Kane Moon (SBN 249834)
kmoon@moonlawgroup.com
H. Scott Leviant (SBN 200834)
hsleviant@moonlawgroup.com
Mariam Ghazaryan (SBN 341119)
mghazaryan@moonlawgroup.com
MOON LAW GROUP, PC
725 S. Figueroa St., Suite 3100
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

KAITLYN NOEL, a minor by and through her guardian ad litem, DOROTHY NOEL, and on behalf of all others similarly situated,

Plaintiff,

vs.

BP VENTURE MANAGEMENT, INC., a California corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 34-2022-00320637-CU-OE-GDS

[Assigned for all purposed to Hon. Lauri A. Damrell]

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Date: September 20, 2024
Time: 9:00 a.m.
Courtroom: Dept. 22
Judge: Hon. Lauri A. Damrell

Action Filed: May 26, 2022
Trial Date: Not Set

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

PLEASE TAKE NOTICE that on September 20, 2024, at 9:00 a.m., in Department 22 of the above-captioned Court, located at 720 9th Street, Sacramento, CA 95814, Plaintiff KAITLYN NOEL ("Plaintiff") will and hereby does move this Court for an order:

1. Granting class certification of the Class, solely for settlement purposes pursuant to Code of Civil Procedure § 382;
2. Finally approving the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE ("Settlement" or "Agreement");
3. Appointing counsel for Plaintiff, Moon Law Group, PC, as Class Counsel;
4. Appointing Plaintiff as the Class Representative;
5. Ruling that Settlement Class Members who did not timely submit requests for exclusion from the settlement as set forth in the Agreement have released their claims against Defendants and the other releasees as set forth in the Agreement;
6. Ruling that Settlement Class Members who did not timely object to the settlement pursuant to the terms set forth in the Agreement are barred from prosecuting or pursuing any appeal of the Court's Order;
7. Awarding the sums requested in the Motion;
8. Entering a Final Judgment; and,
9. Without affecting the finality of the final judgment, reserving continuing jurisdiction over the parties for the purposes of implementing, enforcing and/or administering the settlement as set forth in the Agreement or enforcing the terms of the Final Judgment.

Good cause exists to grant this Motion because: (1) the Class meets all of the requirements for class certification for settlement purposes under Code of Civil Procedure § 382; (2) the Settlement Agreement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted by Plaintiff; (3) Plaintiff and Class Counsel are adequate to represent the Class; and, (4) the notice procedures and related forms complied with California Rules of Court 3.766(d) and (e) and this Court's Order granting preliminary approval of the Settlement, and adequately apprised Class Members of their rights and fully comport with due process.

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

TENTATIVE RULINGS: The Court may or may not issue a tentative ruling prior to the scheduled hearing. Counsel shall check the Court's tentative rulings after 2:00 p.m. the court day prior to the scheduled hearing. Tentative rulings are posted in the case on the public portal. You must have an account on the public portal to access the case. It is imperative for the parties to review the tentative ruling in its entirety. The ruling may include important updates for the parties, including possible updates to the date/time of the hearing. The parties shall be prepared to address all issues outlined in the Court's ruling. If no tentative ruling is posted, the hearing will proceed as scheduled. If a tentative ruling is posted and the Court indicates that no appearance is required, the ruling shall become the final order of the Court, and no hearing shall occur unless the party seeking a hearing contacts the department clerk by 4:00 p.m. on the court day preceding the hearing and advises the clerk that they have provided notice to all other parties. In such event, the hearing will proceed as scheduled or as otherwise indicated by the Court in its tentative ruling.

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

Respectfully submitted,

Dated: August 27, 2024

MOON LAW GROUP, PC

By: H.S. Leviant

Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CALIFORNIA DECISIONAL AUTHORITY

FEDERAL DECISIONAL AUTHORITY

STATUTES

RULES

OTHER AUTHORITIES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to California Rules of Court, Rules 3.769, Plaintiff requests that this Court finally approve the class action settlement set forth in the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE ("Settlement" or "Agreement") with BP VENTURE MANAGEMENT, INC. ("Defendant").

After informal and formal discovery, the exchange of documents and data, and an arm's-length mediation session with mediator Steven J. Serratore, Esq., Plaintiff and Defendant (collectively referred to herein as the "Parties") reached a proposed class action settlement with a gross settlement amount ("GSA") of **$640,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class consisting of **1,436** members.[1] Plaintiff believes this settlement is a fair, adequate, and reasonable compromise of disputed claims for alleged wage and hour violations and penalties asserted in this case.

Plaintiff now submits this Motion for Preliminary Approval of Class Action Settlement, along with the Settlement (attached to the Declaration of H. Scott Leviant ["Leviant Decl."], Exhibit 1 thereto). For the Court's convenience, below is a summary of the key provisions of the Settlement.

