
- 22 3. 30 calendar days after Settlement Administrator has mailed the Notice Packets to Class
23 Members: Deadline for Class Members to postmark and submit all disputes of pay period
24 information, request exclusion, or file written objection to the Settlement;
- 25 4. Approximately 7 Calendar days after the conclusion of the Notice and Response Period:
26 Plaintiffs will file a Motion for Final Approval; and
- 27 5. 16 Court days after the filing of the Final Approval motion: the Court can conduct the
28 Final Approval Hearing.

1
2 Based on this timeline, Plaintiff requests a Final Approval hearing that is approximately
3 90 days (or the first available court date thereafter) after the date the Court enters an Order
4 granting preliminary approval of the Settlement.

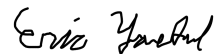
5 **VI. CONCLUSION**

6 Based on the foregoing, Plaintiff respectfully requests that the Court issue an Order:

- 7 i. Certifying the Proposed Settlement Class;
8 ii. Preliminarily approving the Settlement as set forth in the Agreement; and
9 iii. Approving the proposed Notice Packet to be directed to the Settlement Class.

10
11
12 Dated: March 29, 2023

SULLIVAN & YAECKEL LAW GROUP, APC

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14 

15
16 _____
17 Eric K. Yaeckel
18 Ryan T. Kuhn
19 Attorneys for Plaintiff DOUGLAS HILL, individually, and
20 on behalf of other members of the general public similarly
21 situated
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