II. THE NOTICE PROCESS PROCEEDED AS DIRECTED

Plaintiff and Defendant have thus far fulfilled the class notice procedures set forth in the Settlement. The Settlement Administrator, Phoenix Settlement Administrators. ("Phoenix"), sent individual Notices to Class Members on May 20, 2024. (Declaration of Taylor Mitzner, ¶ 5.) Three Notices were returned, but new addresses for two were found after skip tracing. (*Id*., at ¶ 6.) Only one Notice is undeliverable. (*Id*., at ¶ 7.) There has been one opt out and **no** objections or workweek disputes received. (*Id*., at ¶¶ 8-10.) The work week count for the proposed Class exceeded the escalator threshold. Defendant elected to shorten the Class Period rather than pay additional funds, resulting in a smaller Class size. (*Id*., at ¶¶ 11-12.) The final Class includes 1,436 individuals who did not submit a timely request for exclusion. (*Id*., at ¶ 13.)

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[1] The class size is 16% smaller than was estimated at preliminary approval once Defendant elected to shorten the Class Period to avoid the obligation to increase the GSA under the Escalator Clause.

Because Defendant's election to shorten the Class Period occurred after Notices were mailed, Class Counsel determined that supplemental information should be sent to two group of employees: (1) those individuals who were no longer included in the Class due to the election, and (2) those individuals whose workweek counts were shortened because they spanned the shortened end date for the Class Period. (Leviant Decl., ¶ 35.) The supplemental notices are attached to the Leviant Declaration as Exhibits 4 and 5. (Leviant Decl., ¶¶ 35, 39-40 and Exhs. 4-5.)

III. THE MAJOR TERMS OF SETTLEMENT

The provisions of the proposed Settlement include the following:

- Defendant agrees not to oppose certification for purposes of Settlement (Settlement, ¶ 12.1);
- Class: All persons employed by Defendant as hourly-paid or non-exempt employees in the State of California at any time during the Class Period (the "Class Period" is the period from May 26, 2018 until April 15, 2023).[2] "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Settlement, ¶¶ 1.5, 1.9, 1.12, 1.34.)
- Settlement Amount: Defendant will pay a maximum of **$640,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an average **gross** benefit per Class Member of about **$445.68** (Settlement, ¶ 1.21; 3.1; Leviant Decl., ¶ 17.);
- Funding of Gross Settlement Amount: Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 75 days after the Effective Date. (Settlement, ¶ 4.3.)
- Class Size: **1,436** individuals who worked 47,231 Workweeks. (Settlement, ¶ 4.1.);
- PAGA Group Size: **817** individuals who worked 20,299 Pay Periods (Settlement, ¶ 4.1);
- PAGA Period: May 26, 2021 to April 15, 2023. (Settlement, ¶ 1.30);
- Escalator Clause: If the number of workweeks in the Class Period exceeds 43,000 by more than 10%, Defendant may, at its election, opt to (a) increase the Gross Settlement Amount in

[2] The end date was selected pursuant to the Escalator Clause. (Settlement, ¶ 8.)

the exact proportionate amount as to any additional workweeks (i.e., 12% more workweeks than estimated will result in a 2% proportionate increase in the Gross Settlement Amount) or (b) end the Class Period on the date that the Total Workweeks equals 47,300 workweeks. (Settlement, ¶ 8.) **The escalator was triggered, and Defendant eventually elected to shorten the Class Period rather than increase the GSA**.

- *Kullar/Munoz* Analysis: Plaintiff addresses the claims analysis herein, at Part V.B.3, and in the Declaration of Leviant, at Paragraph 18;
- No Reversion: The Settlement is a ***non-reversionary*** settlement (Settlement, ¶ 3.1);
- Certification: Plaintiff addresses certification requisites herein, at Part V.A. Certification was addressed in greater detail in connection with preliminary approval;
- No Claim Form: No claim form is required (Settlement., ¶ 3.1);
- Class Release: The Settlement will release wage-and-hour claims for Participating Class Members (those Class Members who do not opt out of the Settlement) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint (Settlement, ¶ 5.2);
- PAGA Release: Aggrieved Employees and the LWDA will release all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the PAGA Notice, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶ 5.3);
- Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys' fees and costs, service payment to Plaintiff, administration costs, and the PAGA penalty, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of Workweeks each Class Member worked for Defendant within the Class Period. The Net Settlement Amount is estimated to be at least **$318,166.67**, resulting in an average **net** payment per Class Member of at least **$221.56,** before any tax withholdings. (Settlement, ¶ 1.27.)
- Tax Allocation: The amounts distributed to Class Members will be characterized as 10% alleged unpaid wages, 90% to interest and penalties, and PAGA Settlement payments to

Aggrieved Employees will be allocated as 100% penalties. (Settlement, ¶¶ 3.2.4.1, 3.2.5.)

- Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSA (Settlement, ¶ 3.1);
- Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, Phoenix Settlement Administrators, with the costs of administration at a flat rate of up to $17,000.00. Phoenix's estimate for settlement administration services in the amount of $17,000.00 was selected as the lowest bid from a competitive bidding process, and is below the Parties' estimated cost of $20,000.00. (Settlement, ¶ 3.2.3; Mitzner Decl., Exh. C.)
- Class Data for Administration: The Settlement Administrator will receive the Class Data within 15 calendar days of Preliminary Approval, use the National Change of Address ("NCOA") database to update the Class Data, and then use skip tracing on returned Notices (Settlement, ¶¶ 4.2; 1.10);
- Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 7.4.2). The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion (Settlement, ¶¶ 7.5 – 7.7);
- Notice Language: Notice will issue in English and Spanish (Settlement, ¶ 1.11; 7.4.2);
- Objections: Objections can be submitted in person, through an attorney, or in writing to the Administrator, with no pre-requisite to being heard (Settlement, ¶¶ 7.7.1 – 7.7.3);
- Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a written objection (Settlement, ¶¶ 7.5.1 and 7.7.2);
- PAGA Allocation: From the GSA, **$64,000.00** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq*. ("PAGA"), and seventy-five percent (75%), or **$48,000.00**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶ 1.33; 3.2.5);

- Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Leviant Declaration;
- Enhancement/Service Award to Plaintiff: Defendant will not oppose the application for Class Representative Service Payment of up to **$7,500.00** for Plaintiff, to be paid from the GSA (Settlement, ¶ 3.2.1);
- Fees and Costs: Defendant will not oppose Class Counsel's application for fees not to exceed 33.33% of the GSA **($213,333.33)**, and actual costs, in an amount not to exceed $20,000.00, to be paid out of the GSA. The actual costs exceed $20,000, so Plaintiff's Counsel requests an award of **$20,000.00** (Settlement, ¶ 3.2.2);
- Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 4.4.1);
- Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the State Controller's Office, Unclaimed Property Division in the name of the Class Member (Settlement, ¶ 4.4.3);
- Judgment Notice: Judgment will be posted on the Settlement Administrator's website after entry (Settlement, ¶ 7.8.1);
- Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ 12.2).

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

IV. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Claims

Plaintiff worked for Defendant as a cashier in a pizza restaurant. On May 26, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for: failure to pay minimum wages, failure to pay overtime compensation, failure to provide meal periods, failure to authorize and provide rest breaks, failure to timely pay final wages at termination, failure to provide accurate itemized wage statements, and Unfair Business Practices. (Leviant Decl., ¶ 4.)

Plaintiff sent a letter to the Labor and Workforce Development Agency ("LWDA"), pursuant to California Labor Code § 2699.3, providing notice of his intent to seek civil penalties under the Private

Attorneys General Act, California Labor Code § 2698, *et seq*. ("PAGA Letter"). (*Id.* at ¶ 5.) The LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter, and the 65-day time period permitted for the LWDA to provide such a notification expired. On September 2, 2022, Plaintiff filed a First Amended Complaint alleging an additional cause of action for violation of the Private Attorneys General Act ("PAGA"). The First Amended Class and Representative Action Complaint is the operative complaint in the Action (the "Operative Complaint.") (*Id.* at ¶ 5.)

B. Pre-Mediation Data Production and Analysis

The Parties conducted informal and formal discovery and investigation of the facts and law. Such investigation included, inter alia, the exchange of extensive data and discoverable information in preparation for the mediation sessions. (Leviant Decl., ¶ 6.) The Parties have analyzed time clock, pay and other data pertaining to Plaintiff and the Class during the relevant Settlement Period, including but not limited to the numbers of former and current members of the Class, average workweeks and pay periods, and average rate of hourly pay. (*Id.*) In addition, Defendant also provided documents reflecting wage and hour policies and practices during the Settlement Period and information regarding the total number of current and former employees in the Class. (*Id.*) Sampling was used, and data for approximately 300 class members was provided to control costs. The margin of error calculation for the sample of the Class in this case is as follows:

$$1.96\sqrt{\frac{0.5(1-0.5)}{300}}\sqrt{\frac{1{,}677-300}{1{,}677-1}} = \text{margin of error}^{3} = 5.13\%$$

(*Id.*) With a sample of 300 employees, Class Counsel calculated that the margin of error, using the population adjustment factor, was no more than 5.13 percent.[4] (*Id.*) In addition, Defendant also

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[3] The term "1.96" is derived from a standard deviation table for a 95% confidence interval, known as a "z-table." It is not affected by sample or population size. The margin of error is an "overestimate" of because the variance is presumed to be at its highest value, using 0.5(1-0.5) to represent p*q in the variance equation of (p*q)/n.

[4] The margin of error formula does not require an adjustment factor for extremely large populations. A poll of all potential voters in the United States, for example, does not require an adjustment for the population size, since the second radicand in the equation (the fraction in the second radical sign) is effectively equal to 1. This is because the square root of a fraction that is very close to 1 is even closer to 1. Consider a population of 200 million and a sample of 1,000 individuals from that population. The second radicand is the fraction of 200 million minus 1,000, all divided by 200 million minus 1. That is equal to 0.999995. The square root is 0.99999975, which is indistinguishable from 1 when talking about a

provided documents reflecting its wage and hour policies and practices during the Settlement Period and information regarding the total number of current and former employees in the Class. (*Id.*)

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

C. Settlement

On August 1, 2023, the Parties participated in an all-day mediation presided over by Steven J. Serratore, Esq., which led to this Agreement to settle the Action. (Leviant Decl., ¶ 8.) The Parties discussed at length the burdens and risks of continuing with the litigation as well as the merits of claims and defenses. (*Id.*) After mediation, the Parties signed a long form agreement (the "Agreement"). (*Id.*)

Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses thereto. (Leviant Decl., ¶ 9.) Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a Settlement that confers substantial relief upon the Class, as well as Defendant's status as a community services organization. *(Id.*)

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

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margin of error percentage even to the nearest tenth of a percent. But when the population size is much smaller, the population size has a major impact on the margin of error for a given sample size.

the class definition who have not elected to exclude themselves from the Class. (*Id.*)

V. **CLASS DEFINITION**

The revised Class is defined as follows, after Defendant's election under the Escalator Clause:

> All persons employed by Defendant as hourly-paid or non-exempt employees in the State of California at any time during the Class Period (the "Class Period" is the period from May 26, 2018 until April 15, 2023). "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Settlement, ¶¶ 1.5, 1.9, 1.12, 1.34, 8.)

(Leviant Decl., ¶ 34 and Exhibit 1.)

VI. **DISCUSSION**

A. **Consistent with the Court's Findings at the Time of Preliminary Approval, the Court Should Certify the Class for Settlement Purposes**

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest and that a "class action proceeding is superior to other means for a fair and efficient adjudication of the litigation." *See, e.g.*, *Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement *only*, Defendants stipulate to conditional certification. (Settlement ¶ 12.1.)

"The certification question is 'essentially a procedural one that does not ask whether an action is legally or factually meritorious.'" *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.,* 23 Cal. 4th 429, 439-440 (2000). The certification question asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment. *See, e.g.*, *Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). As the court noted in *Dunk*, although certification requirements are intended "to protect the interests of the non-representative class members," that concern is "protected by the trial court's fairness review of the settlement." *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). In view of these standards, ***as discussed more thoroughly as part of the preliminary approval motion***, the Settlement Class should be certified for settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

B. **The Court Should Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims**

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

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

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

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

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

A settlement is presumptively fair where it is reached through arms' length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802; *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v. Southland Corp*., 85 Cal. App. 4th 1135, 1146 (2000). In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, at 1801, quoting *Officers for Justice v. Civil Serv. Comm'n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

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

[T]he 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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

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

Here, the Settlement resulted from thorough, arms' length negotiations between experienced counsel with the assistance of highly regarded mediator, Steven J. Serratore, Esq. (Leviant Decl., ¶¶ 8-10.) With respect to the claims at issue in this case, Plaintiff obtained data from Defendant and then carefully reviewed that information. Counsel for Plaintiff also examined relevant policies and interviewed witnesses in detail about their work experiences and Defendant's practices.

Based on that review, Plaintiff estimated potential exposure and then estimated risk factors to adjust the reasonable expected outcome. The investigation that Plaintiff's counsel conducted was sufficient to provide them with enough information to intelligently evaluate the estimated exposure for purposes of negotiating the Settlement in view of the risks discussed below and was sufficient to allow this Court to do the same. *See, e.g*., *Wershba v. Apple Computer*, *Inc.,* 91 Cal. App. 4th 224, 245 (2001).

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

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial and does not have to provide 100% of damages sought to be fair and reasonable. "In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba*, 91 Cal. App. 4th at 250. Accordingly, because settlements involve compromise, even one that provides for substantially narrower relief than would likely be obtained if the suit were successfully litigated can be reasonable given that "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id.*

With respect to the claims asserted on behalf of the Class in this case, there are serious risks that support this compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiff would be unable to establish liability for unpaid wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"); (ii) the risk that Defendant's meal and rest period policies might not support class certification or class-wide liability; (iii) the risk that uncertainties about the legality of Defendant's policies and practices could preclude class-wide awards of statutory penalties; (iv) the risk that individual differences between Class Members could be construed as pertaining to liability and not solely to damages; (v) the risk that any civil penalties award under PAGA could be reduced by the Court in its discretion; (vi) the risk that lengthy trial or appellate litigation could ensue; and, (vi) the risk that violation rates could prove lower than expected. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the **1,436** members of the Class, the average ***gross*** benefit is **$445.68** per class member, and the estimated average ***net*** recovery for each Class Member is approximately **$221.56**. (*Id.*) Given that Defendant could challenge certification and liability, this is a significant sum to have achieved in settlement. Moreover, <u>a Class Member who worked a greater number of workweeks will receive a larger Settlement share</u> than a Class Member who worked for a shorter time during the class period. (*Id.*)

The maximum calculated plausible exposure is **$6,575,219.70**, *including* PAGA penalties. (Leviant Decl., ¶ 18.) However, after analyzing the claims in this matter, Plaintiff has concluded that the Gross Settlement Amount of <u>**$640,000.00**</u> is about 80% of the **$789,005.26** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. (*Id.*) This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. (*Id.*)

- Based on information from Plaintiff and a few co-workers, the reasonably estimated exposure for unpaid off-the-clock wages was calculated, with the assistance of an expert, to be approximately **$167,158.20**. Class members stated that they would sometimes work "a few minutes" after clocking out to make sure that everything was put away and ready for the morning shift. This off-the-clock took place for employees who were scheduled for the closing shift. The data analysis assumes 3 minutes for every shift of off-the-clock time. The exposure was calculated to be $167,158.20, as set forth above. However, this assumption (1) ignores the fact that this impacted closing shifts only, and (2) assumes the off-the-clock readiness checks happened every time *and* took an average of at least 3 minutes, an assumption that is likely too optimistic. Given the factual variables, a certification probability of 30% and merits success at 30% were estimated. The likelihood of certifying an off-the-clock claim for closing employees, based solely on testimony about off-the-clock checks to be sure things were put away is probably lower than 30%. With a series of uncertain events, the probabilities must be multiplied together to get the resulting probability. Here, a **$167,158.20** exposure has a value of just under 10% of its maximum, given a likelihood of success on both events at just under 10%, which is an approximation of the chain probability of certification multiplied by merits chances: $0.3 \times 0.3 = 0.09$.

- When reviewing the time and pay data with our expert, a regular rate error was observed that impacted the calculation of the regular rate for purposes of overtime, sick pay, and premium payments for missed breaks. Regular rate pay errors are usually small, and that was true here. The underpaid amount was approximately **$11,154.50**. While regular rate issues are usually potent claims due to the associated penalties (late pay under Labor Code § 203 and wage statement penalties under Labor Code § 226), this issue impacted about 5% of the Class, rendering the impact negligible. Most employees worked shorter shifts and did not have overtime, which is why only 5% of the class experienced this issue. Only 7.1% of shifts were more than 8 hours. Most employees were part time workers with shifts of no more than 6 hours in length. Even so, given that this is a legal issue, predominantly, it was assigned a 70% chance of certification and a 60% chance of succeeding on the merits. These figures are simply a mechanism for quantifying a claim as "highly unlikely," "weak," "average," "strong," or "very strong." This is a mathematical way to express those assessments, based on many years of experience in this field. Doing that here, it was project that the value of that claim is approximately **$4,684.89**, which is about 40% of the maximum value for this claim. Penalty claims are separately discussed below. There is a secondary issue with the regular rate theory. The nature of extra pay determines whether it is used to calculate the regular rate. If any bonus payments were discretionary (such as holiday bonuses not connected to productivity) then they would not factor into the regular rate calculation. This issue appears strong, but it is still disputed legally by Defendant.

- Based on information from Plaintiff and a few co-workers, it was alleged that employees *sometimes* had to work through rest breaks because they were too busy. This sometimes happened when an unexpected number of orders were received at a time when staffing projections had fewer employees on the schedule or a shift was unexpectedly vacant. Defendant did not record rest breaks (it was not required to do so, and doing so is very uncommon). Because this claim is based entirely on class member testimonials, and the rest break policy of Defendant appeared to be a lawful policy, it had an asserted value for settlement purposes, while understanding that the risk presented by this claim was very high. The data analyst was directed to assume one rest break violation per week. Using this assumption that 100% of the Class missed one rest break per week due to the demands of work assignments, an aggressive assumption, the exposure was calculated, using average pay rates, to be **$317,510.00**. It was then estimated that the current exposure value of this claim is a little under 5% of the asserted, maximum amount of one missed break for everyone, every single week. That risk-adjusted exposure is **$12,700.40**.

- The meal period exposure was determined by examining the time records and calculating the meal period violations recorded in those records (the short, missed, or late meal periods). While this method of calculation presents better evidence than bare testimony for claims like a rest break violation claim, there were still problems with reliance on just facial violations. First, the violation rate depended ***heavily*** on missed meal break. Of 69,887 facial meal period violations, 60,314 of those were missed meal periods in shifts between five and six hours in length. Meal period waivers nullify these violations. Assuming Defendant kept copies of meal period waivers for everyone in its files, that would leave about 9,573 facial violations, not 69,887. For purposes of calculating an exposure, it was assumed that 25% of the facial violations might be viable, resulting in an exposure of **$263,832.50**. The exposure valuation, even at 25% of the facial violations, was still susceptible to attack. Employee choice is a serious issue in the context of a meal period claim. So long as an employee has the opportunity to take a lawful meal period, an employee can choose to take it late, cut it short, or skip it. In the case of an employee working a six-hour shift, it is often true that an employee would prefer to leave work 30 minutes sooner, rather than take a meal break. But, in an effort to quantify the current value of this claim, it was estimated that the current value would be about 10% of the exposure, or **$23,744.93**, based on chances of certification and liability risks at 30% and 30% respectively.

- The exposure for Labor Code § 226 violations is based upon the off-the-clock theory of unpaid wages. The wage statements themselves are facially compliant. Normally, the regular rate violation theory would make this more valuable, but that impacted so few Class Members, that the exposure value was larger when tied to the much riskier off-the-clock work theory. The wage statement exposure, without any risk adjustment, was calculated to have a maximum plausible value of **$601,125.00**. Using the same adjustment factor of about 10% that was applied to the off-the-clock claim, the risk-adjusted value of this exposure is **$54,101.25**, based on certification and merits success chances of 30% and 30% respectively. This claim is contingent upon the success of the underlying off-the-clock claim. If the regular rate claim was used as the basis instead, the certification and merits chances would be higher, but only 5% of the class was impacted. Thus, the $601,125.00 exposure would have a risk-based value of: $0.7 \times 0.6 \times 0.05 \times \$601,125.00 = \$12,623.63$. In other words, the stronger claim contributes less to the settlement value because only 5% of the class had potential regular rate issues (assuming that the regular rate theory prevailed).

- As with the wage statement claim, the exposure for late final wage payments under Labor Code § 203 is based upon the off-the-clock theory of unpaid wages. Normally, the regular rate violation theory would make this more valuable, but that impacted so few Class Members, that the exposure value was larger when associated with the much riskier off-the-clock work theory. The late pay exposure, without any risk adjustment, was calculated to have a maximum plausible value of **$1,573,939.50**. Using the same adjustment factor of about 10% that was applied to the off-the-clock claim, the risk-adjusted value of this exposure is **$141,654.56**, based on certification and merits success chances of 30% and 30% respectively. This claim is also contingent upon the success of the underlying off-the-clock claim. As with the wage statement claim, the regular rate claim could also be used to recover 203 penalties. But, just as with wage statements, the small size of the affected population means that the "weaker" off-the-clock claim still provided more settlement exposure risk.

- Performing risk-adjusted valuations for all claims yields a total value in the range of **$251,930.26**, excluding PAGA.[5]

- PAGA penalty exposures are commonly calculated two ways, primarily to address the issue of "stacking," which is the argument that a single incorrect act cannot result in multiple penalties all based on that one violation. Here, the approximate number of pay periods is 14,000. Using the "catch-all" $100 penalty, and assuming one violation for every single

[5] It is difficult to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of "very high risk" or "high risk" to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel.

> PAGA Pay Period, the exposure would be $1,400,000. However, with the assistance of the data analyst at Berger Consulting, the exposure was calculated with all penalties that could be identified, even where that resulted in "stacking" of penalties. The resulting exposure under that more aggressive method is **$3,640,500.00**. The next task was to determine a viable current value for this claim. The PAGA claim would require the participation of a large percentage of a part-time job workforce of about 900 current and former employees of a discount pizza business. Many of the claims are testimony dependent. In addition, the Court could, in the interest of justice, reduce any penalty further, once the violation was proven. A 15% valuation is a very reasonable recovery percentage rate, based on these risks, including, in particular, the low participation rate that would be likely in this particular workforce. The resulting, risk-adjusted exposure is **$546,075.00**.

The concurrently-filed Declaration of H. Scott Leviant discusses valuation. (*See*, Leviant Decl., ¶ 18.)

Settlement of a class action at the pre-certification stage necessarily includes a large risk reduction. Class actions are certified at very low rates. When considering the probability of certification in any case, generally, the rational decision, pre-certification, is to assume that there is less than a 20% chance of obtaining certification unless a claim in the case is unusually well suited to certification. The Judicial Council's Class Certification in California: SECOND INTERIM REPORT FROM THE STUDY OF CALIFORNIA CLASS ACTION LITIGATION - FEBRUARY 2010 ("Second Interim Report"), at page 5, states that "less than a quarter of disposed cases in the study sample were certified, either through a litigated motion for certification ***or*** as part of a classwide settlement agreement." *See*, Second Interim Report, at 5 (emphasis added).[6] (Leviant Decl., ¶ 19.) That "or" is significant. The certification rates identified in the study of less that 25% includes ***both*** contested certifications and settlement certifications, which are the majority of certifications. (*Id.*) In other words, one must assume in any wage and hour class action prior to certification that a contested certification motion will have a success rate of well under 25%, and probably closer to 10%. (*Id.*) The facts of each case have bearing on these percentages. (*Id.*) But it cannot be disputed that certification is an exceptionally difficult procedural hurdle to clear. Thus, it is not unreasonable to start from the proposition that a pre-certification settlement that is 10% to 15% of the maximum plausible exposure is a valid starting point for valuation. If roughly 10% of class actions are certified on a contested basis, then, on average, 90% of the time a class will not be certified and the result for the class is zero dollars. (*Id.*) The recovery is

[6] The report is available at https://www.courts.ca.gov/documents/classaction-certification.pdf (last viewed March 12, 2024). The link to the report contained in my prior declaration was incorrect.

roughly **10%** of the maximum plausible recovery (estimated to be approximately **$6,575,219.70**, including PAGA), which falls within the expected outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately $759,655.20, with no risk reduction), excluding penalties and interest; the settlement is about 84% of the premium wages (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure value.[7] This Settlement achieves the goals of the litigation.

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

The proposed method of allocating the Settlement Fund to Class Members also is fair and reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members based on time worked by the Class Member during the Class Period, in relation to the total amount of time worked by all participating Class Members collectively during the class period. This proposed method is fair and reasonable because each Class Member's actual potential damages vary based on the number of workweeks he or she worked (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when a higher number of incidents occur). A Class Member who worked a greater number of work weeks for Defendant will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 13, 17.)

5. The Proposed Enhancement Award to Plaintiff Warrants Approval.

The proposed enhancement of $7,500 to Plaintiff is intended to recognize substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. Factors considered when awarding an incentive include

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

the actions the plaintiff has taken to protect the class, the degree to which the class has benefitted, the amount of time and effort the plaintiff expended in the litigation, the risk to the class representative in commencing suit (financial and otherwise), the notoriety and personal difficulties encountered, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed by the plaintiff as a result of the litigation. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804 (2009). Here, Plaintiff contributed time to the prosecution of this matter, including assistance prior to the mediation with information and substantial time conferring with counsel over the course of this litigation and before it was filed. (Noel Decl,. ¶¶ 5-21; Leviant Decl., ¶ 33.) The enhancement also recognizes risks Plaintiff took to be personally liable for costs regardless of the success of the litigation, as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued an employer, making future employment less certain. Plaintiff's Declaration supports the requested enhancement.

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

a) Plaintiff's Counsel Should be Awarded Fees Based on a Percentage of the Fund Recovered, Consistent with the Common Fund Method

The request for fees as a percentage of a settlement is supported by the "common fund theory," where "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977). The common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995). The lodestar may be cross-checked against the percentage. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorney's fees in California Courts. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).[8] Thus, this Court may and, as strongly encouraged by the California Supreme

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[8] The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method

Court, *should* award attorney's fees to Plaintiff's counsel based upon the percentage methodology.

"Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 47 n. 11 (2008). This is consistent with Plaintiff's counsel's experience. Here, Plaintiff's Counsel requests attorneys' fees of **$213,333.33** (33 1/3% of the GSA), and ***capped*** costs of **<u>$20,000.00</u>**, which includes payment for mediation, filing fees, and other expenses, including filing costs. (Leviant Decl., ¶ 32.) Given the efforts and risks, and the results, these amounts warrant *final approval*.

b) A Lodestar Cross Check Confirms that Class Counsel's Requested Attorneys' Fees Are Reasonable

Plaintiff's fee application is also reasonable based on lodestar. Under the lodestar method, the court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee. *Ramos v. Countrywide Home Loans, Inc*., 82 Cal. App. 4th 615, 622 (2000). The moving party meets its burden by submitting "declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case" as "California case law permits fee awards in the absence of detailed time sheets." *Wershba*, 91 Cal. App. 4th at 254-55; *Dunk*, 48 Cal. App. 4th at 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and the reasonable hourly compensation are used to arrive at a "lodestar" figure which may then be augmented or diminished taking into account various "multiplier" factors. *See Ramos*, 82 Cal. App. 4th at 622 (*citing Serrano*, 20 Cal. 3d at 48-49).

Here, Class Counsel's *total* lodestar is **$181,800.00** (including about 10 hours of past and future time not billed by Mr. Leviant). (Leviant Decl., ¶ 32.) The billed lodestar to date is **$167,175.00**. (Leviant Decl., ¶ 32.) The request for **$213,333.33** in attorneys' fees, which is **1.17** times the estimated total lodestar, is reasonable under the lodestar method.

(1) Class Counsel's Hours Are Reasonable

In determining whether the number of hours was reasonable, the court must determine that "the

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inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases." *Laffitte*, 1 Cal. 5th at 501.

time spent was reasonably necessary and that [] counsel made 'a good faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary." *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The court should defer to the lawyer's judgment as to how much time he was required to spend on the case. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) ("[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee."). Here, Counsel expended a prudent amount of time to achieve the excellent result. (Leviant Decl., ¶ 32.)

(2) Class Counsel's Hourly Rates Are Reasonable

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). "[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorneys' skill as reflected in the quality of work, as well as the attorneys' reputation and status." *MBNA American Bank, N.A. v. Gorman*, 147 Cal. App. 4th 1, 3 (2006). The trial court may also "find hourly rates reasonable based on evidence of other courts approving similar rates." *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

Class Counsel are experienced litigators who specialize in employment law, with a substantial wage and hour practice. (Leviant Decl., ¶¶ 21-27.) A number of courts, including this Court, have approved Class Counsel's hourly rates. (Leviant Decl., ¶ 21.) Given the skill and experience of Class Counsel, and the excellent result achieved, Class Counsel's hourly rates are reasonable.

c) Class Counsel's Costs Are Reasonable

The Settlement Agreement provides for reimbursement of costs not to exceed $20,000.00. Moon Law Group, PC seeks capped costs in the amount of $20,000.00, because actual costs exceed the cap. (Leviant Decl., ¶ 32, Exh. 2.) These costs were reasonably incurred in prosecuting the Action on behalf of the Class Members and should be approved by the Court. Accordingly, Class Counsel respectfully requests the Court approve total costs in the amount of **<u>$20,000.00</u>**. (*Ibid.*)

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

Phoenix Settlement Administrators, which has been selected due to its competitive bid, requests costs of **$17,000.00**. In counsel's experience, based on similar wage-and-hour actions, a cost of **$17,000.00** is a fair and reasonable amount for administration fees and should be approved, and it is below the Parties' estimated cost of $20,000 to administer the Settlement. (Leviant Decl., ¶ 33.) Phoenix has also confirmed it capabilities and security protocols in the accompanying declaration.

The Parties have separately reached an agreement with Phoenix to pay for the mailing of supplemental notices to 237 individuals who are no longer Class Members due to the subsequent Escalator Clause truncation of the Class Period and 211 individuals whose Notices had incorrect Workweek and Pay Period information due to the same Class Period adjustment. (Leviant Decl., ¶ 35.)

8. The PAGA Allocation is Reasonable

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

Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the wage and hour claims is robust and serves the deterrent purpose of PAGA. *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) ("By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA."). *Moniz* provided explicit confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with federal courts that have considered how to evaluate a PAGA settlement, concluded that the class action factors are appropriately considered, along with a consideration of whether the settlement furthers "PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws."

As to the first set of elements (the class-type analysis), it is embodied in Plaintiff's discussion of the adequacy of the settlement generally. Here, the expense, complexity and likely duration of future litigation was to some extent an unknown. However, what is certain is that to adequately establish the violations that would support a substantial penalty, tremendous time and expense would be invested.

The second element (the PAGA purposes element) is also satisfied. As held by *Moniz*, PAGA's purposes include (1) remediation of present labor law violations, (2) deterrence of future violations, and (3) maximization of enforcement. Here the allocation of a major portion of settlement funds to class members still advances the goal of labor law violation remediation. The allocation of a major portion of settlement funds to class members also deters future violations. This is a $640,000.00 settlement, not a trivial sum. Deterrence is fulfilled. Finally, allocation of a major portion of settlement funds to class members still advances the goal of enforcement of state labor law. This settlement is, by definition, a response to alleged violations of labor laws, balanced against risks.

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

Finally, the PAGA allocation is fair. The LWDA is receiving $48,000.00. The Class is receiving, net, an estimated $318,166.67 for the releases of eight other claims (excluding the $16,000.00 as the aggrieved employees' share of the PAGA Allocation). While the proportion is tipped in favor of the employees, the allocation is not unfair because it satisfies California's wage and hour policies.

VII. <u>CONCLUSION</u>

For all the foregoing reasons, because the Class meets the requirements for certification, because the Settlement bears all requisite indicia of fairness, and because the notice procedure complied with Rule 3.766 and due process, this Court should grant this Motion for Final Approval.

Respectfully submitted,

Dated: August 27, 2024

MOON LAW GROUP, PC

By: H. S. Leviant

Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 725 S. Figueroa St., Suite 3100, Los Angeles, CA 90017.

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

Larry Kazanjian
lkazanjian@pkwhlaw.com
Dayra Juarez
djuarez@pkwhlaw.com
PALMER KAZANJIAN WOHL HODSON, LLP
2277 Fair Oaks Blvd, Suite 455
Sacramento, California 95825
Facsimile: (916) 640-1521

Counsel for Defendant BP VENTURE MANAGEMENT, INC.

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

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

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

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

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **August 27, 2024** at Los Angeles, California.

H. Scott Leviant	H. S. Leviant
Type or Print Name	Signature